Western Australian

Industrial Gazette

PUBLISHED BY AUTHORITY

Sub-Part 5 WEDNESDAY, 28TH OCTOBER, 1998 Vol. 78—Part 2

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

CUMULATIVE CONTENTS AND DIGEST APPEAR AT THE END OF THIS PUBLICATION

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

JURISDICTION: WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT

CORAM: KENNEDY J (Presiding Judge)
ANDERSON J
SCOTT J.

DELIVERED: 9 SEPTEMBER 1998.

FILE NO/S: APPEAL IAC 3 of 1998

BETWEEN: COMMISSIONER, PUBLIC SERVICE COMMISSION & ORS

Appellants

and

CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INC

Respondent

and

FILE NO/S: APPEAL IAC 4 of 1998

BETWEEN: ALBANY PORT AUTHORITY & ORS

Appellants

and

CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INC

Respondent

and

FILE NO/S: APPEAL IAC 6 of 1998

BETWEEN: ROYAL PERTH HOSPITAL & ORS

Appellants

and

HOSPITAL SALARIED OFFICERS ASSOCIATION OF WESTERN AUSTRALIA (UNION OF WORKERS)

Respondent.

JUDGMENT—

KENNEDY J (Presiding Judge):

I have had the benefit of reading in draft the reasons to be published by Anderson J. I am in agreement with those reasons and with the orders which his Honour proposes. I publish a note to that effect.

ANDERSON J:

For the reasons which I now publish, I am of the opinion that the appeals must be dismissed.

KENNEDY J:

Scott J is unable to be present this morning. He is of the same view and I publish his reasons.

I think in the circumstances I should reserve liberty to apply if there is any difficulty that arises out of the orders. Subject to that, the orders of the Court will be that each appeal will be dismissed.

Catchwords:

Industrial relations (WA)—Amendment of three public sector awards—Provision for salary packaging to be agreed between employer and employee—Government policy opposed to salary packaging other than pursuant to workplace agreements—Whether consistent with Wage Fixing Principles—Whether constituting contracting out of awards.

Representation:

IAC 3 of 1998

Counsel:

Appellants: Ms J H Smith

Respondent: Mr G R Hancy

Solicitors:

Appellants: State Crown Solicitor

Respondent: Ilbery Barblett

IAC 4 of 1998

Counsel:

Appellants: Ms J H Smith

Respondent: Mr G R Hancy

Solicitors:

Appellants: State Crown Solicitor

Respondent: Ilbery Barblett

IAC 6 of 1998

Counsel:

Appellants: Ms J H Smith

Respondent: Mr C D Panizza (Union Assistant Secretary)

Solicitors:

Appellants: State Crown Solicitor

Respondent: Mr C D Panizza (Union Assistant Secretary)

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

Ngala Family Resource Centre v The Australian Liquor, Hospitality and Miscellaneous Workers Union (1996) 77 WAIG 2551

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

Case(s) also cited:

Confederation of Western Australian Industry (Inc) v The West Australian Timber Industry Industrial Union of Workers (1990) 71 WAIG 15

Civil Service Association of Western Australia Inc v Department of Minerals and Energy (1996) 76 WAIG 2135

Federal Commissioner of Taxation v Spotless Services Ltd (1996) 186 CLR 404

Minister for Aboriginal Affairs v Peko-Wallsend Ltd (1986) 162 CLR 24

KENNEDY J:

I have had the benefit of reading in draft the reasons to be published by Anderson J. For those reasons, I agree that these appeals should be dismissed.

The appellants' case, in my view, failed sufficiently to recognise that the Commission expressly declined to make it compulsory for an employer to enter into salary packaging upon request. There could be substantial reasons in any particular case for an employer reasonably to withhold consent to salary packaging.

ANDERSON J:

These are appeals from a decision of the Commission in Court Session (Commissioners Gregor, Cawley and Beech) delivered on 13 March 1998, whereby the Commission granted applications to amend/vary three public sector awards: the Hospital Salaried Officers Award 1968, No 39 of 1968, the Public Service Award 1992 and the Government Officers Salaries, Allowances and Conditions Award 1989, No A3 of 1989. The variations ordered to be made to each award are in similar terms and the substance and effect of the variations is to introduce into the awards a provision for "salary packaging". For present purposes, that term means the provision of employment benefits otherwise than wholly in the form of money.

Salary packaging is popular and widespread in Australia. It has been facilitated in the form of award provisions (both State and Federal) and through enterprise bargains and workplace agreements. In about 1996, Cabinet adopted a policy for public sector agencies to follow in regard to the introduction of salary packaging. A document was put out styled "Guidelines for Salary Packaging in the WA Public Sector", in which the policy was stated. One of the guidelines (at p8 of the document) was in terms that:

> "Salary packaging arrangements may only be introduced through workplace agreements."

The reference to workplace agreements is, of course, a reference to agreements made between employers and employees, pursuant to the *Workplace Agreements Act 1993* and registered under that Act. Because the jurisdiction of the Western Australian Industrial Relations Commission does not extend to registered workplace agreements and because the regime of wage determination created by the *Workplace Agreements Act* stands outside the award system, the effect of the Government policy is to preclude salary packaging provisions from public sector consent awards and enterprise agreements made under the *Industrial Relations Act* and to extend the benefits of salary packaging, such as they may be, only to employees willing to enter into workplace agreements; ie, to employees willing to opt out of the award system.

The history of these applications is not entirely clear to me. The application made in respect to the Hospital Salaried Officers Award No 39 of 1968 appears to have been first in time. That application has the number P62 of 1994. When it was made, the guidelines had not been promulgated and objection to it was taken by the respondent employers (Royal Perth Hospital and others) on the ground that the application (to vary the award to introduce a provision for salary packaging) did not raise an "industrial matter" as defined by s7 of the *Industrial Relations Act*, was contrary to public policy in that it was "contrary to the spirit and intent of the *Workplace Agreements Act*" and that it provided for the parties to contract out of the award and, hence, infringed the prohibition against contracting out contained in s114 of the *Industrial Relations Act*.

Those objections were determined against the employers by Commissioner George sitting as a Public Service Arbitrator in September 1996. I gather that thereafter the union sought the introduction of salary packaging provisions in enterprise agreements. They failed to obtain enterprise agreements embracing salary packaging. The main, if not the only, reason given by the various public sector employers for their refusal to agree to the inclusion of a salary packaging provision in enterprise agreements was that it would be against the Government policy referred to above; that is, the policy expressed at p8 of the Guidelines document, that salary packaging should only be offered as part of registered workplace agreements.

Against this background the Civil Service Association commenced two applications in 1997 (No P5 of 1997 and No P6 of 1997). The first application was to vary Public Service Award No 1992 to introduce salary packaging and the second was to vary the Government Officers Salaries, Allowances and Conditions Award 1989 to introduce an identical salary packaging provision. The Hospital Salaried Officers Association's application No P62 of 1994 remained on foot. All three applications were heard by the Commission in Court Session in December 1997 and it is the decision in respect of these applications which is the subject of these appeals.

It will be convenient to set out the salary package provision granted in the application to vary the Hospital Salaried Officers Award 1968.

"SALARY PACKAGING

(1) For the purposes of this award 'salary packaging' shall mean an arrangement whereby the wage or salary benefit arising under a contract of employment is reduced, with another or other benefits to the value of the replaced salary being substituted and due to the employee.

(2) An employer and employee bound by this award may enter into a salary packaging arrangement subject to the following—

  (a) The employer shall take all reasonable steps to ensure that any salary package complies with taxation and other relevant laws;

  (b) (i) The employer shall record the arrangement at the time it is entered into, and provide a copy to the employee before the arrangement comes into effect;

  (ii) The record shall include details of the employee's classification and salary level applying immediately prior to the salary packaging, coming into effect, and the details of the package.

  (c) The value of any agreed salary package, viewed objectively, shall not be less than the value of entitlements under this award which would otherwise apply;

  (d) The value of any agreed salary package, viewed objectively, shall not be greater than the value of the contractual benefits which would otherwise be due to the employer;

(3) An employer shall not unreasonably withhold agreement to salary packaging on request from an employee.

(4) In the event of a dispute involving—

  (a) refusal by an employer to discuss after having received a request for salary packaging; and/or

  (b) a claim by an employee or the union party to this award that an employer is unreasonably refusing to enter into a salary packaging arrangement with its employee/s;

such dispute may be determined under the Industrial Relations Act, 1979 as amended."

The same provision was inserted into the Public Service Award 1992 and the Government Officers Salaries, Allowance and Conditions Award 1989.

As can be seen, the provision is a facilitating provision. It does not place an absolute obligation on either party to accept a salary packaging arrangement, although prohibits the employer from "unreasonably" withholding agreement to salary

packaging on request from an employee; and it contains a requirement that the value of the salary package shall be neither greater nor less than the value of award entitlements that would otherwise apply.

There are, of course, three appeals, but the grounds of appeal are the same *mutatis mutandis*. Once again, it is convenient to select application P62 of 1994 as the example and set out below are the grounds of appeal from the decision of the Commission in Court Session in respect to that application:

"1. The Commission in Court Session erred in law and acted in excess of jurisdiction:
   (a) in holding that the Government policy set out in Exhibit P2—Attachment 1 ('the Government Policy') is unfair ('the determination') on the grounds that:
      (i) that the determination required a consideration of matters that are not 'industrial matters';
      (ii) in the alternative, the determination is contrary to Sections 7A, 7B, 7C, 7E and Section 26A of the *Industrial Relations Act* 1979 ('the Act');
   (b) by varying the Hospital Salaried Officers' Award 1968 ('the Award') to provide for the awarding of a condition of employment, namely salary packaging because the condition applies to other employees in the Public Sector who are parties to a workplace agreement; contrary to Section 26A(b) of the Act.
2. In the alternative to ground 1, the Commission in Court Session erred in law by failing to take into account a relevant consideration, in holding that the Government policy was unfair, and making the Order to vary the Award in that there was uncontradicted evidence before the Commission that the salary packaging has been offered to Government employees in accordance with the Government policy through workplace agreements which provide for salary packaging as part and parcel of a package of structural reform, which complied with advice received from the Australian Taxation Office.
3. The Commission in Court Session erred in law in holding that Section 26A of the Act prohibited the Commission from hearing evidence about offers made to employees as defined in the Act, in relation to the terms and conditions that are available to employees in proposed workplace agreements.
4. The Commission in Court Session erred in law in holding that salary packaging is consistent with the Wage Fixing Principles and erred in failing to apply the principles.
5. The Commission in Court Session erred in law in varying the Award 1989 to provide for salary packaging arrangement which enable employers and employees to contract out of the Award entitlements, contrary to Section 114 of the Act.
6. The Commission in Court Session erred in law in that having held that provision of salary packaging should not be compulsory, the Commission in Court Session varied the Award so as to compel each Respondent to the Award to provide salary packaging when requested by an employee to do so."

These grounds are to be understood in the light of the following. By their applications, the unions sought salary packaging provisions which were in complex terms. See, for example, appeal book pp48 to 53 which set out the award amendment sought in application P62 of 1994. It is five closely-typed pages comprising 16 or 17 separate clauses, many of these having a number of subclauses. The Commission construed these as making it "compulsory for an employer to enter into salary packaging upon request" (AB 29). The Commission declined to accept a clause which would impose an absolute obligation upon employers to enter into salary packaging upon request and gave its reasons as follows:

> "However, it seems to us that to accept the union's proposition for compulsion would run counter to our conclusion that the current situation, by precluding employers from even contemplating salary packaging in an enterprise agreement or under an award, should be remedied to enable salary packaging to be considered on its merits by the employers and employees affected. The union's proposal would have the effect of maintaining the lack of discretionary judgment for employers, with an opposite (but equally) predictable outcome.
>
> For this reason we will not endorse the union's proposals for compulsory provisions to be inserted into the awards. **However, we consider that in the event of an enabling provision being inserted into an award for salary packaging to be a matter for those directly affected, then it would be unconscionable for an employer then to refuse to discuss or unreasonably withhold consent to such arrangements. And we make it plain that we consider a refusal to discuss, negotiate or reasonably agree to salary packaging arrangements because of a general Government policy such as is in place currently is unfair.**"

I have emphasised the passages on which the appellants particularly rely to sustain grounds 1 and 2.

Ground 1(a)(i)

As I understand ground 1(a)(i), as it was developed in argument by Ms Smith, who appeared on behalf of the appellants in each of the appeals, the appellants' main complaint here is that the question whether the Government policy regarding salary packaging is "unfair" is not an industrial matter. Hence, it was not open to the Commission to judge it to be unfair and (to use Ms Smith's words) to decide therefore to "circumvent" it.

This submission contains the misconception that the Commission held that the Government policy is unfair. With respect, the Commission did not hold that the Government policy is unfair. It said that a refusal by the employer to reasonably agree to salary packaging because of the Government policy would be unfair. Whilst, from most standpoints, these may seem to amount to the same thing, there is actually a vital distinction. It may well be that the pure question of the fairness or unfairness of the Government policy is not an industrial matter in respect to which the Commission has jurisdiction. However, the relevant conduct and expressed attitudes of the opposing parties engaged in negotiation or disputation over terms and conditions of employment is surely something the Commission is entitled to examine and pass judgment upon in the exercise of its jurisdiction under s23(1) to enquire into and deal with industrial matters. The reason why the parties cannot reach agreement about some matter in the context of wage negotiation is a proper subject for enquiry and findings by the Commission in the exercise of its jurisdiction to conciliate and arbitrate. The Commission is not precluded from holding that industrial conduct is unfair or inappropriate or unmeritorious merely because it may stem from a Government policy in respect to which the Commission has no jurisdiction. In my opinion, ground 1(a)(i) has not been made out.

Grounds 1(a)(ii) and 1(b)

These grounds are based on ss7A, 7B, 7C, 7E and 26A of the *Industrial Relations Act.*

The sections are in the following terms:

"7A. Without limiting the other provisions of this Part, this Act has effect subject to the *Workplace Agreements Act 1993*.

...

7B. Where any employer and any employee are parties to a workplace agreement, they are not, in relation to one another, within the definitions of 'employer' and 'employee' respectively in section 7(1).

7C. (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 section 7(1);

(b) is not capable of being determined under section 24(1) to be an industrial matter; and

7E. A workplace agreement is not a contract to which section 114 applies.

...

26A. In the exercise of its jurisdiction the Commission shall not—

(a) receive in evidence or inform itself of any workplace agreement or any provision of a workplace agreement; or

(b) award particular conditions of employment to employees who are not parties to a workplace agreement merely because those conditions apply to any other employees who are parties to a workplace agreement."

Relevantly to this case, the effect of these provisions is to take matters arising under workplace agreements out of the definition of "industrial matter" in the *Industrial Relations Act* s7(1), to put the industrial relations between the parties to such agreements beyond the reach of the Industrial Relations Commission and beyond the ambit of the coercive provisions of the *Industrial Relations Act* and to prohibit the Commission from looking into workplace agreements or taking account of them in the exercise of its arbitration powers. For example, it would be wrong of the Commission to vary an award merely to bring it into conformity with a workplace agreement.

As I understood Ms Smith's argument in support of these grounds of appeal, it was to the effect that in deciding to vary the awards to include a salary packaging provision, the Commission impermissibly had regard for the content of workplace agreements and impermissibly varied the awards because there were salary packaging provisions in workplace agreements.

It is arguable that if the Commission had done that, it did something it was not permitted to do. However, I am not persuaded it did any such thing. Nowhere in the reasons for decision can there be found any indication that the Commission sought to inform itself on the contents of a workplace agreement, or that it decided to vary the awards because there was a salary packaging entitlement under the workplace agreement regime. The Commission certainly did notice the Government policy to which reference has been made, but only, it seems to me, for the proper purposes of explaining the background to the applications, explaining the employer's attitude in the negotiations that had taken place to obtain salary packaging in enterprise bargains and explaining the reasons why it was necessary for the unions' claim for an award variation to be arbitrated.

It seems to me the Commission's decision came down to this: because of the attitude of public sector employers, the industrial matter constituted by the claim of the two public sector unions to have available to their members an entitlement to salary packaging could only be resolved by arbitration and award variation. In my opinion, to approach the industrial matter in that way did not involve an excess of jurisdiction merely because the Commission noted that the attitude of the employer was a consequence of the Government policy in regard to salary packaging or because the Commission noted that the policy was to confine salary packaging to workplace agreements. As I have said, the fact that there are salary package entitlements in workplace agreements is not why the Commission determined after arbitration to vary the awards, so far as one can tell from their reasons. Nor did the Commission determine to vary the awards for the purpose of subverting Government policy.

In my opinion, these grounds of appeal have not been made out.

Ground 2

With due respect, it is not easy to identify from the terms of this ground of appeal exactly what the point of it is. As it was argued, however, I understand it to be a complaint that the Commission failed to give proper consideration to the full income tax implications of the salary packaging clause ordered to be inserted into the awards. If I have correctly understood Ms Smith's submissions in respect of this particular ground, they were to the following effect. There was evidence before the Commission that any salary packaging which was not tied to structural reforms, productivity gains, the need to attract and retain key staff or similar industrial objectives and which did not allow genuine salary sacrifices in return for other benefits, would be regarded by the Australian Taxation Office as pure tax avoidance. The award variation granted by the Commission owed nothing to these objectives and did not allow for salary sacrifices, inasmuch as the new clause required the total package to have a value no greater and no less than the money value of the wage stipulated in the award. Therefore, salary packaging entered into pursuant to the award variation would be (to use Ms Smith's words at t/s 19) "ineffective for tax purposes". Accordingly, if the matter had been given proper attention by the Commission, they would have appreciated that there was no unfairness in a Government policy requiring salary packaging to be confined to workplace agreements under a broader policy tying salary packaging to structural and productivity reform. Instead, the Commission would have appreciated that the Government policy precluding salary packaging from public sector employment, except pursuant to workplace agreements, was entirely appropriate and that the refusal of public sector agencies to agree to salary packaging, except through workplace agreements as part of structural reform, etcetera, was proper and responsible.

I hope I have not done Ms Smith an injustice by summarising her admirably comprehensive argument in this way. It seems to me that underpinning this argument is the proposition that because it was not tied to structural or productivity reforms salary packaging pursuant to the award variation would not be tax effective and hence would be pointless.

However, what must be kept in mind is that the salary packaging clause ordered by the Commission to be inserted into the awards merely enables parties to the awards to enter into an arrangement whereby the level of remuneration set by the award can be paid and received in forms other than money. It does not oblige the parties to enter into such an arrangement. It is not, of itself, a provision which facilitates tax avoidance by award workers, nor is it by itself a tax minimisation scheme. Should any particular salary packaging proposal have that character, or not meet Australian Taxation Office rulings or guidelines, I think that would be a factor relevant to the reasonableness of any refusal by an employer to enter into it. If the salary packaging sought to be obtained by the employee was likely to attract disapproval of the Australian Taxation Office, or was likely to attract the imposition of liabilities upon the employer under the revenue laws, or impose other unreasonable burdens, these might be relevant considerations in determining the reasonableness of a refusal by the employer to agree to the proposal.

It is not self-evident that no mutually beneficial salary packaging arrangement could lawfully be entered into pursuant to the award variation. It may well be that Ms Smith is correct in her submission that the expert income tax evidence points to the fact that salary packaging which did not have the industrial objectives mentioned and did not involve genuine salary sacrifice would not be "tax effective". However, there might be reasons, apart from tax minimisation, why an employee would prefer to receive some part of the benefits of his employment in a form other than money and why an employer might prefer to offer employment benefits in a form other than money. The plain fact of the matter is that salary packaging is popular and commonplace amongst Australian salary earners and accepted as a legitimate form of remuneration. I do not see why it is not a legitimate industrial objective, speaking generally, for the parties to industrial awards to seek to clear the way for salary packaging within the award system, by the introduction into the particular award of a provision to facilitate salary packaging, whatever the benefits might happen to be in any particular case and however illusory the benefits of salary packaging may turn out to be in any particular case.

I repeat that in my opinion, there is nothing in the award variation which would require the parties to enter into a salary packaging arrangement which was unfair to one or the other party or which imposed unreasonable burdens or might produce unreasonable consequences.

In my opinion, the Commission gave appropriate attention to the income tax implications. I am not persuaded there was

a failure to give proper weight to the difficulties that might confront the parties in actually formulating a mutually beneficial and effective salary packaging arrangement complying with the requirements of the new clause. This ground of appeal has not been made out.

Ground 3

Turning to ground 3, the appellants' complaint is that the Commission declined to receive into evidence written witness statements testifying to terms and conditions that had been offered to employees as part of the workplace agreement negotiating process. I gather the appellant employers sought to adduce that evidence so as to show that the content of the workplace agreement offers made by public sector agencies complied with Government policy inasmuch as the offers show that the public sector agencies had sought to implement productivity and workplace changes through workplace agreements. The Commission rejected this evidence, believing itself bound to do so in virtue of the provisions of s26A(a) to the effect that the Commission "shall not ... (a) receive in evidence or inform itself of any workplace agreement or any provision of a workplace agreement ...". At the hearing, the employers, through Ms Smith, argued that to receive evidence only of what was offered to employees in the negotiating process was not to receive in evidence or be informed of the agreement itself.

I think the problem with this argument is that unless the terms of the offer became the terms of the agreement, evidence of the offer would not be relevant. If the purpose of the evidence was to demonstrate that adherence to Government policy had resulted or would result in productivity improvements and workplace changes, evidence of mere negotiation such as, for example, evidence of the content of an offer of salary packaging in return for productivity improvements, is no proof of the fact. The evidence was not relevant, except as evidence of the content of the agreement actually reached and on that basis it was rightly rejected. In my opinion, this ground of appeal is not made out.

Ground 4

Turning now to ground 4, the Wage Fixing Principles is a reference to the general order made by the Commission in Court Session following a review of the national wage case decision pursuant to s51 of the Act. By s50, the Commission in Court Session may, of its own motion, or on the application of certain bodies, make General Orders relating to industrial matters and, by s51, the Commission in Court Session is obliged to make a general order giving effect to a national wage decision, should a national wage decision be made by the Australian Industrial Relations Commission.

There was a national wage decision in early 1997 and pursuant to its duty under s51, the Commission in Court Session reviewed its Wage Fixing Principles and made a statement of principles to replace the existing Wage Fixing Principles. By its formal general order of 13 November 1997, the Commission in Court Session ordered that the following clause be inserted into every award and industrial agreement of the Commission, with effect from 14 November 1997.

> "1A Statement of Principles—November 1997
>
> It is a condition of this award/industrial agreement that any variation to its terms on or from the 14th day of November 1997 shall not be made except in compliance with the statement of principles—November 1997 made by the Commission in matter number 940 of 1997."

In proceeding to grant variations to the three awards, the Commission in Court Session was therefore obliged to ensure that any variation was "in compliance with the Statement of Principles—November 1997 ...". This Court has held that the obligation of the Commission is to positively apply the principles: ***Robe River Iron Associates v AMSWU*** (1993) 73 WAIG 1993 at 1999.

> Included in the Statement of Principles are the following statements:
>
> " ... the Commission will promote and facilitate enterprise bargaining by conciliation ... the Commission will arbitrate at the invitation of the parties engaged in enterprise bargaining, in which case the Commission's decision should be incorporated into an agreement. That position will be established before the arbitration is commenced.
>
> Where parties to enterprise bargaining remain in disagreement and there is no prospect of agreement being reached then, where appropriate and consistent with the Act, the Commission will arbitrate. However, the Commission will have recourse to arbitration as a last resort.
>
> When a matter is to be determined by arbitration other than at the invitation of the parties, it shall be referred to the Chief Commissioner as a Special Case for him to decide whether it is to be dealt with by a Commission in Court Session or a single Commissioner. In a Special Case claim the Commission **shall have regard to matter of public interest, flow-on and the need for continued implementation at the enterprise level of structural efficiency initiatives**.
>
> 10. Special Cases
>
> ...
>
> Consistent with the requirements set out in this Statement of Principles with respect to a Special Case arising from arbitration in the course of enterprise bargaining ... the Commission in considering a Special Case **shall have regard to matters of public interest, flow-on and the need for continued implementation of structural efficiency initiatives at the enterprise level**."

The applications to amend these awards were treated as Special Cases arising from arbitration in the course of enterprise bargaining on the basis, presumably, that there was no prospect of agreement being reached on the inclusion of salary packaging into enterprise agreements or by consent into the awards. That may not be entirely accurate. I do not think there is any need to go too far into the basis upon which these applications received Special Case status because it is common cause that they did receive Special Case status and it is not suggested that there is anything wrong with that. The appellants contend, and it is not disputed, that in considering each application the Commission was bound by the general order and the Statement of Principles to "have regard to matters of public interest, flow-on and the need for continued implementation of structural efficiency initiatives at the enterprise level". And the appellants contend that the Commission failed to do so.

It is clear that the Commission had regard for public interest in deciding to grant the award variations to allow for salary packaging. The Commission pointed out (AB 26) that the main thrust of the Commission's wages policy for a number of years had been to achieve a more flexible negotiating environment directly between employees and their employers and I think that plainly is a public interest objective. The Commission clearly considered that to enable salary packaging to occur would advance that wages policy. The Commission referred, more than once, to what it described as the "widespread interest" in salary packaging, in the community as a whole. The Commission's reasons for decision contain the following statements (AB 28):

> "We see much force in the argument that inserting salary packaging arrangements into the awards is a move consistent with allowing individual employees and their employers to negotiate a benefit at the workplace level. Such a conclusion is also consistent with the requirements of the Commission, in the exercise of its jurisdiction, (to) have regard for the interests of the persons immediately concerned whether directly affected or not and, where appropriate for the interest of the community as a whole. Given the widespread interest in salary packaging as manifested in the evidence we think that it is consistent with the interests of persons immediately concerned and for the interests of the community as a whole for an enabling provision for salary packaging to be introduced into the awards. For all of these reasons this Commission in Court Session, in principle, endorses the insertion of salary packaging provisions in these awards."

In my opinion, these passages, and the other references which I have noted, do reveal that in reaching their decision the Commission did apply the Wage Fixing Principles insofar as the Principles required the Commission to have regard for public interest and the need for continued implementation, at the enterprise level, of structural efficiency initiatives. It is true that the Commission used the phrase "consistent with" in the formulation of its reasons, but that does not mean they did not

positively apply the Principles. On a true understanding of their reasons, the Commission held that to allow the flexibility of salary packaging in these areas of the public sector would advance the public interest and would enhance the prospects of structural efficiency reforms. In my opinion, that was a conclusion of fact that was open to the Commission on the whole of the evidence, including the evidence as to the widespread popularity of salary packaging amongst salary earners.

As to the issue of flow-on, there is ample indication in the reasons for decision that the Commission had the issue well in mind. At AB 24 there is specific reference to the appellants' argument that the variations would have cost and flow-on implications. The Commission adverted to the fact that salary packaging had already found its way into some awards. The Commission expressed the opinion that salary packaging "is a fact of life in the Australian community now ... " (AB 26). Relevantly to the issue of flow-on, the Commission found that the introduction of salary packaging into awards would not impose significant cost burdens on employers (AB 28). There are other references to matters relevant to the issue of flow-on and I am far from persuaded that the issue was left out of account or that it was not properly evaluated.

This ground of appeal is not made out.

Ground 5

By this ground of appeal, the appellants raise s114 of the *Industrial Relations Act*. What they say, in effect, is that the Commission failed to take into account the fact that any salary packaging arrangement made pursuant to the award variation would contravene s114. It is worth setting out the relevant parts of that section:

> "114 (1) Subject to this Act, a person shall not be freed or discharged from the obligation of any award, industrial agreement or order of the Commission by reason of any contract made or entered into by him ... and every contract, in so far as it purports to annul or vary such award, industrial agreement or order of the Commission shall, to that extent, be null and void ... "
>
> (2) Each employee shall be entitled to be paid by his employer in accordance with any award, industrial agreement or order of the Commission binding on his employer and applicable to him and to the work performed, notwithstanding any contract ... to the contrary, and the employee may recover as wages the amount to which he is hereby declared entitled in any court of competent jurisdiction ... ".

It is important to note that s114 does not forbid arrangements under which employment benefits are in a form other than money. It forbids the contracting out of awards, industrial agreements and orders.

Ms Smith argued that any salary packaging arrangement which provided for payment otherwise than in money would be a contract which purported to "annul or vary" the award in that it would purport to free or discharge the employer from the obligation to pay the money salary prescribed by the award. But the award as varied permits a payment otherwise than in money by permitting employers and employees bound by the award to enter into a salary packaging arrangement. Hence, the entry into a salary packaging arrangement which complies with the requirements of the award as to total value would not be an arrangement which "freed or discharged" the employer from the obligations of the award. It would not be a contract which purported to "annul or vary" the award. Entitlements given pursuant to a salary packaging arrangement which complied with the salary packaging clause in the award would be the entitlements to which the employee was entitled within the award. Another way of saying this is to say that to enter into a salary packaging arrangement under which part of a salary entitlement is paid in kind is not to "annul or vary" (ie, contract out of) an award which permits that arrangement to be entered into.

Ms Smith referred us to ***Ngala Family Resource Centre & Ors v ALHMWU & Ors*** (1996) 77 WAIG 2551 which, she submitted, was authority to the contrary. With respect, I do not think it is. In that case, the Commission at first instance ordered that an enterprise flexibility provision be inserted in seven awards applying in the private health industry, the effect of which was to enable *award variations* to be achieved by agreement between employers and employees rather than between employers and the union. The result was a provision in the award itself allowing for the award to be amended through non-union enterprise bargaining and imposing a limitation on the union's right to object to any such amendment. The Full Bench reversed that decision and this Court upheld the Full Bench. In giving reasons (with which Franklyn and Scott JJ agreed) in this Court, I said:

> "In my opinion, it does seem out of keeping with the present long standing legislative framework to have in an industrial award binding upon a union and to which the union is a principal party a provision which contemplates that the award may be varied on the striking of an agreement with a body of persons not a principal party to the award—especially as some of the body may be wholly opposed to the agreement. This seems to me to be, with respect, inimical with the award based system provided for in the *Industrial Relations Act* as that Act presently stands."

The basic objection in ***Ngala*** (*supra*) was that the union was effectively shut out of negotiations in respect to amendments to its own award, enabling an industrial outcome to be achieved which was coercive and enforceable against the union and other employees eligible to be members of the union, without union involvement and by amendment to the union's own award through the making of an industrial agreement to which the union was not a party. It can therefore be seen that that was a very different case from this. Salary packaging arrangements entered into between an employer and an employee will not have the effect of varying the award, nor will they affect the rights of anyone other than the parties to the particular arrangement.

This ground of appeal is not made out.

Ground 6

By this ground of appeal, the appellants complain that although the Commission recognised that it should not be compulsory for an employer to enter into a salary packaging arrangement upon request, the award variation actually has that effect. Ms Smith submitted that the "shall not unreasonably withhold agreement" clause, ie, cl (3), leaves the employer without any real choice. I am not persuaded that this is so. The clause leaves the employer free to decline to enter into a salary packaging arrangement on any reasonable ground. That seems to me to fall well short of compulsion.

In my opinion, each appeal must be dismissed.

SCOTT J:

I have had the opportunity of reading the reasons to be published by Anderson J. I agree with those reasons and the conclusion to which his Honour comes.

The Government policy referred to by Anderson J when dealing with ground of appeal 1(a)(i) was conceded in argument to be no more than a policy. The policy did not have the force of law in that it had not been legislated or gazetted or otherwise dealt with in such a way as to give it the force of law. The submissions advanced by counsel for the appellants in relation to this ground of appeal are in my view unsustainable. As the Presiding Judge points out in his brief reasons, salary packaging was not made mandatory by the amendment to the award so that it would be a matter to be determined on a case by case basis, taking into account the particular circumstances of each individual employee.

I agree that these appeals should be dismissed.

WESTERN AUSTRALIAN
INDUSTRIAL APPEAL COURT.

Industrial Relations Act 1979.

Appeal No. IAC 6 of 1998.

IN THE MATTER OF an appeal against the decision of the Commission in Court Session of the Western Australian Industrial Relations Commission in Matter Numbered P62 of 1994 dated the 9th day of September 1998.

Between

Royal Perth Hospital and Others

Appellants

and

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

Respondent.

Before—

JUSTICE KENNEDY (PRESIDING JUDGE)
JUSTICE ANDERSON
JUSTICE SCOTT.

9 September 1998.

Order.

HAVING heard Ms J H Smith (of Counsel) for the Appellants, and Mr C D Panizza for the Respondent, the Court hereby orders that the appeal be dismissed.

(Sgd.) J.A. SPURLING,
[L.S.] Clerk of the Court.

WESTERN AUSTRALIAN
INDUSTRIAL APPEAL COURT.

Industrial Relations Act 1979.

Appeal No. IAC 4 of 1998.

IN THE MATTER OF an appeal against the decision of the Commission in Court Session of the Western Australian Industrial Relations Commission in Matter Numbered P6 of 1997 dated the 26th day of March 1998.

Between

Albany Port Authority and Others

Appellants

and

Civil Service Association of Western Australia Incorporated

Respondent.

Before—

JUSTICE KENNEDY (PRESIDING JUDGE)
JUSTICE ANDERSON
JUSTICE SCOTT.

9 September 1998.

Order.

HAVING heard Ms J H Smith (of Counsel) for the Appellants, and Mr G R Hancy (of Counsel) for the Respondent, the Court hereby orders that the appeal be dismissed.

(Sgd.) J.A. SPURLING,
[L.S.] Clerk of the Court.

WESTERN AUSTRALIAN
INDUSTRIAL APPEAL COURT.

Industrial Relations Act 1979.

Appeal No. IAC 3 of 1998.

IN THE MATTER OF an appeal against the decision of the Commission in Court Session of the Western Australian Industrial Relations Commission in Matter Numbered P5 of 1997 dated the 26th day of March 1998.

Between

Commissioner, Public Service Commission and Others

Appellants

and

Civil Service Association of Western Australia Incorporated

Respondent.

Before—

JUSTICE KENNEDY (PRESIDING JUDGE)
JUSTICE ANDERSON
JUSTICE SCOTT.

9 September 1998.

Order.

HAVING heard Ms J H Smith (of Counsel) for the Appellants, and Mr G R Hancy (of Counsel) for the Respondent, the Court hereby orders that the appeal be dismissed.

(Sgd.) J.A. SPURLING,
[L.S.] Clerk of the Court.

FULL BENCH—
Appeals against decision of Commission—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ramsay Bogunovich
Appellant

and

Bayside Western Australia Pty Ltd
Respondent.

No 939 of 1998.

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

23 September 1998.

Reasons for Decision.

INTRODUCTION

THE PRESIDENT: This is an appeal against the whole of the decision of the Commission, constituted by a single Commissioner, made under s.29 of the Industrial Relations Act 1979 (as amended) (hereinafter called "the Act") on 12 May 1998. The appeal is properly brought, under s.49 of the Act.

The decision (see page 29 of the Appeal Book (hereinafter referred to as "AB")) was that the application made at first instance by the abovenamed appellant employee be dismissed.

GROUNDS OF APPEAL

It is against that decision that the appellant, Mr Ramsay Paul Bogunovich, now appeals on the following grounds (as amended by leave upon the hearing of this appeal)—

"1 The Commission erred in law and miscarried its discretion in deciding that the Appellant was not harshly, oppressively or unfairly dismissed in that the

Commission found that the contract of employment between the Appellant and the Respondent provided for a minimum of one week and/or a maximum of four week's written notification by either party depending on the circumstances relating to the cessation of employment (the Appellant claimed he was entitled to reasonable notice of dismissal from his employment).

2 The Commission erred and miscarried its discretion in deciding the Appellant was not harshly, oppressively or unfairly dismissed in that the Commission—

~~(a) found the Appellant most likely might have remained in the position of State Manager for only another month at the most~~(abandoned);

(b) found that Graham Guest (clinical psychologist) was not an expert witness because Mr Guest was in effect called as a witness on behalf of the Respondent;

(c) failed to take into account the expert evidence of Graham Guest (psychologist) and particularly Mr Guest's evidence that—

(i) the dismissal of the Appellant was unexpected and gave the Appellant no opportunity to come to terms with it and the lack of consultation, discussion and participation with the Appellant over the dismissal was detrimental to the Appellant's mental state aggravating his depression problems;

(ii) if the manner of the dismissal was carried out differently it would have minimised the affect(sic) of the dismissal on the Appellant;

(iii) the impact of the dismissal on the Appellant was significant because of his unique circumstances including being dismissed while off on workers' compensation;

(iv) the Appellant's dismissal had greater psychological impact on the Appellant due to his immediate removal from the Respondent's premises;

(v) the Appellant's confidence had been damaged by the dismissal and Respondent's handling of the secret report including the failure of the Respondent to discuss the secret report criticising the Appellant with the Appellant;

(vi) the impact of the dismissal on the Appellant's family life was extremely significant.

(d) failed to attach due weight to Mr Blanche's evidence that he had never advised the Appellant that his employment may be terminated due to poor performance or any other reason;

(e) found that the Respondent informed the Appellant of his short comings concerning poor performance;

(f) found that there is a lesser standard required when it comes to advising managers of their shortcomings;

(g) determined the issue of the Appellant's responsibility in Western Australia for Bayside Group Holdings Pty Ltd—Department 3, Western Australia ("BGH") on the basis of whether the Appellant was employed by BGH and failed to take into account documentary evidence that the Appellant was so responsible for BGH's operations in Western Australia. The Commission erred in finding the Appellant was merely providing project supervisory services for the payment of $16,000.00 monthly fee to the Respondent;

(h) found that the Respondent said through its witnesses that—

"The Applicant attended a number of operational management meetings. ~~*He*~~ *The Applicant also received reports in his capacity as manager, that the performance of the office for which he was responsible was unsatisfactory.* ~~*He was constantly kept aware of the deteriorating financial position of his office through verbal communication between himself and Robert Blanche.*~~ *There were a series of meetings in 1996 and early in 1997 when he was advised that the Respondent's operations in Western Australia would either cease or his position would be reviewed if profitability was not established."* ~~*The Respondent agreed that there was a meeting on 8 May 1997 at which time the Applicant was informed by Mr Blanche of the intention to terminate the employment contract. There was no connection between the act and the Applicant's physical disability caused by the work related accident. The Respondent argued that it had made every endeavour to assist in the rehabilitation of the Applicant following the accident."*~~

(i) found that Mr Blanche raised some of the issues with the Appellant contained in the secret report that he thought had been substantiated with the Appellant;

(j) failed to attach sufficient weight to the Appellant's performance with BGH, the financial performance of BGH and the fact the Appellant was paid a bonus approximately 4 months prior to termination;

(k) attached too much weight to the financial results of the Respondent included in exhibits JI and J2;

(l) ~~failed to take into account the evidence of Mr Blanche that at the time of the dismissal interview the Appellant was in so much pain at the time from his back injury, he either had to stand or lie down and was taking sedatives and that Mr Blanche was aware of this;~~ or attach sufficient weight to the evidence of Mr Blanche that at the time of the dismissal interview the Appellant was in so much pain at the time from his back injury, he either had to stand or lie down and was taking sedatives and that Mr Blanche was aware of this;

(m) ~~found that some strategies had been suggested for improvement in the personnel side of the business and that some evolved but most did not;~~ (abandoned);

(n) failed to attach due weight to his finding that the Appellant's employers were so happy with the work he performed on the Council House contract that he was granted a bonus for that work;

(o) ~~failed to take into account the fact the Appellant was off work on workers' compensation at the time of the dismissal and that the Respondent had an obligation under the *Workers' Compensation and Rehabilitation Act* 1981 to provide the Appellant with his position or a similar position for a further period of time;~~

(i) failed to take into account or attach sufficient weight to the fact the Appellant was off work on workers' compensation at the time of dismissal;

(ii) failed to take into account that the Respondent had an obligation under the Workers' Compensation Rehabilitation

Act 1981 to provide the Appellant with his position or a similar position for a further period of time.

(p) found the Appellant did not build up the business over a three year period and that it was strange that he made no sales personally during that time;

(q) ~~failed to consider and/or require Robert Blanche to produce BGH's:~~ (abandoned);

(i) ~~monthly and end of year (June) profit and loss statements for BGH for the period December 1994 to July 1996; and~~

(ii) ~~operating budgets for BGH for the financial years ended 30 June 1995 and 30 June 1996.~~

(r) found the Appellant said that while he was supervising the Council House job he was not required to operate the personnel functions of the Respondent;

(s) ~~failed to attach sufficient weight to the manner in which the Appellant was dismissed in that the Appellant at the time of the dismissal meeting was in so much pain from his back injury, he either had to stand or lie down during the interview and was on sedatives~~ (abandoned);

(t) failed to take into account or attach sufficient weight to—

(i) the lack of performance standards required of the Appellant by the Respondent;

(ii) ~~the time and effort the Appellant put into BGH's operations and the profits made while also responsible for the Respondent's business~~ (abandoned);

(iii) ~~the delay and lack of assistance provided by the Respondent on the personnel side of operations despite the Appellant's many requests.~~ the delay and lack of assistance provided by the Respondent on the personnel side of operations despite the Appellant's many requests.

(u) In attaching significant weight to the $274,000.00 loss suffered by the Respondent in 1996/97 because—

(i) during the 1996/97 financial year with BGH's business with the Respondent was transferred to another company (Cosko) costing the Respondent $16,000.00 per month;

(ii) an $80,000.00 management fee was included in that loss, an amount transferred internally within the Bayside Group;

(iii) there were additional unproductive costs of sending Dickenson and Wilson to Perth during this period;

(iv) the Respondent was considering suing the chair manufacturer claiming losses for this period as a result of the affect of the Appellant's injury on his performance;

(v) the Appellant was dismissed well before the end of the 1996/97 financial period;

(vi) ~~found that there were a continued slide of profitability in BWA operations and that the Appellant did not over a three year period generate the business in the personnel side of the operations at all.~~ there was not a continued slide in the profitability of BWA's operations.

(v) ~~found it was always the Board's intention that the Appellant would devote his energies towards improving the performance of the personnel side of the business and to an extent he was merely assisting another part of the group in the asbestos removal operations~~ (abandoned);

(w) found the Appellant cleaned his office out prior to the dismissal meeting;

(x) found that he had no reason not to accept the information that John Dickenson gave as being credibly based;

(y) found that the way Mr Blanche answered questions did not lead him to conclude that he was trying to hide anything or be evasive and in preferring Mr Blanche's evidence over the Appellant's on the basis it was more logically arranged;

(z) found the Respondent did not fully appreciate the difficulty the Appellant was facing with his back injury and that it appears that the Respondent's senior management based in the eastern states were not aware of this and perhaps they should have been.

RELIEF CLAIMED

~~An order that the matter be remitted back to Commissioner Gregor to assess compensation for the Appellant's loss and injury suffered as a consequence of being harshly, oppressively or unfairly dismissed by the Respondent.~~

The Respondent be ordered to pay the Appellant six month's remuneration as compensation for harshly, oppressively or unfairly dismissing the Appellant or alternatively that the decision of the Commission be suspended and the matter be remitted back to the Commission to determine the appropriate amount of compensation."

BACKGROUND

On 17 June 1997, Mr Ramsay Paul Bogunovich, the abovenamed appellant, applied to the Commission for an order pursuant to s.29(1)(b)(i) of the Act, whereby he alleged that he had been unfairly dismissed from his employment by the respondent employer on 23 May 1997. Such termination of the contract of employment was alleged to have been effected by a letter (see exhibit 52 reproduced at page 16(AB)) dated 9 May 1997.

The respondent denied that the dismissal was unfair. The background of the matter can be outlined as follows.

There was evidence in these proceedings, given by the appellant. His was the only oral evidence called on behalf of the appellant, as the applicant at first instance, except for the evidence of Mr Graeme Henry Guest, a Clinical Psychologist specialising in areas of depression, pain, anxiety and adjustment to disability.

The oral evidence for the respondent employer was the evidence of one of its two directors, Mr Robert Graeme Blanche, and the evidence of Mr John Phillip Dickinson, an employee of one of the companies in the group called Baytech Industrial Pty Ltd, he having been previously employed by Bayside Personnel (WA).

In addition, there was a substantial amount of documentary evidence before the Commission at first instance.

The appellant is and was, at all material times, the holder of a Degree in Quantity Surveying and a Graduate Diploma in Business Management.

Advertisement and Contract – The Group

He had answered an advertisement in the West Australian newspaper of 31 July 1993 (see exhibit B2)(see page 58(AB)), seeking the services of a person to be appointed to the Western Australian operations of a national company operating in a number of areas, the majority of which were related to the building and construction industry.

That advertisement was for "State Manager—Western Australia". That advertisement described the national businesses as follows—

"The national businesses are associated with the removal of asbestos materials, personnel placement, both contract and permanent, and engineering drafting. Internationally,

the group is currently placing personnel within companies located throughout the Persian Gulf area, these placements incorporating a broader cross section of professions."

Further, the fourth paragraph thereof refers to the "primary responsibility to establish a viable ongoing expanded profitable business before the beginning of 1995, using the groups existing core businesses as the base from which to build".

The national businesses were, in fact, involved in the removal of asbestos materials, contract and permanent engineering and drafting and personnel placement.

These were conducted by the group of companies called "The Bayside Group". In due course, the appellant was offered, and accepted, a position by the Group General Manager of the respondent, Bayside Western Australia Pty Ltd (hereinafter referred to as "BWA"). He commenced employment on 1 October 1993.

Subsequent to his dismissal, in a reference dated 12 May 1997 (see page 94(AB)), Mr Blanche described the appellant as "State Manager, a role involving the management of two of the Bayside Group's operations in construction and Personnel recruitment". Business cards also indicate the he was "State Manager The Bayside Group" (see page 95(AB)). Mr Blanche was unable, in evidence, to adequately explain that these did not emanate or were not approved by head office in Victoria.

The organisation chart (see page 102(AB)) also identifies the appellant as State Manager of Group Operations in Western Australia, there being, according to that chart, four companies in the group being concerned in operations in this State – BWA, Bayside Group Holdings Pty Ltd (hereinafter referred to as "BGH"), Bayside Personnel (WA) and Bayside Personnel Australia (see also a standard introductory letter apparently composed by a Director, Mr John Wilson (see pages 112-113(AB)), written on BGH letterhead and describing that company as "a market leader in the field of asbestos removal, demolition and associated building refurbishment". The introductory letter, to which I have referred, was a contact point and marketing tool only, according to the evidence of Mr Blanche. BGH was not under the appellant's control, according to Mr Blanche. However, significantly, in evidence, Mr Blanche did concede that the appellant was held out to be the State Manager of BGH (see page 193(TFI) for the benefit of prospective customers in Western Australia).

As State Manager, the appellant reported to the Board of Directors (see page 102(AB)). The introductory letter (see pages 112-113(AB)) supports his assertion that he was responsible for the day to day operations of BGH.

Mr Robert Graeme Blanche was a director of the companies grouped together as the Bayside Group, including Bayside Personnel Australia Pty Ltd, Baytech Pty Ltd, Cosko Pty Ltd, Bayside Group Holdings Pty Ltd and Baymasta. In 1994, BWA was "structured" and directed to the personnel recruitment area. BWA, therefore, became engaged in personnel recruitment and later in the installation of operable walls.

The terms of the contract of employment were set out in the offer of employment accompanying a letter (see exhibit B3) which is dated 3 September 1993 and purportedly signed by Mr Ray Allen, as Group General Manager for Bayside BWE Pty Ltd (see page 59(AB)). The termination clause therein, clause 11, reads as follows—

"11. Resignation/Termination

A minimum of one (1) week and/or a maximum of four (4) weeks written notification by either party depending on the circumstances relating to cessation of employment."

What was the termination provision, if any, at the time of the appellant's dismissal was a matter of submission upon the appeal.

Letter of Dismissal

The appellant's contract of employment continued until 23 May 1997, when the contract, as I have observed above, was terminated by virtue of a letter of termination dated 9 May 1997, which, formal parts omitted, reads as follows (see page 93(AB))—

"This letter serves as formal notice of our intention to terminate your services on 23 May 1997.

Your termination is due to the under performing business resulting in substantial losses.

As agreed during our meeting you will return the following to our Perth office.

Keys to office filing cabinets

Battery charger for mobile telephone

All Bayside files and documents in your possession

Details of loss of attendance from 1 April 1997 to 8 May 1997 due to Workers Compensation.

We request the above be returned by 15 May 1997.

We also agreed that the company motor vehicle (Ford Falcon Gli Sedan 9JC 457) together with the Shell and Motor Pass fuel cards would be returned on 23 May 1997."

As can be seen, that letter states the reason for the dismissal as one only: the under performance of the business resulting in substantial losses. It does not state that the under performance was the fault of the appellant, although that might be said to be implicit.

The Council House Project, Personnel Recruitment

The group was under the management of a Board or Boards of Directors, to whom the appellant reported.

When he commenced his employment, the appellant had two staff. The number of staff increased under his managership. After the appellant took up his employment, he was involved in a project to remove asbestos from Council House ("The Council House project") in Perth, where he in fact supervised the work for BWA on behalf of BGH. He had dismissed the then Project Manager for misconduct, and was, on Mr Blanche's evidence, the key person involved in the obtaining of the project. The project had been awarded after BGH was successful in obtaining the tender (that was in 1994).

A fee of $16,000.00 per month was paid by BGH to BWA for the appellant's services and administrative support in relation to that project. The appellant said that the sum paid for his services was a way of propping up the recruitment division. The invoicing was done from head office.

Mr Blanche, in his evidence, asserted that the appellant was not employed by BGH. His evidence was that the asbestos side of the business was incredibly profitable under his management and was generating large profits, which the group needed nationally. Indeed, the profit and loss statements for 1995/96 showed a net profit of $860,000 (see exhibit B57 (see page 109(AB)). His evidence, not refuted, was that the appellant manned the project whilst running the other divisions of Bayside and that all of his focus was on the asbestos division, in accordance with the instructions he had received. The appellant's evidence was that he was told to focus on the Council House project which he did. He was still, of course, responsible for managing the recruitment side.

He had asked for a senior consultant to help in July 1995. On 9 July 1995, he sent a memorandum to Mr Robert Allen, the General Manager of the group, about this subject. There were other requests for help, too. Indeed, it was agreed on 10 September 1995 at a Management Meeting of the group that the position of Senior Consultant would be filled (see exhibit B56 (see page 101(AB)(see pages 31-33(TFI)) (see also exhibit B18). It was the fact that no senior consultants were sent to assist him until 21 January 1997 when Mr John Dickinson and Ms Dawn Wilson were sent for a six month period. This meant that from about the beginning of 1995 to the beginning of 1997, there were no senior consultants in the office. Mr Blanche, in evidence, was critical that the personnel side had been allowed to wane. In particular, he said that they should not have been left in the position where they did not have fully trained consultants.

He made reference to a meeting of 9 and 10 September 1996 in Perth in which were present Mr Blanche, Ms Tatiana Kestner, Mr Les Papadoulos and Mr John Wilson. They discussed the fact that the personnel business was in disarray and prescribed a list of actions to be taken by the appellant. However, the actions were not taken (see page 172(TFI) (exhibit J6)), according to Mr Blanche. Most were taken, according to the appellant.

No person was placed by the appellant in the construction industry. There were continual discussions between the appellant and Mr Blanche on the telephone. However, there

was the occasion which, according to Mr Blanche, broke the camel's back, where the appellant failed to install a twenty-four hour telephone service. Some of the discussions were, of course, said to be heated.

The appellant continued with the supervision of this project until he was relieved on the basis that, according to the respondent, he was expected to put more time and effort into his role with personnel recruitment. This was in June 1996. Of course, during the time that the appellant was involved with the Council House project, he was still in charge of the personnel recruitment operation and the Panelfold business. The group's asbestos operation, however, was moved to South Australia in July/August 1996, the appellant having been told that he would be relieved of responsibility in that area in June 1996. A Mr Stephen Luter was engaged to complete the Council House project.

The Appellant's Injury

During this time, the appellant suffered an injury to his back whilst at work and suffered pain and disability as a result of the injury. This occurred on 21 March 1996 whilst he was in the site office at the Council House project at 22 St George's Terrace, Perth. The appellant continued to suffer pain and disability up to the time of his dismissal and, on the evidence, subsequently. He advised the respondent of this disability.

In a letter written on 23 July 1996 to GIO Australia, the workers' compensation insurer, Mr Blanche advised, inter alia, as follows (see pages 74-76(AB))—

> "The consequential damages referred to being due to diminished management performance because of the Manager being absent from work or attending part time only, still not being fully fit for work (having to lie on the office floor during the day to get relief for his back) and for us having to provide temporary support in an endeavour to shore up the business. In addition there is the affect(sic) that Ramsay's condition and lack of attendance has had on the performance of Bayside Group Holdings Pty Ltd, a sister company in which Ramsay was also playing a key managerial role."

The respondent was well aware of the disability and acknowledged its effect on the appellant (see exhibit B23 at page 76(AB)). The pain, according to the appellant, did affect certain aspects of his job to a degree. He was able to still perform his job, but with increased difficulty. He did not tell Mr Blanche that he could not do the job, but he did, as is clear from the evidence, seek assistance.

The appellant set up an office at home after he was injured, when he was unable to work. He also worked from the office whilst he was suffering pain. What he would do was to lie on the office floor if he were in pain or go to the physiotherapist and also take pain killers. However, he said that, as the State Manager, he had a job to do and he wanted to do it (see page 44(TFI)). It is clear that, as the Commission at first instance found, he soldiered on despite his injury and disability.

It was the appellant's assertion that, eventually, this injury was an important factor in his dismissal. The appellant's assertion was that he was dismissed because of his injury and because of the need for the company to reduce costs. He had given written advice to the respondent about the extent of his injury in a memorandum dated 18 June 1996. He also said that he was given no assistance, despite requests he made to Mr Blanche for help (see memorandum from the appellant to Mr Allen dated 9 January 1996 (see page 70(AB)).

He was given no assistance until January 1997, four months before his contract ended. As to the personnel recruitment side of the business, the appellant's evidence was that he did increase sales markedly, but this increase was offset by increases in overheads. This side of the business was making a loss when he commenced. He gave evidence, too, that the recruitment arm had a bad reputation when he arrived in 1993.

Mr Dickinson and Ms Wilson

Although assistance arrived eventually in the form of two officers from operations on the eastern seaboard, Mr Dickinson, to whom I have already referred, and Ms Dawn Wilson. They arrived on 21 January 1997 for a six month period. Whilst they were there, according to the appellant, Mr Dickinson produced a secret report condemning the appellant's performance. Certainly, Mr Dickinson did forward a report on operations in Perth to Mr Blanche (see exhibit B71) (pages 148-155(AB)). The report is unequivocally critical of the appellant. The report appears current as at 31 January 1997 (see pages 148-154(AB)).

The appellant's evidence also was that Mr Dickinson and Ms Wilson were his subordinates and their objectives, as their duty statements reveal, were to expand the profitability of BWA and achieve personnel sales targets (see page 58(TFI) and exhibit B62). His evidence was, further, that they did not achieve their "sales" targets (see page 59(TFI)) and were not paying their way; that there were complaints from the staff about their attitude (see pages 59-60(TFI)) and that they did not work long hours.

The appellant said, too, that he had put in a report about their "secretive and inquisitional" style and how they had disrupted office morale. He was of the opinion that Mr Dickinson, from the start, was there to undermine and not to assist him.

Discussions and Operations 1996-1997

The budget from which the appellant was working provided for a loss of $170,000.

There were discussions between Mr Blanche and himself once or twice a week, and those related to the number of contacts, training and the need to make more sales. The financial result was identified and looked at at operational management meetings.

On 9 and 10 September 1996, Mr Blanche came to Perth and there were a number of meetings and discussions, to which I have referred above. The appellant gave evidence that Mr Blanche did not say that he would be dismissed if profitability could not be re-established (see page 49(TFI)). His evidence was that most of the actions required after that meeting were carried out. There was, of course, the dispute about the installation of the twenty-four hour call apparatus.

The appellant's evidence was that none of the meetings were concerned with his performance, but with the performance of the Perth office; and he was not, at any time, before he was dismissed, told that he would be dismissed. (my underlining)

There was no evidence from Mr Blanche that he was told that he would be dismissed. In fact, Mr Blanche said that threatening a manager in such a way would not be the way to act in relation to a manager.

The BGH operation at Council House had, however, returned a substantial profit of $680,000, under the appellant's supervision.

An internal report (see pages 155-156(AB)(exhibit B73)) about Bayside Personnel WA, written in early 1996 by Mr Blanche significantly observes as follows—

> "The opportunities in WA look sensational; unfortunately we are failing to capitalise on them. The possible reasons being—
>
> (a) Lack of experienced consultants
>
> (b) Minimal exposure to the marketplace
>
> (c) Lack of dedicated management
>
> (d) Excellent competition."

This report indicates problems in the personnel recruitment area, not the least seeming to be excellent competition. Significantly, too, in the following extract from page 155(AB) which I quote, the report observes that even if the appellant were to commit his efforts to personnel, the need for a senior operator was imperative. However, nothing, of course, was done in this regard until January 1997.

> "I emphasised before and will do so again, it is not appropriate that Ramsay Bogunovich be spending the amount of time in Group Holdings if we are to have a successful Personnel Recruitment organisation. It would appear as if we all have different views on W.A.'s operations in the asbestos area and insulation of operable walls. This being indicated by the need for John Wilson to spend three days in Perth beginning 17 April. If it is considered appropriate we are to continue our efforts in the asbestos area, and use Ramsay Bogunovich's energies accordingly, then we must engage a person responsible for the Personnel activities. Even if Ramsay Bogunovich was to

commit his efforts to Personnel, the need for a senior operator is imperative."

(my underlining)

Termination—The Process and Circumstances

The appellant's evidence was that he was never told that the losses suffered by BWA would result in his employment being terminated (see page 38(TFI). He was, he said, not told that he would be dismissed if the personnel side of the business did not succeed. Indeed, his evidence was that he thought that the Board was happy with his performance because he was paid a bonus in December 1996, about four months before his contract ended. That was a sign of some approbation.

There was, of course, some evidence that the business would have to close down if losses continued, but there was no personal criticism of the appellant.

Certainly, the group was under pressure from its bankers. There was a Board Meeting in May 1997, when consideration was given to the viability of the Western Australian operations. At that Board Meeting, decisions were made that changes needed to be made to arrest the continuing loss, and Mr Blanche came to Perth to make a final examination of the options. The Board considered the rationalisation of the Perth operation and reduction of overheads including the dismissal of the appellant.

Before Mr Blanche saw the appellant on 8 May 1998 to inform him that he would be dismissed, he sought advice from the Government Insurance Office to ascertain what their occupational health and workers' compensation liabilities were (that is, the respondent's). Solicitors were also present. He was advised that the respondent was required to employ the appellant for a period of twelve months after the accident and that fourteen months had elapsed.

Whilst Mr Blanche was in Perth, he and the appellant met and reviewed the position of BWA and Mr Blanche terminated the appellant's services, telling him that the termination was necessary to reduce overheads and to endeavour to turn the BWA operation into a viable operation.

The appellant asked if he could not be dismissed or if he could have a chance to look for another job. He was told that that was not an option, according to his evidence, because Mr Blanche had to appease the bankers because of the overheads nationally. The appellant said that Mr Blanche told him that he was not being sacked for poor performance, but that this was a cost cutting exercise and that he would be paid a bonus on termination. He also said, in evidence, that Mr Blanche denied that it was, therefore, a redundancy (see page 67(TFI)). The appellant also said that they discussed the state of the industry but not his performance. He also said in evidence that Mr Blanche told him that he had organised it with the insurance company and they would continue paying him workers' compensation payments.

At Mr Blanche's request, the appellant handed over all the office keys in the presence of Mrs Dallas Lange, the office manager. Mr Blanche told him that he could have the use of the company vehicle until 23 May 1997, but he had to return his mobile phone. The appellant said that Mr Blanche marched him off the premises, but Mr Blanche denied this and said that he had walked down to the carpark with the appellant and they had shaken hands.

Mr Blanche said in evidence that he had told the appellant that he, Mr Blanche, had been to GIO to discuss his injury, that he had been advised by the General Manager that the bankers had said that, if nothing was done about the loss being incurred, then the bank would take action. He asked the appellant to justify why he should not dismiss him.

During the interview, according to the appellant, he was in so much pain from his back injury that he had to stand or lie down during the interview, and was distressed by what was put to him. Mr Blanche acknowledged that the appellant was suffering pain during the interview.

Mr Blanche said that he had told the appellant that he was very pleased with the asbestos job and would be happy to have him back as Project Manager. Mr Blanche said that arrangements were made about keeping the car, etc, as I have mentioned them supra.

Mr Blanche conceded that there were no performance appraisals during the course of the employment and no means of measuring performance, prescribed.

Mr Blanche also asserted that there was no document setting out the terms and conditions of the appellant's employment, so far as the termination of employment was concerned. However, evidence was, too, that whilst there were prescribed procedures and policy, these were not applied to the appellant. In that way, he was treated differently from other employees. In particular, the appellant was given no written warnings, and no final warning. There were no performance standards set to measure his performance. Mr Blanche said that a manager should know whether he/she is performing well or not (see pages 200-201(TFI)), the criterion being, in the case of the appellant, the budget. Mr Blanche did not accept that the only budget given to the appellant for the year 1996/97 predicted a loss of $170,000.

Further, whilst the appellant did request assistance from a senior consultant to assist on the recruitment side, none was provided in the period commencing at the beginning of 1995 and ending at the beginning of 1997 (see pages 204-205(TFI)).

Mr Blanche said that the skill base in Western Australia in the recruitment area was far from adequate and it would have helped tremendously to have that knowledge come over from the eastern seaboard (see page 205(TFI)). This was a recognition of a problem which existed in Perth.

Mr Blanche also gave evidence as follows. At the end of May 1997, there was considerable pressure from banks to cut costs in Western Australia. The operation in Western Australia was not going satisfactorily, which is why the termination of the appellant occurred. The termination of the appellant was not a reaction to events mentioned at the operational management meeting of 30 April 1997 where cash flow problems and the suspension of the group's bank overdraft facility were discussed (see pages 213-215(TFI)).

Mr Blanche agreed with Mr Dickinson that the contents of the report of Mr Dickinson were not put to the appellant. He said that he did discuss the report with Mr Dickinson.

The dismissal was for the appellant's poor performance (see page 222(TFI)) and that the under performing business was due to the appellant's under performing his duties.

Mr Blanche made it clear that he did not discuss with the appellant the prospect that he would be terminated if he did not improve his performance, although he said that the office would be closed if its performance did not improve.

There were discussions in detail about these matters on 11 and 12 March 1997.

The factors taken into account in reaching the decision to dismiss the appellant were—

(a) A $770,000 loss;
(b) Financial performance;
(c) Staff criticism;
(d) Failure by consultants under his control to perform;
(e) Failure to place one person in a position;
(f) Aggression which was starting to come out;

and in addition—

(a) His performance on the Council House job;
(b) That he had continued to turn up to work under considerable pain;
(c) That he would find it difficult to find another job while on workers' compensation.

The dismissal had nothing to do with the appellant's back injury and, in assessing his performance, the pain he was suffering was taken into account, Mr Blanche said. Mr Blanche agreed that the letter terminating the employment did not say that he was being dismissed for poor performance.

The respondent's case was that the appellant's performance and the performance of the company for which he was responsible from June 1996 was such that the company ran, during that period, at a substantial loss.

The Effect of the Dismissal

There was evidence from Mr Graeme Henry Guest which was not shaken or controverted, upon a fair reading of the transcript. His qualifications as an expert witness were not challenged. The Commissioner accepted him as an expert (see page 158(TFI)). He was a clinical psychologist specialising in the areas of depression, pain, anxiety and adjustment to disability.

The appellant had consulted him approximately ten times, commencing in January 1997, before his dismissal. The appellant had been initially referred to get assistance in managing his pain (see page 155(TFI)). The appellant, he said, found it depressing not to be able to complete all of his work because of his pain.

When he saw the appellant four or five days after his dismissal, the appellant was surprised and shocked by his dismissal. His self esteem was tied to his work and he experienced feelings of failure, and his mood had significantly deteriorated.

Mr Guest described the dismissal as more than a minor set back; there was the necessity to start afresh. He observed that the appellant thought that he would be terminated anyway and that, although it was said to be a cost cutting exercise, the appellant had doubts about that.

Mr Guest gave the following further evidence. The absence of "negotiation" or "consultation" prior to dismissal caused the appellant's depression to be aggravated, the termination having a significant effect upon him. This he reiterated in effect in cross-examination, noting that the appellant would need at least another six months psychotherapy. He further observed that the impact was greater because he was on workers' compensation at the time of the dismissal.

After the appellant's dismissal, he was unable to find work through his professional network, or at all. He claimed that his professional reputation and credibility were not supportable, because of his dismissal.

FINDINGS OF THE COMMISSION AT FIRST INSTANCE

The following is a summary of the findings of the Commission at first instance.

1. A decision was made ten months prior to the appellant's dismissal that the Board had decided that the respondent would have to be closed down or major changes would have to be made to reduce its overheads and increase sales.
2. Strategies had been developed and put in place to achieve an increase in sales, but this did not occur.
3. It was only after this that the Board considered dismissal.
4. Having regard to the facts surrounding the performance of BWA at the time, and that the appellant had been spoken to about his performance, even if there was a fault in the procedure of his termination, he would most likely have remained in the position for only another month at the most.
5. His claim that his professional reputation and credibility was damaged was not supportable.
6. (a) The evidence from clinical psychologist, Mr Graeme Guest, concerning rehabilitation, indicated that while the termination may have had an effect, there were other factors at work causing problems for the appellant.
   (b) (i) The Commissioner was not inclined to accept the evidence of Mr Guest as expert evidence, because Mr Guest was, in effect, called as a witness on behalf of the respondent.
   (ii) Nonetheless, the Commissioner accepted the evidence given by Mr Guest to be authoritative, but did not accept all of the conclusions that he offered from his dealings with the appellant, "in the same way as one would have if he had the status of an independent witness".
7. (a) In evidence, the appellant attempted to be truthful and thorough and was in some pain.
   (b) The evidence of Mr John Dickinson, the Commissioner did not accept as not being credibly based.
   (c) Mr Blanche gave evidence in a thorough and detailed way of all the relevant incidents and the Commissioner did not conclude that he was trying to hide anything or be evasive.
   (d) If there was any difference, this could be divined from logical arrangement of the answers and the treatment of the information which was offered by Mr Blanche. This, in essence, made his evidence more attractive and, therefore, the evidence, on the balance of probabilities, was a more attractive version of events than that offered by the appellant.
8. (a) It was common ground between the parties that the appellant successfully handled the job of supervision of the removal of asbestos for BGH when it was executing the contract that they had won for removal of that material from Council House.
   (b) The appellant was not, at that time, an employee of BGH and remained an employee of BWA.
   (c) The arrangement was that during that period, he would continue as the senior person responsible for BWA's operations in Western Australia, as well as providing supervision services for the Council House job.
   (d) The appellant's employers were happy with the work he performed on the Council House contract and, as a result, he was granted a bonus for that work.
9. From 1993 until 1996 BWA had suffered total losses in the order of $742,000.00.
10. In June 1996, it was decided that the asbestos removal part of the group would move to Cosko Developments Pty Ltd, working in South Australia, because it was not practical to have such an operation in Western Australia, where there was not a continuity of work and to ask the appellant to stay working in that area after he was injured would be against the respondent's policy of providing a safe working place.
11. In about July to August 1996, after the appellant had returned to working on the personnel side of the business, there was a discussion between Mr Blanche and him, during which the appellant told Mr Blanche he was confident he could get the company working again and provide a good profit outcome.
12. Mr Blanche's evidence was that he was prepared to give the appellant a run, because he had no reason to doubt his ability.
13. (a) By September 1996, there was no improvement and Mr Blanche described the business as being "in a mess". In order to straighten things out, the appellant was given instructions to work in the white collar area of recruitment. There were continual discussions on the telephone between Mr Blanche and the appellant, some of which became quite heated.
   (b) There was a suggestion which involved the installation of a 24 hour voicemail system, but despite instructions from Mr Blanche, this was not implemented.
14. In order to assist the appellant, two officers, Mr John Dickinson and Ms Wilson were sent from the eastern states to help. There was a report critical of the management technique of the appellant sent by Mr Dickinson to Mr Blanche, which the Commissioner found had not been asked for by Mr Blanche, but was sent of his own motion by Mr Dickinson.
15. (a) By February to March 1997, Mr Blanche had formed a clear view that there was reason to be very concerned about the operations under the control of the appellant in Western Australia. He also formed the view that the appellant was not suited to the job.
   (b) There were further heated discussions between Mr Blanche and the appellant.
16. (a) The Board was eventually told by its bankers that if it did not move to stop the haemorrhage of funds through the Western Australian

operations in 1997, which were in the vicinity of $274,000.00, that funding support for the whole group would be cut off.

(b) It was, therefore, imperative that the group act to preserve its business position, particularly in relation to the respondent.

17. Mr Blanche came to Perth and had discussions with the appellant. Before doing so, he noticed that members of the office were concerned by what he described as a "heckle and jeckle" style of management. (That evidence was hearsay.) He made enquiries of the respondent's workers' compensation insurer and the respondent's solicitors concerning its legal obligation to the appellant the day before he spoke to the appellant. He then had discussions with the appellant. He had been told that the appellant had all but cleaned out his office prior to this meeting. During the meeting, Mr Blanche suggested to the appellant that the company had been very happy with him in his role of Project Manager and was prepared to continue that relationship, subject to his fitness, in the future. In addition, he offered the appellant assistance in obtaining other employment, a process, for some reason or other, referred to as "outplacement".

These offers were not taken up and notice was then given by Mr Blanche to the appellant that his services would be terminated in two weeks' time in accordance with the contract of service entered into between them. That provided for a minimum of one week and a maximum of four weeks' written notification.

19. (a) The appellant had not been dismissed as the appellant suggested he was. That is, he was not marched off the premises.

(b) Mr Blanche, as the Commissioner accepted, because of the appellant's condition, carried some items for the appellant down to the car and shook hands with him as he left.

20. The respondent did take account of and care of the appellant's injury.

21. It is a wrong interpretation of events to suggest that because Mr Blanche went to see the appellant's workers' compensation insurer the day before the meeting, during which notice of termination of employment was given, that there was some ulterior motive in his so doing. What he was trying to do, and the advice he sought from the respondent's solicitor, was to ensure that the appellant's payments would continue notwithstanding termination, and Mr Blanche wanted to be in a position to tell the appellant that.

22. (a) The appellant did not build up the business over a three year period and made no sales personally at all during that time.

(b) The continued slide of the profitability of the BWA operation in Western Australia continued from 1994 through to the time he was dismissed. He did not, over a three year period, generate business in the personnel side of the operations at all.

(c) A business placed in that position, with severe financial repercussions, is entitled to take action.

(d) The respondent was entitled to believe that an employee appointed to a managerial position was competent to perform that work and if, as a senior manager, he was aware of his own shortcomings, he ought to be able to devise plans to remedy those shortcomings.

(e) A respondent still has a responsibility to inform its employee, be they managers or not, about concerns relating to performance, but the respondent did not.

(f) There is a lesser standard required when it comes to advising managers of their shortcomings. It is not necessary that they be written a letter in the same way as some junior employee may receive, it is sufficient that they are told about concerns and the appellant was certainly told that on a number of occasions.

(g) He (the appellant) may well have asked for help, but when help did not arrive, one would have thought that a competent manager would have taken his own action to remedy the situation, but this did not occur.

23. (a) The respondent was not blameless and could have acted sooner to assist the appellant.

(b) The respondent did not, at the time, fully appreciate the difficulty that the appellant was facing with his back injury. However, this may have been because the appellant, at all times, continued to try and present for work and "soldier on".

(c) All of the circumstances are ones upon which, with the comfort of hindsight, the Commissioner, from his own point of view, may have concluded that it would not have taken the same action as the respondent did when it terminated the appellant's services. However, the Commission is not the surrogate manager of the respondent.

24. Although the Commissioner had a tremendous sympathy for the appellant, the Commissioner was unable to conclude, on objective analysis of the facts, that at the time of termination, the respondent acted in breach of the test set out in Miles and Others t/a Undercliffe Nursing Home v FMWU 65 WAIG 385 (IAC).

25. The act is not to be interpreted simply from the employee's point of view (see Sangwin v Imogen Pty Ltd t/a Carleton Custom Upholstery (1996) 40 AILR 3-388) and the Commission must require the practical realities of the situation (see Gibson v Bosmac Pty Limited (1995) 60 IR 1 at 7 and Selvachandran v Peteron Plastics Pty Ltd (1996) 62 IR 371).

26. The appellant had not discharged the onus of proof in the matter and, on the balance of probabilities, he was not unfairly dismissed.

CONCLUSIONS

This is a matter which depends on the application of the principle in the Miles and Others t/a Undercliffe Nursing Home v FMWU (op cit).

It was, further, a discretionary decision which cannot, as a matter of law, be interfered with by the Full Bench, (see House v The King [1936] 55 CLR 499 (HC)) (see also Gromark Packaging v FMWU 73 WAIG 220 (IAC)), unless an error has occurred in the exercise of the discretion according to the notion in House v The King (op cit) and Gromark Packaging v FMWU (op cit).

As to the question of evidence, the principle which applies is that in Devries and Another v Australian National Railways Commission and Another [1992-1993] 177 CLR 472 (HC). However, the Full Bench is entitled to draw its own inferences from the primary facts (see Warren v Coombes and Another [1978-1979] 142 CLR 531).

Findings of fact by a trial judge (the Commission at first instance), based on the credibility of a witness, is not to be set aside because the appellant 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/her advantage, or has acted on evidence which was inconsistent with the facts incontrovertibly established by the evidence, or which was glaringly improbable.

In this case, the findings of fact were not based on a preference of the evidence of the appellant over that of the respondent's witnesses, save and except, on the basis of the more logical arrangement of Mr Blanche's evidence and the credibility of Mr Dickinson, who misled the appellant about his report.

Ground 1

Implying Reasonable Notice

This ground depended on a submission that the contract of employment between the appellant and respondent did not provide for a minimum of one week and a maximum of four weeks' written notification of termination. The written agreement (exhibit B3) (see pages 60-62(AB)) provided in Clause 11 for that notice to be given.

However, it was common ground for different reasons between the parties that there was no written provision governing the termination of the appellant's employment in existence. That was Mr Blanche's clear evidence. That evidence was not contradicted, and indeed, it was the appellant's case that no such written term existed.

It was, of course, asserted by Mr Blanche and not disputed that a policy existed to govern the procedures and manner in which a dismissal should be effected, but that policy did not provide for any period of notice.

The appellant's submission was that, in accordance with the principles laid down in Quinn v Jack Chia (Australia) Ltd [1992] 1 VR 567, there had been a change in duties amounting to a termination of the original contract of employment, constituted by and evidenced by the written term and other written terms to which I have referred above, as I understand the submission.

However, it matters not. The parties were ad idem that there was no express provision for notice. Accordingly, it was open to the Commissioner, as a matter of law, to imply a provision for reasonable notice (see Tarozzi v WA Italian Club (Inc) 71 WAIG 2499). (See also Macken, McCarry and Sappideen "The Law of Employment" (4th edition) pages 164-170 and the authorities cited therein.) What is reasonable is implied at the time when notice is given, not when the contract is made. There was no evidence of custom or industry practice.

The duration of the contract was indefinite and, indeed, the appellant had already been in the position for about three and a half years. The position was an important one and remunerated accordingly. The remuneration was substantial. The nature of the employment was that of a State Manager, he was an experienced and qualified employee, he was less than middle age, that his plans were to be employed indefinitely by the respondent or whoever his employer was.

In those circumstances, and taking those factors into account, a period of nine to twelve months' notice would be reasonable to imply, as I find. That that was not given contributed an element of substantial industrial unfairness to the dismissal. The Commissioner erred in not so finding.

To, therefore, dismiss him, in what was almost a summary fashion, was manifestly unfair. On that basis alone, I would have found the dismissal unfair. The Commissioner should have so found. I would uphold Ground 1.

The Appellant's Employment

There is one other matter which might be relevant to this ground of appeal and others. The Commissioner found that the appellant was not, at the time he supervised the Council House project, an employee of BGH. The Commissioner found that he remained as the person responsible for the personnel operations, as well as providing supervision services paid for by BGH.

Mr Blanche asserted in evidence that the appellant was not employed by BGH and was an employee of BWA at all times, his supervisory services being provided to BGH for a fee.

The appellant asserted that he was the Bayside Group Manager, and that the fee paid to him occurred through headquarters invoicing to provide monies to shore up BWA.

There was evidence of the advertisement for the position which was over the name of the Group Operations and Business Development Manager and sought a State Manager to Western Australia "within our group". Further, he was held out as the Group Manager and his letter of introduction, signed by a director, Mr John Wilson, represents him as Group Manager. The business cards (see exhibit B50) (page 95(AB)) do the same and name four companies. Mr Blanche could not adequately explain those in evidence.

The organisation chart (see page 102(AB)) makes it clear that he was the group's State Manager and he reported to the Board, the Board being, as I read the evidence, the Board of the group or a board which is the same for each group.

The preponderance of evidence was that the appellant was the group's manager in Western Australia, notwithstanding that there was an arrangement to profit from his services within the companies in the group and that his employer for the record was the respondent. In my opinion, the preponderance of evidence, including Mr Blanche's and even his reference of 12 May 1997 (exhibit B46) (see page 94(AB)) was that the appellant was the group's State Manager, and that his role involved, to quote from Mr Blanche's letter, the management of "two of the Bayside Group's operations in construction and personnel recruitment". In my opinion, a fair reading of that letter would account him the manager of the asbestos operations.

He was still the manager of the group's operations in Western Australia after June 1996, but the asbestos operation was no longer a group operation in Western Australia. Mr Blanche's memorandum of 9 May 1997 on Bayside letterhead advising of the appellant's dismissal is corroborative of the role as State Manager for the group.

There is something, too, in the appellant's evidence that the monies paid to BWA for his services were to prop up BWA. Since that company was suffering losses, those payments certainly should have had that effect. In my opinion, this was an instance where the evidence was not so logically arranged that, in the face of the other evidence to which I have referred, it was correct to prefer Mr Blanche's oral evidence.

On the evidence which I have outlined and for those reasons, it was open to find, and the Commissioner should have found, that he was employed on behalf of the group as its State Manager, even if the contract of that employment was with BWA.

In any event, even if he were solely the employee of BWA, his duties as BWA's employee included group duties, even running to the dismissal of a Project Manager, presumably employed by BGH. His duties specifically assigned to him, as an employee of BWA only, until June/July 1996 involved the BWA functions and the asbestos project supervision. Those were his duties, no matter who employed him. His duties involved achieving a profitable outcome of the Council House project and he did so. He remained after July 1996 as Group Manager, or alternatively as an employee of BWA, but without the duties in the asbestos dismantling area.

Ground 2 (b) & (c)

Another ground of error which was alleged related to the evidence of Mr Graham Guest which I have outlined above. Mr Guest gave expert evidence as a psychologist, qualified and practising in the fields of pain, depression, anxiety, etc. He was called on behalf of the appellant. He was, in the course of evidence, accepted as an expert by the Commissioner. He qualified himself as an expert. His expertise was not challenged, nor was he shaken to any significant extent in cross-examination. His field of expertise was relevant and, indeed, he had been treating the appellant for the depression and its symptoms which he opined was aggravated by the manner of the dismissal. Further, the evidence was, as Mr Bartlett submitted, directed to the injury alleged to have been caused not only by the dismissal, but also to the effect of the dismissal as a measure of its unfairness. The evidence, as I have outlined above, was clearly to that effect.

(i) Mr Guest did give evidence, as alleged in the grounds of appeal, that the dismissal of the appellant was unexpected, gave the appellant no opportunity to come to terms with it, and that the lack of consultation, discussion and participation with and by the appellant concerning the dismissal, was detrimental to the appellant's state and aggravated his depression problems.

(ii) That if the dismissal had been carried out in a different manner, then the effect of the dismissal on the appellant would have been minimised.

(iii) The appellant's dismissal had greater psychological impact on him because he was immediately removed from the premises.

(iv) The appellant's confidence was damaged by the dismissal and the respondent's handling of the secret report by Mr Dickinson criticising the appellant.

(vi) The impact of the dismissal on the appellant's family life was significant.

As a matter of fact, of course, Mr Dickinson provided Mr Blanche with a secret and very critical report on the appellant and the discharge and the manner of discharge of his duties. That report was never shown to the appellant on the admission of Mr Dickinson and Mr Blanche.

Mr Guest's evidence quite clearly referred not just to the question of "injury" and compensation, but also to the mode of dismissal and its effect as a factor to be taken into account in considering unfairness. I have referred to, in his evidence, that some matters mentioned in the report were raised with the appellant. However, that was not put to Mr Guest.

The Commissioner, although he had accepted, in the course of hearing of the application, the evidence of Mr Guest as that of an expert, then purported to say that he did not accept the evidence as that of an expert, because Mr Guest was called on behalf of the respondent (see page 22(AB)). I assume that is a typographical error and the appellant was being referred to.

No point was taken at the hearing that Mr Guest was not an expert in the field about which he was giving evidence. It was unnecessary to raise that question, therefore. The observations of King CJ in R v Runjanjic (1991) 56 SASR 114 at 119 (FC) fortify me in the view that this matter was within the expertise of a psychologist. I would not follow what Keall J decided in Klimoski v The Water Authority of Western Australia and Another 5 SR (WA) 148 and see also R v Whitbread (unreported) (Court of Criminal Appeal Victoria) delivered 14 May 1995 (No 184 of 1994).

In not accepting the evidence, the Commissioner erred. Mr Guest qualified as an expert, his expertise was not disputed, and his evidence was not shaken. The Commissioner said that he accepted the evidence as authoritative but did not accept all of his conclusions in the same way as he would had he the status of an independent witness. That was the only reason which the Commissioner gave for not accepting all of Mr Guest's conclusions. It is not clear, either, which conclusions were not accepted because he was not an independent witness in the Commissioner's view. In so observing, the Commissioner erred.

The Commissioner should have given full weight to what was said, since the only ground on which he did not was, for that reason, not valid. It was open to find that the certain procedural aspects were unfair or harmful to the appellant's psychological well-being. It was open to the Commissioner to find that the failure to "negotiate" before the dismissal and the failure to reveal the nature of the Dickinson report represented elements of industrial unfairness, in that evidence of Mr Guest and by the very nature of those acts.

Ground 2(d)

This ground relied on the allegation that the Commissioner failed to attach weight to Mr Blanche's evidence that he had never advised the appellant that his employment might be terminated due to poor performance or for any other reason. As a matter of fact, the appellant was not advised in advance that his employment would be terminated. That was the evidence of Mr Blanche and the appellant.

The Commissioner did not attach any or any sufficient weight to that fact, it was submitted. Rather, the Commissioner took account (see pages 26-27(AB)) of a number of factors.

The appellant did not build up the business over a three year period and made "no sales" personally during that time. It was a difficult task for him to run the Council House job and the BWA operations as well.

It might be that his accident reduced his ability, but the continued slide in profitability of the BWA operations was ongoing from 1994 until he was dismissed. The banks were warning the board of the company that if something were not done in relation to its losses nationally, there would be severe financial repercussions.

The respondent was (see page 27(AB)) entitled to take action, the Commissioner observed.

The respondent, in the financial situation in which it was placed, was entitled to believe that an employee, appointed to a managerial position, was competent to perform the work and, as senior manager and aware of his own shortcomings, should be able to devise plans to remedy those shortcomings, so the Commissioner held.

The Commissioner acknowledged that a respondent still has a responsibility to inform its employees about shortcomings in its performance and this was done.

However, the Commissioner found there is a lesser standard required when it comes to advising managers of their shortcomings. It is not necessary that they be written a letter in the same way as a junior employee might. It is sufficient that they be told about concerns and the appellant was told this on a number of occasions (see page 27(AB)).

The Commissioner also observed that, even if he had asked for help, as he may well have done, when help did not arrive, one would have thought that a competent manager would have taken his own action to remedy the situation.

The Commissioner cited the dicta of Fielding SC in Richards v Chains Engineering Pty Ltd 77 WAIG 3010 in support of that proposition.

I would observe that the Commissioner was entitled to find as a fact that the appellant had quite openly asked for senior consultants to assist him, but nothing was done over a period of two years. That was the evidence. The Commissioner held that it was also open to find that the respondent's group had benefited from a substantial profit achieved by the appellant of $680,000 in the asbestos removal operation. That was the fact.

Further, the Commissioner held that it was open to conclude that the respondent could have acted sooner than January 1997 to provide assistance for the appellant. Indeed, the respondent acknowledged the need for the provision of senior consultants in the Perth office.

The Commissioner also concluded, as he was entitled to do on the evidence, that the respondent was not blameless. Inter alia, the respondent did not and should have, it was open to find, fully appreciate the difficulty which the appellant was having from his injury. The respondent, on the evidence, was advised of the injury and its nature. I would further add that it was open to find, on Mr Blanche's evidence, that he knew that the injury was serious (Mr Allen did, too (see page 72(AB) – Memorandum to Ray Allen of 19 June 1996)).

Mr Blanche acknowledged that diminished performance by the appellant had been caused by his injury, involving absence from work, and the necessity to lie on the floor to get relief (see letter to GIO dated 23 July 1996 (exhibit B23)(page 76(AB))). The Commissioner found that he had "soldiered on" against adversity.

Further, it was open to find, and the Commissioner should have concluded on the evidence; that the personnel recruitment area ran at a loss; that it was hard to hold and recruit suitable staff (two left in January 1997 (see page 149(AB))); that it was difficult to recruit senior consultants (Mr Dickinson'S report (see pages 149(AB))); that there was no competent team of consultants; that a person should have been engaged earlier, while the appellant was engaged in the asbestos area, as a senior operator; that this could occur even if the appellant were to commit his efforts full time to personnel (see pages 155-156(AB)); and that the respondent had identified these problems by way of improved procedures.

Actions were laid down for the appellant to carry out (see pages 201-203(AB)), as agreed at meetings of Bayside Personnel in Perth on 9,10 and 11 September 1996. The appellant said that most of these had been carried out. Mr Blanche denied it.

Notwithstanding what was said in Richards v Chains Engineering Pty Ltd (op cit), I know of nothing which should absolve an employer, as a matter of fairness, from warning a manager that he is likely to be dismissed. Mere discussions and proposals are not sufficient. To observe that a manager ought to know, because she/he is a manager, what are perceived to be defects in his or her performance, seems to me to be patently wrong. Likewise, to observe that the manager ought to know that he has not performed adequately because the budget will tell her/him is not a valid observation. This is borne

out by the fact that the appellant was never told when he was dismissed or that he was being dismissed for poor performance. On his own evidence, he was aggrieved because he had worked hard and, despite his injury, plainly he did not see himself as at fault. It is further borne out by the fact that he was working with pain and disability and the respondent knew this.

In this case, Mr Dickinson, as an experienced consultant, with Ms Wilson, was unable to achieve "sales targets", the appellant was suffering physical disability and had made this known, he had been engaged in the asbestos removal contract until seven months before his dismissal, and that this was a very profitable enterprise, and, further, he received no senior consultant assistance in apparently two years, when the respondent had identified the need for senior consultants some months before; and the senior consultants did not arrive until about four months before the dismissal.

Further, the appellant, as the Commissioner had found, was soldiering on, trying to do his job, despite his pain.

First, I would observe that it is not the law, in my opinion, that a manager should be given some second rate notification of the intention to dismiss him because of his performance.

In this case, the stated reason for dismissal had no relationship to incompetence. Although it was denied that this was a redundancy, the stated reason for dismissal supports that.

In this case, too, given that there was evidence of the competence of the appellant recognised by the awarding of a bonus about four months before his dismissal and, given that there were problems with the respondent's recruitment business in Western Australia which I have referred too in detail above (and also nationally), on the evidence, in any event, it was open to find that the recruitment business of the respondent was not in difficulties due to the fault of the appellant or, alternatively, in any significant way due to his lack of competence, given all of the other factors to which I have referred. Even if that were not the case, that was not the subject of any hearing, nor was it an expressed reason for dismissal.

In this case, industrial fairness required that the appellant be given fair and specific warning that he risked dismissal. Such a warning required that he be advised of the allegations made against him by Mr Dickinson. He should have been given an opportunity to respond. This should have occurred as a matter of industrial fairness (see Margio v Fremantle Arts Centre Press 70 WAIG 2559 (FB), Lumsden v Woodroff (1979) 46 SASR 211 at 226 and SDA v Katies Fashions 69 WAIG 118 at 119).

No warning was given, no adequate warning was given. That was industrially unfair. Of course, it may not have been given, and this is a fair inference, because, as it was open to find, the problems of the respondent were not properly attributable to the appellant, and were, in any event, part of national financial difficulties, and a failure to attend to problems in recruitment in Western Australia identified months before.

If this were in fact a redundancy situation due to cost cutting, then there was unfairness involved, it could be found, also, but I make no judgment on that.

As to the question of procedural fairness, that is subsumed in the question of industrial unfairness, and the lack of a fair go all round, due to lack of warning or of adequate warning.

This unfairness is emphasised by the appellant's attitude, as expressed in evidence, which was that he was surprised and upset by the dismissal because he had worked so hard, in his opinion, and built the operations up when he was affected by pain and disability (see page 67(TFI)). This meant that he took issue with allegations of incompetence.

In any event, even if that were not so, the procedural unfairness was sufficient on its own to justify an unfair dismissal finding, given all the facts and factors to which I have referred under this heading, and within the principle in Shire of Esperance v Mouritz 71 WAIG 891 (IAC).

Ground 2(e)

If discussions which occurred constituted a warning of his shortcomings, it was neither specific or direct. However, there was no evidence of any such warning. There was no indication at all that his shortcomings were such that he would eventually be dismissed. In any event, having referred to the findings of fact referred to under Ground 2(c), it was not open to find that the problems experienced were personally the fault of the appellant. My comments in relation to Ground 2(d) apply. The Commissioner erred in finding that there was any warning to the appellant of his shortcomings. In any event, if there were, it was inadequate.

Ground 2(f)

The Commissioner did find that there was a lesser standard required when warning managers of their shortcomings. The Commissioner erred in so finding, for the reasons which I have expressed above. In particular there is no binding authority to warrant such a view.

Ground 2(g)

For the reasons which I have expressed above, the Commissioner failed to take into account documentary and other evidence that the appellant was responsible for BGH's operations in Western Australia until mid 1996. He should have so found for the reasons I have set out above. In any event, whether he was employed by BGH or not, his duties included work for BGH which brought to it a substantial profit in the financial year 1995/96. (He was playing a key managerial role in BGH (see page 76(AB)). However, because his duties were clear, that ground is not significant.

Ground 2(h)

The findings referred to in that ground were correct. However, there was no evidence that the respondent made every endeavour to assist in his rehabilitation following the accident. The appellant was given no or no useful assistance. In any event, what the Commissioner found did not take the matter further.

Ground 2(i)

It is not clear, on the evidence, that Mr Blanche raised sufficiently, or in any detail, the issues raised in the Dickinson report. The full text of the criticisms made of the appellant in the report should have been directly raised with him by way of warning and procedural fairness. That this was not done constituted a denial of procedural fairness, and was an ingredient of what should have been a finding of industrial fairness, and of unfair dismissal (i.e. harsh, oppressive and unfair) under s.29 of the Act.

Ground 2(j) and (k)

The Commissioner did clearly fail to attach sufficient weight to the extent of the appellant's performance with BGH, the fact that he was paid a bonus, nor did this and the significant financial performance of BGH due to his efforts.

Too much weight was attached to the financial results which appeared in Exhibits J1 and 2 (see exhibit B57) (pages 104-109(AB)) without considering all those valid factors, and, further, the problems with the personnel operation referred to by Mr Dickinson in evidence, the disability of the appellant, the lack of senior consultants, and the inability of experienced senior consultants to meet their targets, and all of those matters which I have referred to in detail in my comments on Ground 2(c).

Ground 2(l)

There was a failure to take into account the fact that the appellant, on 8 May 1997, at the time of his interview with Mr Blanche, was in a great deal of pain requiring him to stand or lie down and was taking sedatives. That, on its own, would not be a significant factor. Unfortunate as it was, one might have some difficulty, given his condition, to find a suitable time to conduct such an interview with the appellant.

Ground 2(n)

This ground has been discussed above. However, I would re-emphasise the need to have given weight to work done and the results achieved on the Council House project.

Ground 2 (o)

The Commissioner did fail to take into account the fact that, at the time of his dismissal, the appellant was off work and the respondent dismissed him when it had an obligation to retain him under the Workers Compensation and Rehabilitation Act 1981 (as amended) for a further period of time. The relevant section of the Act is s.84AA. S.84AA provides—

> "S.84AA(1) Where a worker who has been incapacitated by disability attains a partial or total incapacity for work

in the 12 months from the day the worker becomes entitled to receive weekly payments of compensation from the employer, the employer shall provide to the worker –

(a) the position the worker held before that day if it is reasonably practicable to provide that position to the worker; or

(b) if the position is not available, or if the worker does not have the capacity to work in that position, a position

(i) for which the worker is qualified; and

(ii) that the worker is capable of performing most comparable in status and pay to the position mentioned in paragraph (a).

S.84AA(2) The requirement to provide a position mentioned in subsection 1(a) or 1(b) does not apply if the employer proves that the worker was dismissed on the ground of serious or wilful misconduct."

I seems to be clear that the appellant was injured in 1 March 1996. It seems to be common ground that he had an injury which rendered him unable to work from time to time until the time of his dismissal. However, he attained at least partial capacity for work during that time. He was not dismissed, on the evidence, for serious or wilful misconduct. Accordingly, there was an obligation to maintain him in his present position for twelve months, but not beyond. At the time of the dismissal, the twelve month period had expired. There was no statutory prohibition upon the dismissal. I would not find that ground made out for those reasons.

Ground 2(p)

The Commissioner did find that the appellant did not build up the business over a three year period and that it was strange that he made no sales personally. What the Commissioner did not find is whether he could have made any, how much he was affected by his disability, his ability to supervise both the asbestos project and to do personnel work too, and the experience of Mr Dickinson and Ms Wilson in being unable to achieve targets themselves.

I would also make other observations. Losses suffered in Western Australia were not necessarily attributable to the appellant solely or substantially. Some of the losses were due to intra group financial arrangements. Over four years, the loss was about $185,000 annually, out of which management fees were paid. There were, in any event, loss making activities in the group (see page 218(AB)), and personnel activities in the group were acknowledged to be generally down (i.e. the group, not just Western Australia) (see exhibit B76) (pages 218-219(AB) – Minutes of the Operational Management Meeting of 30 April 1997 held at Head Office). I repeat, too, in that context, my observations and findings in relation to Ground 2(c),(e), (j) and (k).

Ground 2(r)

The Commissioner found that the appellant was not required to attend to the respondent's personnel functions whilst supervising the Council House project. However, the evidence was that he was still responsible in that area even though he was required to "focus" on the Council House project.

Ground 2(t)

The lack of performance standards was not given weight. I am not convinced that that is fatal to the decision at first instance. The lack of warning was. However the delay and lack of assistance, although such assistance was recognised as necessary, was not given due weight as a likely cause or contributing cause of poor performance, if there were any. Similarly, other problems in the contract area were identified by the respondent itself, together with the appellant's injury and the lack of experienced assistance and not remedied or remedied too late.

The fact of the matter was that, overall, it was open to find that whether there were performance standards, or none, in existence, that, having regard to all of the circumstances, including disability obstacles, to success in the recruitment area, and other factors to which I have referred, the appellant's performance could not be said to be incompetent. It was not alleged to him to be, either.

The group had voted that, even if he were to commit his efforts to personnel (see page 155(AB)), the need for a senior operator was imperative. It was not at all made clear, nor was it clear, that the under performance of the business was due to him under performing his duties. There had been a recognition that, even if the appellant were to commit his efforts to personnel, the need for a senior operator was imperative. Further, as Mr Dickinson recognised in evidence, and as the report (see pages 155-156(AB)) written about a year before the dismissal recognised, there were other problems to surmount. A fair inference is that too little time to improve was allowed, particularly given the late provision of senior consultants. (See, also, my observations as to these matters under Ground 2(c), (e) and (u).)

Ground 2(u)

There was a significant loss of $274,000 suffered by the respondent. It is quite clear that, in each year, part of the loss was constituted by a management fee transferred within the group and also that there were other costs.

As to the allegation that the respondent was considering suing the manufacturer of the chair which injured the appellant, I am not persuaded that that is relevant to that ground.

The allegation that the appellant was dismissed "well before" the end of the 1996/97 financial year is not made out because the dismissal took effect only 5 weeks before that date.

It is true that there was not a continued slide in profitability because the respondent showed an overall sameness in performance generally. In any event, and significantly, no account was taken of matters which were beyond the appellant's control or not solely his responsibility (see Ground 2(c), (c) and (t).

Ground 2(w)

There was some evidence that the appellant cleared his office prior to the meeting of 8 May 1997, but it was hearsay evidence and merited the attachment of little weight for that reason, and as a factor in any event.

Ground 2(x)

It was open to the Commissioner to accept the evidence of Mr Dickinson as credibly based, but having done so, he should have accepted Mr Dickinson's evidence as against Mr Blanche's that he had seen the report and his evidence as to the poor prospects for the personnel recruitment business of the respondent in Western Australia. However, Mr Dickinson gave significant evidence of an inability on his and Ms Wilson's part, to meet targets and the difficulties confronting the office.

Ground 2(y)

I do not understand why the Commissioner found Mr Blanche's evidence to be more logically arranged, nor am I, with respect, able to say, upon a fair reading of the whole of the transcript, what "logically arranged" means, in the context of the evidence.

It is fair to say, however, that a great deal of significant evidence was not in conflict and I have outlined that evidence above.

Ground 2(z)

That was a significant finding, as I have said above, and should have been given great weight.

FINALLY

Suffice it to say that the evidence to which I have referred merits the findings to which I refer hereinafter. The Commissioner, in the last paragraph of the Reasons for Decision, touches upon factors which should have led to a finding of unfair dismissal. Such a finding warranted the dismissal being found to be unfair. Further, it was manifestly unfair, there being no summary dismissal, to dismiss the appellant on less than nine to twelve months' notice. The Commissioner should have so found. I am not persuaded that the appellant could have taken his own action to remedy the situation when help was not forthcoming. If that were the case, however, it is not clear what action he could have taken. He was suffering pain and disability. He had, on instructions, supervised the Council House project, with great success; it is a fair inference then that the profitability had been used to prop up the recruitment area.

His supervisors took no steps until late to endeavour to remedy the problems identified by him and them. Senior consultant assistance arrived too late. They found sales targets difficult to achieve. It was open to find, too, that some of the losses suffered by BWA included fees which directed money between companies in the group. Further, the evidence was that nationally there was a fall in recruitment activity acknowledged by the Board.

There is no doubt that the appellant's duty was to serve the group as a whole. In so doing, he generated a profit which was not able to be generated in personnel in his supervision of the Council House project. It was open to find, if necessary, and the Commissioner should have found, that the personnel recruitment performance was not due to his bad management substantially, but was a difficult operation to "turn around", particularly in the space of ten months without the senior consultant help, identified as being necessary. It was unfair to use his performance as a reason for dismissal, for those reasons, as Mr Blanche's evidence seemed to indicate.

The next matter, the failure to warn, was sufficiently unfair, on its own, to warrant a finding that the dismissal was oppressive, harsh and unfair.

Further, and alternatively, there was a denial of procedural fairness, sufficient even within the principle in Shire of Esperance v Mouritz (op cit), to warrant a finding that the dismissal was unfair in terms of s.29 of the Act.

Further, to dismiss him without a specific warning beforehand and without considering the reasons why losses were being incurred, was manifestly unfair. This was aggravated by the fact that the employee had indisputably discharged his duties for a long term in pain and under a disability, as was known to the respondent. The Commissioner should have so found. The unfairness of the failure to warn, as the law requires (see Margio v Fremantle Arts Centre Press (op cit)) was accentuated in its unfairness by the fact that, at no time was the appellant told that he was in jeopardy of dismissal and at no time was he told that he was being dismissed because of his poor performance.

Insofar as it was necessary to go to the evidence of a psychologist to find that the failure to warn before dismissal was unfair, it was open to the Commissioner to rely on that evidence and to so find. He should have done so.

Further, the use of a critical report (Mr Dickinson's report), not fully disclosed so as to give the appellant an opportunity to answer the allegations contained in it, was an added factor of unfairness. There was ample documentary evidence not in dispute to support that view. For all of the reasons which I have already advanced above, a finding that the dismissal was harsh, oppressive and unfair was warranted, particularly because of the failure to warn and the lack of sufficient notice.

The appellant, according to the principles in House v The King (op cit), has established that the Commissioner's exercise of discretion miscarried. The Commissioner erred in not finding that the dismissal was unfair, having regard to all of the circumstances surrounding the dismissal. It could correctly be said, too, that, having regard to all of the evidence, the decision reached was not reasonable in all of the circumstances of the case.

I would uphold the appeal and substitute a finding of unfair dismissal.

It follows that I would vary the decision to dismiss the application by the appellant.

I would make the findings, which I have observed above in these reasons, should have been made at first instance. I would adjourn the question of relief for further argument, a course consented to by the parties when the other appeal grounds were argued. I would not be disposed to issue an order or minutes of proposed order until after I had determined that question, unless I were otherwise persuaded.

CHIEF COMMISSIONER W S COLEMAN: I have had the opportunity to read the Hon. President's draft reasons for decision and agree that the appeal should be upheld. A finding that the dismissal was unfair should be substituted for that made in the first instance and further argument presented on the matter of relief.

In the first instance the Commission identified the "essence of the argument" as "the applicant's performance and the performance of the company for which he was responsible from June 1996 is that which must be the subject to adjudication and during that period the company ran at a substantial loss". Subsequently, it was found that the appellant was not an employee of Bayside Group Holdings, the company that had profitably removed asbestos under its contract at the Council House project and that the appellant had remained an employee (State Manager) of Bayside Western Australia Pty Limited.

For the reasons identified by the Hon. President with respect to grounds of appeal 2(g), (j), (k), (n), (p), (r) and (u), I agree that the Commission in the first instance erred in limiting consideration to the circumstances of the appellant's employment to the performance and fortunes of Bayside Western Australia Pty Limited. The failure to take into account the full scope of the appellant's responsibilities as State Manager and his performance in the range of core activities undertaken by the Bayside Group rendered the dismissal unfair. On the evidence before the Commissioner it was open to him to find that the appellant's duties had merited the recognition accorded by the payment of a bonus shortly before the termination of employment was effected. An appreciation of the appellant's contribution to the development of the Bayside Group's business and therefore to all of the circumstances of his employment was inhibited by the limitation imposed through the finding that the employment relation was solely with Bayside Western Australia Pty Limited. It was not open to make such a finding on the basis that preference was given to a more logical arrangement of answers and information presented by one witness when there was evidence of the scope of the employment relationship that had to be tested against the credibility of the witnesses.

In the absence of an express provision for notice, the question of an implied term is a matter which along with the loss or injury caused by the dismissal to be considered when the question of relief is addressed.

COMMISSIONER S J KENNER: I have had the benefit of reading in draft the reasons of His Honour the President. I agree that this appeal be upheld. In my view, the circumstances surrounding the dismissal of the appellant where such as to render the dismissal harsh, oppressive and unfair. On the evidence, as His Honour has observed, the financial difficulties of the respondent were not necessarily attributable to any neglect or incompetence on behalf of the appellant. Indeed, on the evidence, the conclusion is open that the circumstances in which the respondent found itself were largely beyond the appellant's direct control.

Furthermore, despite the notional employment of the appellant by the respondent, the evidence disclosed that the appellant played a significant role in the operations of the Bayside Group's activities in Western Australia. Of particular significance, was the appellant's work on the Council House project. I also refer to promotional material for the Bayside Group operations in Western Australia (see AB 113, 144) business cards for the appellant (see AB 95), the Bayside Group Western Australia organisation chart (see AB 102) and to a letter from Mr Blanche, dated 12 May 1997 (see AB 94). The latter is, in my opinion, tantamount to an admission by Mr Blanche as to the extent of the appellant's responsibilities on behalf of the Bayside Group in Western Australia.

The issue of relief in this matter is to be the subject of further submissions, as agreed by the parties at the outset of the appeal.

THE PRESIDENT: For those reasons, the appeal is upheld and the appeal will relisted for the hearing of further submissions.

APPEARANCES: Mr G Bartlett (of Counsel), by leave, on behalf of the applicant

Mr M Jensen, as agent, on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Merchant Service Guild of Australia, Western Australian Branch, Union of Workers
Appellant

and

Fisheries Department of Western Australia
Respondent.

and

The Civil Service Association of Western Australia Incorporated
Intervener.

No 1354 of 1998.

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

18 September 1998.

Reasons for Decision.

INTRODUCTION

THE PRESIDENT: This is an appeal against the decision of the Commission, constituted by a single Commissioner, upon application No PSAA 1 of 1997 made on 30 June 1998.

By his decision, the Commissioner dismissed an application by the applicant organisation for an award to operate throughout the State of Western Australia, which would apply to all fisheries officers, including trainees, employed under the provisions of the Public Sector Management Act 1994 (as amended).

The application was made on the grounds that the employees who would be covered by the award are members of the applicant organisation.

BACKGROUND

The appellant was not, at the material times, a respondent to or party to any award which covered the employees, but alleged that it would be industrially expedient to issue such an award. The respondent employer opposed the application.

Leave to intervene was granted to the Civil Service Association of Western Australia Incorporated (hereinafter referred to as the "CSA") by the Commission at first instance. The CSA is also an "organisation", as that is defined in s.7 of the Industrial Relations Act 1979 (as amended) (hereinafter called "the Act").

The CSA had an interest, so it was held, in that it contended that the new award which the appellant applied for was intended to cover fisheries officers of whom the CSA had constitutional coverage pursuant to its rules.

Further, there were two awards, so the Commissioner observed, to which the CSA was the sole "union" party which applied to "Fisheries Officers". The contention of the respondent was that the appellant had no ability under its rules to cover fisheries officers.

A number of agreed facts and matters were set out in a schedule tendered to the Commission. These included the following.

All fisheries officers were appointed pursuant to s.11 of the Fish Resources Management Act 1994 (as amended) (hereinafter referred to as "the FRM Act") and are and were, at the material time, employed under Part 3 of the Public Sector Management Act 1994 (defined in s.4 of the FRM Act to mean "a fisheries officer referred to in s.11").

The Fisheries Department is a State Government Department responsible for the conservation, developing and sharing of fish and other living aquatic resources (so-called) "within Western Australia".

The maintenance of fish breeding stock levels and the control of commercial and recreational fishing are, to that end, functions of the respondent. The function is described in more detail in the agreed facts (see pages 58-59(AB)). The objects contained in the FRM Act are signposts as to what the Fisheries Department and fisheries officers are to achieve under the FRM Act, and what functions they are to perform.

The employees sought to be covered are all persons who command, are officers of or use patrol vessels and other vessels in the course of their employment (with the exception of trainees and Level 1 fisheries officers).

It was common ground that all fisheries officers held certificates of competence to navigate vessels, such certificates being issued pursuant to the Western Australian Marine Act 1982.

The Commissioner also made a number of findings. The Commissioner found that the objects prescribed in the FRM Act were to conserve, develop and share the "fish resources of the State for the benefit of present and future generations". The objects plainly, put shortly, so direct. (They appear in detail in s.3 of the FRM Act.) The Commissioner correctly so found.

Further, the Commissioner canvassed those provisions of the FRM Act relating to provisions of entry and enforcement vested in fisheries officers. The Commissioner then construed and interpreted Rule 3 of the appellant's rules, finding that a fisheries officer is not eligible for membership of the appellant organisation in accordance with Rule 3. No other basis for eligibility was argued before the Commission or the Full Bench.

ISSUES AND CONCLUSIONS

Interpretation and Construction

This appeal was determinable primarily upon the interpretation of Rule 3 of the rules of the appellant.

As the Commissioner said and, as was submitted to the Full Bench, the rules of an organisation must be interpreted in the same manner as any other legal document. (However, such rules are not "written law", as defined in s.3 of the Interpretation Act 1984 (as amended).) Rules of registered organisations are to be given a liberal interpretation (see HSOA v Honourable Minister for Health 61 WAIG 616 at 618 (IAC) per Brinsden J with whom Smith J agreed) (see also R v Aird; Ex parte The Australian Workers' Union [1973] 129 CLR 654 at 659) (see also Re Grimshaw; Ex parte Australian Telephone and Phonogram Officers Association (1986) 60 ALJR 588 at 592 (HC)).

The construction of a constitution or eligibility rule involves a question of law. The interpretation of or the meaning of a particular word or question, whether an employee falls within the category of a particular classification, is a question of fact (see ABLF v CMEWU 70 WAIG 1653 at 1655 (IAC)).

It is permissible, in the course of interpretation, to have regard to any common understanding among people concerned with relevant industries and particularly with industrial matters, if the ordinary application of the words used is ambiguous (see R v Coldham; Ex parte AWU (1983) 153 CLR 415 at 430). That was not argued here.

Of course, as the Commissioner acknowledged, Rule 3 was required to be interpreted and construed must be interpreted and construed in the context of the whole of the rules of the appellant.

Rules 2(11) and Rule 3

Rule 3, the rule to be interpreted, reads as follows—

> "Members of the Mercantile Marine and dependent services possessed of certificates of competency issued or recognised by the Commonwealth of Australia, or any State thereof, the Board of Trade, or by any British possession or dependency, or possessed of any qualifications entitling him to undertake any duty connected with the navigation of vessels, may be elected as members. Marine Engineers (so engaged), including Third Class and Port Engineers and Marine Engine Drivers, may be admitted to membership, provided that this Rule as to Engineers shall only apply in cases where such Engineer is not eligible for membership in or has been rejected by the Australian Institute of Marine and Power Engineers. This Rule as to eligibility of Engineers shall include Engineers upon vessels owned by the Government. Persons who have become Shipowners, Superintendents, or who are otherwise acting in the interests of employers, shall be strictly debarred from membership. Apprentices who are bound by indenture for sea service to a Shipowner or Master (other than Engineer Apprentices) and Cadets may be admitted to membership together with any other persons whether employed in the industry of Shipping and

Marine or not who have been or are hereafter elected as Officers of the Guild and admitted as members thereof."

The objects contained in Rule 2 of the rules refer to an industry called "The Shipping and Marine Industry". Rule 2(11), in particular, contains the object that "the whole of the navigators (commanders, pilots, officers, and other persons connected or associated with shipping, subject to the provision of Clause 2) engaged in the Australian Merchant Service with the object that they shall comprise the membership of the Guild...".

However, I look first at Rule 3, applying the ordinary and natural meaning of the words to the whole of Rule 3 but, in particular, the words "Members of the Mercantile Marine and dependent services possessed of certificates of competency issued or recognised by the Commonwealth of Australia...".

As I have observed, it was not in dispute that fisheries officers are "possessed with certificates of competency" within the meaning of Rule 3.

"Mercantile Marine" is defined by the Macquarie Dictionary (3rd Edition), at page 1346, as synonymous with the Merchant Navy, which is itself defined as—

"**1.** the vessels of a nation engaged in commerce. **2.** the officers and crews of merchant vessels."

In the Shorter Oxford Dictionary (3rd Edition), at page 1308, the Mercantile Marine is defined as—

"the shipping collectively employed in commerce"

The crucial phrase in Rule 3 is "Members of the Mercantile Marine and dependent services". Accordingly, to be eligible for membership, within the meaning of that phrase, one must be a member of the Mercantile Marine, that is, of the Merchant Navy, "**1.** the vessels of a nation engaged in commerce **2.** the officers and crews of a merchant vessel" (see Macquarie Dictionary (op cit) at page 1347 and see also the Shorter Oxford Dictionary definition (op cit) at page 1308).

A vital component of the definition of the Merchant Navy (Mercantile Marine) is the word "commerce". The appellant's advocate, Mr Boronovskis, referred us to the definition of "trade commerce and intercourse" in s.92 of the Constitution and the dicta of Dixon J in Bank of New South Wales and Others v The Commonwealth and Others 76 CLR 1 at 381. However, the word "commerce" cannot be separated from or placed in isolation from the whole of the phrase in s.92, which is a phrase given a special meaning in the interpretation of s.92 of the Constitution in the Courts.

In my opinion, in the context of the phrase "the Mercantile Marine" or "the Merchant Navy", the definition of "commerce" contained in the Macquarie Dictionary (3rd Edition) at page 442 is more apposite. There is one apposite definition. That is—

"interchange of goods or commodities, especially on a large scale between different countries (**foreign commerce**) or between different parts of the same country"

As a matter of fact, the employees who are said to be covered by Clause 3 are employed in a Government department, charged with the management and conservation of fish in Western Australian waters, and the regulation of fish and fishing to achieve certain objects in eco farming, commercial and leisure fishing and aquaculture (see also s.3, Part 4, Part 6, s.106, s.109, s.112, s.182-197 and s.200 of the FRM Act). Their functions are in supervision, education, management, inspection, liaison and enforcement, on the evidence. It is noteworthy, too, that police officers and naval officers have the powers, in certain matters, of fisheries officers (see s.180-1 of the FRM Act).

They are not employed, on the evidence, in or required to discharge duties in relation to merchant vessels.

The Commissioner found correctly that fisheries officers and their employer are not, on the evidence, at all engaged in using vessels engaged in commerce, or providing officers or crews to vessels engaged in commerce. In particular, there was no evidence that the Department, or officers, crews or the subject employees (fisheries officers) bought, sold or traded or carried goods for that purpose, or for profit. That is not the function of the Department nor, on the evidence, of the patrol vessels of which fisheries officers are officers or crew members; nor is it the role or function of those employees.

The Fisheries Department's activity is and was, on the evidence, and according to the prescription of the FRM Act, plainly governmental and not carried on for profit. Further, the Fisheries Department and the fisheries officers were not, on the evidence, engaged in the interchange of goods or commodities, especially on a large scale, between different countries or between different parts of Australia, or at all. There was no evidence that fisheries officers were officers and/or members of a crew of merchant vessels or, for the reasons which I have expressed above, were the vessels owned by the Department and/or used by the Department, used or engaged in commerce.

Further, s.3(c),(d) and (e) of the FRM Act, notwithstanding what Mr Boronovskis submitted, were, like all of s.3, not directed to commerce, but to management, conservation, allocation and supervision, on their plain words.

Accordingly, the Commissioner was quite correct in deciding that these employees were not members of "the Mercantile Marine" or "the Merchant Navy".

The next question raised in the construction of the phrase is whether the word "and", in the first line of Rule 3, is to be interpreted as a conjunctive word or a disjunctive word. In my opinion, it does not matter, to some extent. The phrase clearly means that eligibility depends on an employee being a member of the Mercantile Marine or, if she/he is not, of a dependent service of the Mercantile Marine (tugboat officers and crews and pilot boat officers and crews spring to mind). The phrase also means that members of the Mercantile Marine and also members of dependent services are eligible for membership. Put another way, if a fisheries officer is not a member of the Mercantile Marine or is not a member of a dependent service, i.e. dependent to or upon the Mercantile Marine, then that person is not eligible for membership of the appellant organisation.

The question is whether, then, service in the Fisheries Department as a fisheries officer, appointed under the FRM Act, confers membership of a dependent service of the Mercantile Marine. The word "dependent" is defined by the Macquarie Dictionary (3rd Edition) at page 579 to mean—

"**2.** depending on something else for aid, support, etc. **3.** conditioned; contingent. **4.** subordinate; subject."

In the Oxford Dictionary (3rd Edition), the word is defined to mean—

"**1.** A subordinate part, appurtenance, dependency. **2.** A person who depends on another for support, position, etc.; a retainer, subordinate, servant"

I have already said that the Commissioner was correct in finding that the function of the Fisheries Department and its officers did not, in any way, authorise, require or enable it or them to engage in commerce. There was no evidence that their vessels are so engaged.

I have already referred to the provisions of the FRM Act in order to characterise the function of the Department and the role of its officers. Having regard to those provisions and the evidence, it was open to the Commissioner to find that the Fisheries Department and its officers were not engaged in a service which bore any relationship to the Mercantile Marine. The Fisheries Department is not an appurtenance, a subordinate part, a dependency or subject to the Mercantile Marine, by statutory definition or prescription, in its prescribed functions or in its operations, and nor are its officers. That was clearly the case upon a proper consideration of the statute, the duty statements and the evidence. (The case of The Merchant Service Guild and Northern Territory Port Authority and Others (1970-71) 136 CAR at 299, which was concerned with pilots who were also public servants, and not with Clause 3 of the appellant's rules, is not to the point.)

The Fisheries Department plays no part nor does it assist the Mercantile Marine in the transport of goods by way of commerce, nor does it assist, facilitate the role of, form an adjunct to or contribute to the function of the Mercantile Marine or its officers and crews. The function of its employees is prescribed by the FRM Act. Their role is so defined, and includes, as I have observed, no participation in commerce, as I have defined it above. Their role bears no relation to the Mercantile Marine or its function or role, as I have defined it above. They carry out functions prescribed by the Parliament

of Western Australia in relation to fish within the waters of that State, and the conservations, administration and supervision of fish and the supervision, etc of those engaged in the fishing industry. (The FRM Act so prescribes and there is undisputed evidence to that effect.)

That fisheries officers are, as a matter of evidence, required to operate vessels and to have the relevant certificate of competency is and was of no significance, given the evidence and given the plain words of Rule 3. It would be surprising if, in fact, it were not the case that such certificates were required and that the duties involved the operation of vessels and boats, since the work of fisheries officers is performed, in part, upon the sea, as a matter of necessity.

It was clearly, for those reasons, open to the Commissioner to find that the employees submitted to be eligible for membership of the appellant were not members of the Mercantile Marine, or of a dependent service.

In particular, it was open to find that the powers of the Department and of the fisheries officers to administer the fish industry under the FRM Act are not, for that reason, dependent at all upon them being in the service of the fishing industry, even if, by that fact, they were rendered members of a "dependent service". In fact, if it were necessary to so find the fishing industry, on the evidence, involved aquaculture and fishing and might not, as a matter of evidence, be said to be part of the Mercantile Marine. However, it is unnecessary to make any finding on that issue. There was no other basis on which it was submitted that fisheries officers were eligible for membership of the appellant, nor was there, in the rules apparently, any other basis to so submit.

Whilst it is unnecessary to refer to Rule 2(11), it is fair to say that, if it were prayed in aid, it would assist in a narrow construction of what the Mercantile Marine means, which is consistent with what the Commissioner found, at first instance. Whether the context of Rule 2(11), given the duties of fisheries officers and the provisions of the FRM Act under which they are appointed, the Commissioner could not have properly found that fisheries officers are connected with or associated with shipping. They are and were associated or connected with the supervision, regulation and management of fish and fishing. It was, therefore, correctly found that fisheries officers were not eligible to be members of the appellant organisation and that the application for an award by the appellant to cover those officers should be dismissed.

I have considered all of the evidence and all of the submissions. It has not been established that the Commissioner at first instance erred, as alleged, in the grounds of appeal. For those reasons, no ground of appeal is made out, in my opinion. The Commission did not err in finding as it did. I would dismiss the appeal.

CHIEF COMMISSIONER W S COLEMAN: I have had the benefit of reading the Reasons for Decision of His Honour, the President. I agree with those reasons and have nothing further to add.

COMMISSIONER S J KENNER: I have had the benefit of reading the Reasons for Decision of His Honour, the President. I agree with those reasons and have nothing further to add.

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

Order accordingly

APPEARANCES: Mr T Boronovskis on behalf of the appellant

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

Mr J Dasey on behalf of the intervener

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Merchant Service Guild of Australia, Western Australian Branch, Union of Workers
Appellant

and

Fisheries Department of Western Australia
Respondent.

and

The Civil Service Association of Western Australia Incorporated
Intervener.

No 1354 of 1998.

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

18 September 1998.

Order.

This matter having come on for hearing before the Full Bench on the 7th day of September 1998, and having heard Mr T Boronovskis on behalf of the appellant organisation and Ms J Smith (of Counsel), by leave, on behalf of the respondent and Mr J Dasey on behalf of the intervener, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 18th day of September 1998 wherein it was found that the appeal should be dismissed, it is this day, the 18th day of September 1998, ordered that appeal No 1354 of 1998 be and is hereby dismissed.

By the Full Bench

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

FULL BENCH—
Coal Industry Tribunal Reviews—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch

(Applicant)

and

Wesfarmers Coal Ltd

(Respondent).

No. 1469 of 1998.

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

14 September 1998.

Consent Order.

This matter having come on for hearing before the Full Bench on the 14th day of September 1998, and having heard Mr D Schapper (of Counsel), by leave, on behalf of the applicant and Mr G Bull, as agent, on behalf of the respondent, and the applicant having sought leave to discontinue the matter and there being no objection by or on behalf of the respondent, and the Full Bench having determined therefor, pursuant to s.27(1)(a)(ii) and (iv) of the Industrial Relations Act 1979 (as amended), that it refrain from further hearing the matter upon

the applicant discontinuing application No 1469 of 1998, it is this day, the 14th day of September 1998, ordered and declared by consent that the Full Bench refrain from hearing this application further, the applicant having been given leave to discontinue the said application.

By the Full Bench,

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

AWARDS/AGREEMENTS— Application for—

ASSOCIATION OF INDEPENDENT SCHOOLS OF WESTERN AUSTRALIA CLERICAL OFFICERS (ENTERPRISE BARGAINING) AGREEMENT 1998. No. AG 105 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

and

Association of Independent Schools of Western Australia, (Inc).

No. AG 105 of 1998.

Association of Independent Schools of Western Australia Clerical Officers (Enterprise Bargaining) Agreement 1998.

COMMISSIONER P E SCOTT.

30 September 1998.

Order.

HAVING heard Ms T I Howe on behalf of The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers and Dr I E Fraser on behalf of the Association of Independent Schools of Western Australia, (Inc) and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Association of Independent Schools of Western Australia Clerical Officers (Enterprise Bargaining) Agreement 1998 in the terms of the following schedule be registered on the 15th day of September 1998.

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

Schedule.

1.—TITLE

This agreement shall be known as the Association of Independent Schools of Western Australia Clerical Officers (Enterprise Bargaining) Agreement 1998.

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. Agreed Efficiency Improvements
11. Fidelity
12. Dispute Resolution Procedures
13. Other Matters
14. No Further Claims
15. No Precedent
16. Signatories

3.—PARTIES TO THE AGREEMENT

This agreement is made between the Association of Independent Schools of Western Australia Inc (the Employer) and the Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (the ISSOA), a registered organisation of workers.

4.—SCOPE OF AGREEMENT

(1) This agreement shall apply to Clerical Officers who are employed by the Employer at its office, 3/41 Walters Drive, Osborne Park, WA, and who are employed within the scope of the Independent Schools'; Administrative and Technical Officers' Award 1993 (the Award).

(2) The number of employees covered by this agreement is 4.

5.—DATE AND DURATION OF AGREEMENT

(1) This agreement shall come into effect on and from the 1st day of July 1998 and shall apply until the 30th day of June 1999.

(2) The parties have agreed to meet no later than three months prior to the expiration of this agreement to review this agreement.

6.—RELATIONSHIP TO PARENT AWARD

This agreement shall be read and interpreted in conjunction with the Award.

If there is any inconsistency between this agreement and the Award, this agreement shall prevail to the extent of the inconsistency.

7.—SINGLE BARGAINING UNIT

The parties to this agreement have formed a single bargaining unit.

The single bargaining unit has conducted negotiations with the Employer and reached full agreement.

8.—OBJECTIVE

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 Employer and its Employee become genuine participants and contributors to the Employer's aims, objectives and philosophy.

(3) Safeguard and improve the quality of office administration and service by emphasising the upgrading of professional skills and knowledge. The Employer and the Employee acknowledge that this upgrading of skills and experience can best occur when both share responsibility for professional development by undertaking both in-service and external courses and training partly during the Employer's time and partly during the Employee's time.

9.—SALARY RATES

Salaries shall be negotiated and shall be not less than those for the appropriate positions in the Award.

In the event of any safety net adjustment being applied to the Award, such adjustment will be deemed to be included in the negotiated salary.

10.—AGREED EFFICIENCY IMPROVEMENTS

(1) The parties accept that the following principles and beliefs help to define required duties and responsibilities—

(a) The Employer's foremost aim is to meet the needs of its members and to assist all other bodies seeking information and assistance in matters relating to member Schools in particular and independent education in general

(b) The Employer provides a service which necessitates participation by Employees in many aspects of office procedure. The Employer is committed to the provision of service of the highest quality.

(2) Professional Development

(a) Professional development activities shall be undertaken partly in the Employer's time and partly in the Employee's own time; where feasible in equal proportions.

(b) There will continue to be consultation between the Employer and the Employee in the planning of appropriate professional development.

(3) Performance Appraisal

(a) The Employer is committed to systematic performance appraisal of the Employee.

(i) to encourage regular reflection and feedback on performance

(ii) to help ensure that the individual's goals and directions remain consistent with the Employer's goals and directions

(iii) to guide personal and professional development.

(b) The form of the conduct of appraisals shall be determined by the Employer.

(c) Appraisals will be conducted at regular intervals.

(d) During an appraisal, the Employee will be kept informed of the progress of the appraisal.

(3) Overtime

(a) Extra days' holiday granted by the Employer in the Christmas New Year period are to compensate for extra time worked during the normal course of duty.

(b) Additional time worked by the Employee at Conferences or other functions shall be compensated by the granting of time in lieu which shall be taken at a time convenient to the Employer and the Employee.

(4) Requests for information from representatives of Member Schools and from all other people shall be directed to the appropriate officer for response.

(5) Morning and Afternoon tea breaks shall be confined to fifteen minutes and be taken by arrangement with other staff so that the front counter and telephones are attended.

(6) Lunch breaks shall be of one hour's duration and be taken by arrangement with other staff—on a roster basis if alternate lunch times are requested—so that the front counter and telephones are attended.

11.—FIDELITY

The discussion of confidential matters learnt in the course of duty is not to occur. The unauthorised disclosure to any third party of confidential information about matters connected with the Employer is forbidden.

No comment is to be made about any school which could lead to unfavourable comparisons or inferences.

All records, documents and other papers, including copies, shall be the property of the Employer.

12.—DISPUTE RESOLUTION PROCEDURES

(1) A dispute is defined as any question, dispute or difficulty arising out of this agreement. The persons directly involved, and/or representatives person/s directly involved, shall discuss questions, dispute or difficulty as soon as practicable with the Executive Director.

(2) The terms of any agreed settlement should be jointly recorded.

(3) Any settlement reached which is contrary to the terms of this agreement or is in conflict with the Industrial Relations Act 1979 shall not have effect.

(4) Nothing in this clause shall be read so as to exclude ISSOA from representing a member.

(5) Any dispute not settled may be referred to the Western Australian Industrial Relation Commission.

(6) A liberty to apply to amend the terms of the dispute settlement procedures in this agreement is reserved.

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 Employer or the staff.

14.—NO FURTHER CLAIMS

It is a condition of this agreement that the parties will not seek any further claims with respect to salaries or conditions unless they are consistent with the State Wage Case Principles.

15.—NO PRECEDENT

It is a condition of this agreement that the parties will not seek to use the terms contained herein as a precedent for other enterprise agreements.

16.—SIGNATORIES

Signed ..... (Signature)

Signed ..... (Signature)

Common Seal

A JACKSON

.....

(Name of signatory in block letters) Association of Independent Schools of Western Australia

T I HOWE

.....

(Name of signatory in block letters) Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

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BUILDER'S REGISTRATION BOARD OF WESTERN AUSTRALIA ENTERPRISE AGREEMENT—1998. No. PSA AG 91 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Incorporated

and

Builders' Registration Board of Western Australia.

No. PSA AG 91 of 1998.

Builders' Registration Board of Western Australia Enterprise Agreement—1998.

4 September 1998.

Order.

HAVING heard Ms J van den Herik on behalf of the Applicant and Mr V Websdane on behalf of the Respondent now therefore, I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order —

1. THAT the agreement to be known as the "Builders' Registration Board of Western Australia Enterprise Agreement—1998" reflected in the schedule to this order shall be and is registered with effect on the 14th day of August 1998.
2. THAT the Builders' Registration Board of Western Australia Enterprise Agreement—1998 shall replace the Builders' Registration Board of Western Australia Enterprise Agreement 1996—PSA AG 122 of 1996.

[L.S.] (Sgd.) S. A. CAWLEY,
Commissioner,
Public Service Arbitrator.

Schedule.

1.—TITLE

This enterprise agreement shall be known as the "Builders' Registration Board of Western Australia Enterprise Agreement – 1998" and replaces the Builders' Registration Board of Western Australia Enterprise Agreement—1996 PSA AG 122 of 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope of the Agreement
3A. Number of Employees Covered
4. Parties to the Agreement
5. Definitions
6. Term of the Agreement
7. No Further Claims
8. Relationship to Parent Award
9. Single Bargaining Unit
10. Shared Mission and Objectives
11. Continuous Improvement
12. Enterprise Bargaining Payments
13. Productivity Initiatives and Measurement Model
14. Hours
15. Sick Leave
16. Family Carers' Leave
17. Annual Leave Loading
18. Short Leave
19. Parental Leave
20. Dispute Resolution Procedure

Schedule A—Salaries

3.—SCOPE OF THE AGREEMENT

This Agreement shall apply to all employees of the Builders' Registration Board of Western Australia who are members of or eligible to be members of the Civil Service Association of Western Australia Incorporated.

3A.—NUMBER OF EMPLOYEES COVERED

As at 1 June 1998 the total number of employees subject to this Agreement is twenty three.

4.—PARTIES TO THE AGREEMENT

The parties to this Agreement are the Builders' Registration Board of Western Australia and the Civil Service Association of Western Australia Incorporated.

5.—DEFINITIONS

(1) "Agreement" means the Builders' Registration Board of Western Australia Enterprise Agreement – 1998.

(2) "BRB" means the Builders' Registration Board of Western Australia.

(3) "Union" means the Civil Service Association of Western Australia Incorporated.

(4) "WAIRC" means the Western Australian Industrial Relations Commission.

6.—TERM OF THE AGREEMENT

(1) This agreement shall operate from the beginning of the first pay period commencing on or after 4 August 1998 and shall remain in operation for a period of two (2) years from that date.

(2) The parties agree to commence negotiations for a new agreement six months prior to the expiration of this agreement.

(3) The parties will assess achievements in performance, productivity and efficiency against the targets detailed in the model presented in Clause 13.—Productivity Initiatives and Measurement Model during the term of this agreement.

(4) The pay quantum achieved as a result of the Agreement will remain and form the new base pay rates for future Agreements or continue to apply in the absence of a further Agreement subject to the continuation of the conditions of this Agreement.

7.—NO FURTHER CLAIMS

(1) The parties to this Agreement undertake that for the duration of the Agreement there shall be no further salary or wage increases sought or granted except for those provided under the terms of the Agreement.

(2) The parties recognise that it is important to encourage further productivity improvements beyond those currently identified in this Agreement and agree that where such improvements are identified and implemented they will be negotiated as part of the next enterprise agreement. Where achievements in excess of the expectations stipulated by this Agreement are achieved, the excess will be recognised in the next enterprise bargaining agreement.

(3) This Agreement shall not operate so as to cause an employee to suffer a reduction in ordinary time earnings.

8.—RELATIONSHIP TO PARENT AWARD

(1) Except as provided by this Agreement the conditions of employment and rates of salary payable to employees are those provided by the Government Officers Salaries, Allowances and Conditions Award 1989.

(2) In the case of any inconsistencies, this Agreement shall have precedence to the extent of the inconsistencies.

(3) Insofar as this Agreement is silent the provisions of the Government Officers Salaries, Allowances and Conditions Award 1989 shall apply.

9.—SINGLE BARGAINING UNIT

This Agreement has been negotiated through a Single Bargaining Unit comprising management and employees of the BRB and Union Representatives.

10.—SHARED MISSION AND OBJECTIVES

(1) The mission of the Builders' Registration Board of WA is to obtain the highest possible standards in the building industry, by the maintenance of appropriate levels of entry skills for builders, the fostering of continuous professional development and the provision of a cost efficient and impartial service to the community.

(2) The parties to this agreement are committed to achieving the mission in subclause (1) of this clause. To achieve this and provide a continuously improving quality of service to all stake holders, the parties are committed to the organisational objectives as detailed in the Corporate Plan along with the following supporting objectives—

(a) To build on the clear commitment and talents of our employees by developing a work environment which values and rewards initiative, effort and excellence.

(b) To develop and pursue changes on a co-operative and continuing basis through the implementation of a Continuous Improvement Program.

(c) To pursue best management practices through the implementation of a corporate management structure.

(d) To encourage greater flexibility in decision making and the allocation of human and other resources.

(e) To improve organisational performance through the targeted and programmed training and development of staff.

11.—CONTINUOUS IMPROVEMENT

The Builders' Registration Board of Western Australia is committed to continually improving productivity and overall performance. Enterprise Bargaining and the implementation of a Continuous Improvement Program assists by—

(1) Achieving pay increases for staff based on improvements in efficiency, service provision, quality and general productivity.

(2) Facilitating an improvement program which encourages all employees and management to identify and deal with real productivity barriers in a clear and participative manner.

(3) Achieving continuous improvement of all processes to achieve improved quality, work Organisation, customer service, delivery, timeliness, safety and training.

(4) Providing a forum and process in which staff are encouraged to contribute ideas and initiatives for productivity improvements and which will assist in their implementation.

(5) Making use of and improving existing consultative processes.

12.—ENTERPRISE BARGAINING PAYMENTS

(1) Four general salary adjustments shall apply—

(a) an increase of 2% payable from the first pay period commencing on or after 4 August 1998, as detailed in Schedule A – Salaries, of this Agreement;

(b) an increase of 1% payable from 4 February 1999, and as detailed in Schedule A – Salaries, of this Agreement, subject to the parties agreeing on the actual

achievement of targets identified in the productivity model and Government approval-

(c) an increase of 2% payable from 4 August 1999, and as detailed in Schedule A – Salaries, of this Agreement, subject to the parties agreeing on the actual achievement targets identified in the productivity model and Government approval;

(d) an increase of 2% payable from 4 February 2000, and as detailed in Schedule A – Salaries, of this Agreement, subject to the parties agreeing on the actual achievement of targets identified in the productivity model and Government approval;

(2) The Single Bargaining Unit will appoint a representative committee to monitor progress toward the achievement of targets.

(3) Where targets are not met due to unforseen circumstances, the Single Bargaining Unit may substitute targets of equivalent productivity benefit with the agreement of the parties hereto.

(4) The parties agree to the targets established in the Productivity Model at Clause 13.—Productivity Initiatives and Measurement Model.

13.—PRODUCTIVITY INITIATIVES AND MEASUREMENT MODEL

(1) The parties agree that the assessment and monitoring of productivity improvements is important because it provides critical feedback on the performance of the organisation to management, workforce and stakeholders.

(2) It is agreed that management and employees' understanding of productivity measurement concepts is vital for performance monitoring arrangements to be successful on an ongoing basis.

(3) Consistent with the above it is agreed that a performance improvement monitoring program be jointly developed between management, employees and the union.

(4) The parties agree to implement the following initiatives, aimed at improving the productivity of the organisation, and to the measurement of the effectiveness and of these initiatives through the Model produced below. The parties further agree to the payment of salary increases detailed at Clause 12.—Enterprise Bargaining Payments subject to the parties agreeing on the actual achievement of targets established within the model.

(5) Productivity Initiatives

The following productivity initiatives will be implemented within the life of the Agreement. Those listed in Stream A are directly related to the achievement of targets set in the Productivity Model, which in turn relate directly to the achievement of the organisations' stated objectives. Those initiatives listed in Stream B are related to improved service provision generally and are indicative of a range of initiatives to be investigated and implemented by the parties.

(a) Stream A

(i) Review and streamline administrative processes related to complaint receipt and handling.

(ii) Review inspection and assessment procedures and establish performance standards for permanent and contract inspectors.

(iii) Introduce multi-skilling of registration staff (including training initiatives as necessary) and review staffing levels and profiles.

(iv) Introduce tracking and records management systems for files, complaints and prosecutions.

(v) Review and streamline prosecution processes and systems.

(vi) Investigate and where appropriate implement measures to streamline Board Inquiry process.

(vii) Investigate, develop and where appropriate, implement an efficient system for Business Names searches.

(viii) Investigate, develop and where appropriate, implement a system that will routinely provide details of any registered builder convicted or a crime or misdemeanour in Western Australia.

(ix) Investigate, develop and where appropriate, implement a computerised Quality Assurance Management System.

(b) Stream B

(i) Upgrade computer systems and ensure that all are 2000 compliant.

(ii) Development of an appropriate web site, providing a range of information on the organisations, legislation, procedures and Registers.

(iii) Provision of laminated certificates within existing fee structure (no additional cost to customer).

(iv) Extension of general enquiries service from 8am to lpm daily to 8am to 3pm, daily and office hours from 8am to 5pm.

(6) Productivity Model

Performance Indicator	Base Measure	Target 6 Months (% value)	Target 12 Months (% value)	Target 18 Months (% value)
Average time between receipt of complaint and Registrar's Order	77% within 42 days	78% within 40 days (0.5%)	79% within 38 days (0.5%)	80% within 36 days (0.5%)
Average cost of complaints dealt with by the Registrar	$401.16		5% reduction (0.7%)	5% reduction (0.7%)
Average cost of processing registrations including Board deliberation time	$254.00	2% reduction (0.2%)	3% reduction (0.2%)	3% reduction (0.2%)
Number of prosecutions filed per annum	54	6% increase (0.2%)	7% increase (0.2%)	7% increase (0.2%)
Average cost of prosecutions head	$505.00	2% reduction (0.1%)	4% reduction (0.2%)	4% reduction (0.2%)

14.—HOURS

Notwithstanding Clause 16.—Hours of the Government Officers Salaries, Allowances and Conditions Award 1989, employees will be required to work—

(1) seventy six (76) hours instead of seventy five (75) hours per fortnight;

(2) one hundred and fifty two (152) hours instead of one hundred and fifty (150) per four (4) week period;

(3) seven (7) hours thirty six (36) minutes instead of seven (7) hours thirty (30) minutes per day;

(4) thirty eight (38) hours instead of thirty seven (37) hours thirty (30) minutes per week.

15.—SICK LEAVE

This clause replaces subclauses (2), (4) and (10) of Clause 22.—Sick Leave of the Government Officers Salaries Allowances and Conditions Award 1989 and the following provisions shall apply—

(1) In the case of personal illness, injury or where there is a need for an employee to visit a health professional, including a dentist, physiotherapist or chiropractor, the BRB shall grant that employee leave of absence in accordance with the provisions contained in this clause.

(2) On the date of appointment an employee shall be credited with 76 hours leave on full pay for the purposes of sick leave. On the completion of 12 months continuous service and on completion of each successive period of twelve months continuous service, the employee will be credited with a further 76 hours paid leave. All leave credits shall be cumulative.

(3) In the event of serious illness or exceptional circumstances, the BRB retains the discretion to approve paid sick leave beyond the abovementioned entitlements following production of a certificate from a registered medical practitioner.

16.—FAMILY CARERS' LEAVE

Employees covered by this Agreement may use sick leave to a maximum of 38 hours per annum in accordance with this clause to provide care for another person subject to—

(1) The employee being responsible for the care of the person concerned.

(2) The person concerned being either a member of the employee's immediate family or a member of the employee's household.

(3) The term "immediate family" includes a partner (including a spouse or defacto spouse), child or adult child (including an adopted child, foster child, step child or ex nuptial child), parent, grandparent, grandchild or sibling of the employee or partner of the employee.

(4) Where any application for leave pursuant to this clause exceeds two consecutive days the employee shall provide to the Board satisfactory evidence of the need for care of the other person.

(5) The employee shall, where practicable, give the employer prior notice of the intention to take leave, details of their relationship to the person requiring care, the reasons for taking such leave and the estimated length of absence. In any event the particulars required by the prior notice must be provided to the BRB as soon as practicable, in default of which there will be no entitlement to paid leave under this clause.

17.—ANNUAL LEAVE LOADING

Notwithstanding the provisions of Clause 19.—Annual Leave of the Government Officers Salaries, Allowances and Conditions Award 1989 the following provision shall apply to all employees:.

Annual leave loading will not paid at the time of taking such annual leave but shall be incorporated as a part of the fortnightly salary.

18.—SHORT LEAVE

(1) Subject to subclause (2) of this clause the provisions of Clause 26.—Short Leave of the Government Offices Salaries Allowances and Conditions Award 1989 shall not apply provided that the provisions for Bereavement Leave within the Minimum Conditions of Employment Act shall continue to apply.

(2) In exceptional circumstances the BRB may approve paid leave for an employee to deal with an emergency situation.

19.—PARENTAL LEAVE

(1) Definitions

"Replacement employee" means an employee specifically engaged to replace the employee proceeding on parental / adoption leave.

(2) Eligibility for Parental / Adoption Leave

(a) The employee is entitled to a period of up to fifty-two (52) weeks unpaid parental leave in respect of the birth of a child to the employee or the employee's spouse / partner.

(b) Where the employee applying for the leave is the partner of a pregnant spouse one (1) week unpaid leave may be taken at the birth of the child.

(c) Where the employee is adopting a child under the age of five (5) years, he/she shall be entitled to three (3) weeks unpaid adoption leave at the placement of the child and a further period of adoption leave up to a maximum of fifty-two (52) weeks.

(d) Where the employee is seeking to adopt a child, he/she shall be entitled to two (2) days unpaid leave for the employee to attend interviews or examination required for the adoption procedure.

(e) Where both partners are employed by the BRB the leave shall not be taken concurrently except for—

(i) One (1) week unpaid leave at the birth of the child as specified in paragraph (b) above, or

(ii) under special circumstances and with the approval of the Registrar.

(3) Other Leave Entitlements

(a) The employee when proceeding on parental / adoption leave, may elect to utilise any accrued annual leave or accrued long service leave for the whole or part of the period of parental / adoption leave or extend the period of parental / adoption leave with such leave, subject to the Registrar's approval.

(b) The period of the parental / adoption leave can be extended with the leave detailed in paragraph (a) above with the approval of the Registrar.

(c) The employee when on parental / adoption leave is not entitled to paid sick leave.

(d) Where the pregnancy of the employee terminates other than by the birth of a living child, then the employee shall be entitled to such paid sick leave or unpaid leave for a period certified as necessary by a registered medical practitioner.

(e) Where the employee is pregnant and not on parental leave suffers .illness related to the employee's pregnancy or is required to undergo a pregnancy related procedure the employee may take any paid sick leave to which the employee is entitled or such further unpaid leave for a period certified as necessary by a registered medical practitioner.

(4) Notice and Variation

(a) The employee shall, where practicable, give the Registrar ten (10) weeks prior notice of the date the employee proposes to commence parental leave stating the period of leave to be taken.

(b) The employee when proceeding on parental leave, may elect to take a shorter period of parental leave and may at any time during that period of leave elect to reduce or extend the period stated in the original application provided four (4) weeks written notice is provided.

(5) Transfer to Safe Job

(a) Where illness or risks arising out of pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue her present duties, the duties shall be modified or the employee may be transferred to a safe position at the same classification until the commencement of maternity leave.

(b) If the transfer to a safe position is not practicable, the employee may take leave in accordance with the award for such period as is certified necessary by a registered medical practitioner.

(6) Return to Work

(a) The employee shall confirm the intention to return to work by notice in writing to the Registrar not less than four (4) weeks prior to the expiration of the period of parental / adoption leave.

(b) The employee on return from parental / adoption leave shall be entitled to the position which the employee occupied immediately prior to proceeding on parental / adoption leave. Where the employee was transferred to a safe job pursuant to subclause (5) of this clause, the employee is entitled to return to the position occupied immediately prior to the transfer.

(c) The employee may chose to return to work on a part—time basis to the same position at the same classification level in accordance with the part time provisions of the Government Officers Salaries, Allowances and Conditions Award 1989.

(d) Where the position occupied by the employee no longer exists, the employee shall be entitled to a position of the same classification level with duties similar, where possible, to that of the abolished position.

(7) Effect of Leave on Employment Contract

(a) Fixed Term Contract

An employee employed on a fixed term contract shall not have the entitlement to parental / adoption leave extend beyond the term of that contract.

(b) Continuous Service

Absence on parental / adoption leave shall not break the continuity of service of the employee but shall not be taken into account in calculating the period of service for any purpose this Agreement.

(c) Termination of Employment

The employee whilst on parental / adoption leave may terminate employment at any time during the period of leave by written notice in accordance with the provisions of this Agreement.

20.—DISPUTE RESOLUTION PROCEDURE

(1) In the event of any questions, disputes or difficulties arising between an employee, group of employees or the union and management concerning any interpretation or the implementation of this agreement, the following procedure shall apply—

(a) The Union representative and/or the employees concerned shall discuss the matters with the immediate supervisor or employer's representative, as appropriate.

(b) If the matter is not resolved within five (5) working days following the discussions in accordance with subclause (1) of this clause the matter shall be referred to the Chief Executive Officer, or his nominee, for resolution.

(c) The parties to the dispute may individually or collectively seek advice and assistance from any appropriate Organisation or person in an attempt to resolve the matter.

(d) If the matter is not resolved within ten (10) working days following notification pursuant to subclause (2) of this clause it may be referred by either party to the WAIRC for resolution.

(2) In implementing the above procedure the following principles shall be applied—

(a) decisions made are unbiased and are seen to be unbiased;

(b) all parties to the dispute have the opportunity to put their cases fully;

(c) appropriate confidentiality is to be maintained;

(d) employees will not be subject to any discrimination as a result of using the dispute resolution procedure.

SCHEDULE A—SALARIES

Levels	Annual Salary Pre-Agreement	2% +2% From Date Of Registration	1% +1% 6 Months After Registration	2% +2% 12 Months After Registration	2% +2% 18 Months After Registration
Level 1/U 17	13,636.62	13,909.35	14,048.45	14,329.41	14,616.00
Level 1/17 yrs	15,706.91	16,021.05	16,181.26	16,504.88	16,834.98
Level 1/18 yrs	18,094.39	18,456.28	18,640.84	19,013.66	19,393.93
Level 1/19 yrs	20,730.22	21,144.82	21,356.27	21,783.40	22,219.07
Level 1/20 yrs	23,112.06	23,574.30	23,810.04	24,286.25	24,771.97
Level 1.1	25,254.58	25,759.67	26,017.27	26,537.61	27,068.37
Level 1.2	25,990.58	26,510.39	26,775.50	27,311.01	27,857.23
Level 1.3	26,725.45	27,259.96	27,532.56	28,083.21	28,644.87
Level 1.4	27,455.81	28,004.93	28,284.98	28,850.67	29,427.69
Level 1.5	28,190.68	28,754.49	29,042.04	29,622.88	30,215.34
Level 1.6	28,925.55	29,504.06	29,799.10	30,395.08	31,002.99
Level 1.7	29,771.05	30,366.47	30,670.14	31,283.54	31,909.21
Level 1.8	30,355.78	30,962.90	31,272.52	31,897.98	32,535.93
Level 1.9	31,220.47	31,844.88	32,163.33	32,806.59	33,462.73
Level 2.1	32,255.61	32,900.72	33,229.73	33,894.32	34,572.21
Level 2.2	33,049.18	33,710.16	34,047.27	34,728.21	35,422.77
Level 2.3	33,883.39	34,561.06	34,906.67	35,604.80	56,316.90
Level 2.4	34,765.01	35,460.31	35,814.91	36,531.21	37,261.84
Level 2.5	35,687.27	36,401.02	36,765.03	37,500.33	38,250.'33
Level 3.1	36,954.95	37,694.05	38,070.99	38,832.41	39,609.06
Level 3.2	37,942.68	38,701.53	39,088.55	39,870.32	40,667.73
Level 3.3	38,960.89	39,740.11	40,137.51	40,940.26	41,759.06
Level 3.4	40,006.19	40,806.31	41,214.38	42,038.66	42,879.44
Level 4.1	41,439.80	42,268.60	42,691.28	43,545.11	44,416.01
Level 4.2	42,562.99	43,414.25	43,848.39	44,725.36	45,619.87
Level 4.3	43,718.92	44,593.30	45,039.23	45,940.02	46,858.82
Level 6.1	45,944.98	46,863.88	47,332.52	48,279.17	49,244.75
Level 5.2	47,449.72	48,398.71	48,882.70	49,860.36	50,857.56
Level 6.3	49,013.15	49,993.41	50,493.35	51,503.21	52,533.28
Level 5.4	50,535.29	51,648.00	52,164.48	53,207.77	54,271.92
Level 6.1	53,244.02	54,308.90	54,851.99	55,949.03	57,068.01
Level 6.2	55,017.42	56,117.77	56,678.95	57,812.53	58,968.78
Level 6.3	56,852.90	57,989.96	58,569.86	59,741.25	60,936.08
Level 6.4	58,812.56	59,988.81	60,588.70	61,800.47	6-3,036.48
Level 7.1	61,817.51	63,053.86	63,684.40	64,958.09	66,257.25
Level 7.2	63,896.83	65,174.77	65,826.51	67,143.04	68,485.91
Level 7.3	66,159.01	67,482.19	68,157.01	69,520.15	70,910.56
Level 8.1	69,835.62	71,232.33	71,944.66	73,383.55	74,851.22
Level 8.2	72,469.19	73,918.57	74,657.76	76,150.91	77,673.93
Level 8.3	75,734.91	77,249.61	78,022.10	79,582.55	81,174.20
Level 9.1	79,813.39	81,409.66	82,223.75	83,868.23	85,545.59
Level 9.2	82,568.87	84,220.25	85,062.45	86,763.70	88,498.97
Level 9.3	85,711.55	87,425.78	88,300.04	90,066.04	91,867.36

BUNBURY CATHEDRAL GRAMMAR SCHOOL (NON-TEACHING STAFF ENTERPRISE BARGAINING) AGREEMENT 1998.

No. AG 116 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Bunbury Cathedral Grammar School and The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers.

No. AG 116 of 1998.

Bunbury Cathedral Grammar School (Non-Teaching Staff Enterprise Bargaining) Agreement 1998.

COMMISSIONER P.E. SCOTT.

9 September 1998.

Order.

HAVING heard Ms D MacTiernan on behalf of the Applicant and Ms T Howe on behalf of The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Bunbury Cathedral Grammar School (Non-teaching Staff Enterprise Bargaining) Agreement 1998 in the terms of the following Schedule be registered on the 25th day of August 1998.

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

Schedule.

1.—TITLE

This agreement shall be known as the Bunbury Cathedral Grammar School (Non-Teaching Staff Enterprise Bargaining) Agreement 1998.

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 Awards
7. Single Bargaining Unit
8. Objectives
9. Salary Rates
10. Classifications
11. No Reduction
12. Leave
13. Efficiency Improvements
14. Superannuation
15. Education of Children of Members of Staff
16. Redundancy Provisions
17. Dispute Resolution Procedure
18. Consultation
19. No Further Claims
20. No Precedent
21. Signatories

3.—PARTIES TO THE AGREEMENT

This agreement is made between Bunbury Cathedral Grammar School and the Independent Schools Salaried Officers' Association of Western Australia, The Australian, Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, Western Australian Branch.

4.—SCOPE OF AGREEMENT

(1) This agreement shall apply to staff members who are employed within the scope of the awards listed in Clause 6.

(2) The estimated number of staff employed within the scope of the awards is 37 in total.

5.—DATE AND DURATION OF AGREEMENT

This agreement shall come into effect on the 1 July, 1998 and shall apply until 31 December, 1999. The parties have agreed to meet no later than six (6) months prior to the expiry of this agreement.

6.—RELATIONSHIP TO PARENT AWARDS

(1) This agreement shall be read and interpreted in conjunction with the following awards—

Independent Schools' Administrative and Technical Officers' Award 1993

Teachers' Aides' (Independent Schools) Award 1988

School Employees' (Independent Day and Boarding Schools) Award 1980

Independent Schools' (Boarding House) Supervisory Staff Award

(2) Where there is any inconsistency between the agreement and the relevant award, this agreement will prevail to the extent of the inconsistency.

7.—SINGLE BARGAINING UNIT

(1) The parties to this agreement have formed a single bargaining unit.

(2) The single bargaining unit has conducted negotiations with the School and reached full agreement with the School represented by this agreement.

8.—OBJECTIVES

(1) The School's foremost aim is to provide a broad, balanced, relevant, holistic and high quality education for students and prepare them for adulthood. Each and every employee, to varying degrees, has an input into the broader education process and through this agreement, should strive to achieve the following objectives—

(a) Re-affirm a mutual responsibility to maintain a working environment that will ensure that the School and its staff continue to be genuine participants and contributors to the School aims, objectives and philosophy.

(b) Safeguard and improve the quality and productivity of services at the School through the ongoing review of work practices and procedures and 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.

(c) Consolidate and develop further, the initiatives arising from the Award Restructuring process.

(d) Provide some consistency regarding general conditions of employment that exists for the different categories of non-teaching staff employed with the School.

9.—SALARY RATES

(1)

LEVEL	STEP	BASELINE	1/7/98 +3%	1/1/99 + 2%	1/7/99 + 2%
Level 1	1	21,300	21,939	22,378	22,825
	2	21,800	22,454	22,903	23,361
	3	22,300	22,969	23,428	23,897
	4	22,800	23,484	23,954	24,433
	5	23,300	23,999	24,479	24,969
	6	23,800	24,514	25,004	25,504
Level 2	1	24,300	25,029	25,530	26,040
	2	24,800	25,544	26,055	26,576
	3	25,300	26,059	26,580	27,112
	4	25,800	26,574	27,105	27,648
	5	26,300	27,089	27,631	28,183
	6	26,800	27,604	28,156	28,719
Level 3	1	27,300	28,119	28,681	29,255
	2	27,800	28,634	29,207	29,791
	3	28,300	29,149	29,732	30,327
	4	28,800	29,664	30,257	30,862
	5	29,300	30,179	30,783	31,398
	6	29,800	30,694	31,308	31,934
Level 4	1	30,300	31,209	31,833	32,470
	2	30,800	31,724	32,358	33,006
	3	31,300	32,239	32,884	33,541
	4	31,800	32,754	33,409	34,077
	5	32,300	33,269	33,934	34,613
	6	32,800	33,784	34,460	35,149
Level 5	1	33,300	34,299	34,985	35,685
	2	33,800	34,814	35,510	36,220
	3	34,300	35,329	36,036	36,756
	4	34,800	35,844	36,561	37,292
	5	35,300	36,359	37,086	37,828
	6	35,800	36,874	37,611	38,364

(2) In the event of any safety net adjustments being applied in the future to any of the relevant awards, such shall be absorbed into the salary rates prescribed in this agreement.

(3) An employee appointed to a salary rate shall proceed by annual increments to the maximum of that classification level. Such annual increments shall be on the basis of full time employment.

(4) (a) If during progression through the salary steps, and at least two months prior to the employee's next annual increment, the employer considers such increment to be inappropriate, due to work performance, and as such does not recommend or authorise further progression to the next step, then the employer shall state reasons in writing to the employee concerned.

(b) Such reasons should indicate the areas where the employer considers improvement is required. If the improvement is subsequently achieved, then the employee shall progress to the appropriate salary step from the time of improvement.

(c) If the employer does not recommend or authorise progression at the end of this procedure, then the employee may choose to appeal this decision in accordance with the provisions of Clause 17—Dispute Resolution Procedure of this agreement.

(5) (a) An employee may only progress from one level to another in accordance with the provisions prescribed in Clause 10.—Classifications.

(b) Should an employee's responsibilities increase to the extent where they consider their salary level to be no longer appropriate to their position, the employee and/or his/her representative, may at any time apply in writing to have his/her classification reviewed.

(c) The employer shall determine whether such reclassification is warranted within twenty eight days from the date of the written application. If the reclassification is agreed, the date from which the new rate will apply will be determined by mutual agreement. If the employer does not recommend reclassification, then the employee has the right to appeal in accordance with the provisions of Clause 17.—Dispute Resolution Procedure of this Agreement.

10.—CLASSIFICATIONS

Each staff member shall be placed in one of the following levels dependent on the skills, qualifications and experience demanded by the position.

Level 1

The employee at this level requires no prior experience or formal qualification in the performance of their job and works under direct or general supervision.

Level 2

The employee at this level performs tasks under general supervision, is competent in the performance of tasks associated with Level 1 positions. The employee will, if the position requires, have acquired trade or other relevant qualifications and/or demonstrated experience. Some employees at this level will supervise other employees under direction.

Level 3

The employee at this level is competent and skilled and performs duties under general direction, but with some degree of autonomy. The employee will have acquired a recognised trade or other relevant qualification and/or demonstrated experience. Some employees at this level could be responsible for the supervision of others.

Level 4

The employee at this level is competent and skilled with the knowledge and demonstrated ability to undertake complex tasks with a reasonable degree of autonomy. They may also be involved in the supervision of others and will have relevant TAFE/Tertiary or equivalent qualifications and/or demonstrated experience.

Level 5

The employee at this level, through formal qualifications or job responsibility, is not only fully competent in the performance of the position but also has a high degree of autonomy, initiative and discretion in the work programme and is responsible for the supervision of other employees.

11.—NO REDUCTION

(1) Nothing herein contained shall entitle the School to reduce the salary of any staff member who at the date of this agreement was being paid a higher rate than the minimum prescribed for the staff member's classification at the time.

(2) Salaries however may be capped at their current rate in cases where remuneration is considered to be in excess of the definitions prescribed in Clause 10—Classifications.

12.—LEAVE

(1) **Long Service Leave**

(a) Any employee who has completed eight (8) continuous years of service with the School shall be entitled to ten (10) weeks Long Service Leave on full pay. Pro-rata entitlement on termination will be paid after seven (7) years continuous service.

(b) For each subsequent eight years of service the employee shall be entitled to an additional ten (10) weeks paid Long Service Leave. A member who leaves the employ of the School after completing the initial eight (8) continuous years of service shall be entitled to pro rata Long Service Leave for all service after the initial eight (8) years.

(c) Part-time employees will be paid Long Service Leave on a pro-rata basis in accordance with hours worked and averaged out over the 8 year period.

(d) Entitlement from 1/7/98 will be calculated as follows—

$$\text{No. of Years Service from 1/7/98} \times \frac{\text{10 weeks}}{\text{8 years}} \text{ (1.25wks)}$$

and will be added to pre-existing entitlements. (10 years or 15 years according to Awards).

(e) Where a staff member has become entitled to a period of Long Service Leave in accordance with this Sub-Clause, the staff member shall commence such Leave as soon as possible after the accrual date, in a manner mutually agreed between the employer and the staff member.

(f) Long Service Leave will generally be taken in its entirety, however in special circumstances, which result in no additional cost to the School, Leave may be taken in smaller portions at mutually agreed times.

(2) **Parental Leave**

The School will grant Parental Leave in accordance with current minimum conditions as contained in the Western Australian Minimum Conditions of Employment Act (1993).

(3) **Special Family Leave**

The School agrees to the employee using three (3) of their sick leave days each calendar year to care for sick members of their immediate family. If more than one day is taken in succession the employee will be required to produce a medical certificate confirming the illness of the person concerned. Leave unused for this purpose will only accrue as normal sick leave.

13.—EFFICIENCY IMPROVEMENTS

(1) **Flexibility of Hours**

(a) The parties recognise that there is a wide range of duties and responsibilities associated in the operation of a Day and Boarding School. By necessity these duties and responsibilities are undertaken at a range of times during each twenty-four hour span.

(b) The increases within this agreement are, in part, recognition of the requirement for employees to work overtime and as such ordinary rates will be paid until an employee works in excess of 90 hours per fortnight after which the relevant award penalty rates will apply.

(c) The employee may choose to take the overtime as payment for hours worked or as time in lieu. The time in lieu taken in accordance with this sub-clause shall be at such time as agreed between the employer and employee.

(d) The parties recognise that there is no intention on the part of the employer to seek to have employees work more than their prescribed normal hours on a regular basis.

(e) The parties agree to discuss strategies providing for greater flexibility in working hours to meet the needs of the School programme.

(f) Each employee to be entitled to a paid 15 minute tea break after the second hour of work and an unpaid thirty minute meal break.

(2) **Workplace Culture**

(a) Employees covered by this agreement agree to work collectively in an effort to achieve the objectives of the School as prescribed in Clause 8—Objectives.

(b) Employees will have commitment to and responsibility for the work that they undertake. This will include the ongoing improvement of work practices and the continuous search to provide a better quality of service within their team.

(c) Employees will strive to work together with others from all areas of the School, whether it be in a team or as an individual, to improve the delivery of service. Individuals and teams will take responsibility for finding solutions and be solutions based rather than problems based.

(d) Management and staff will work together in order to establish, improve and maintain, strong lines of communication in order that awareness and understanding between them can be achieved.

(3) **Part-time Employees**

(a) Part time employees shall have the expectation of continuity of service.

(b) (i) The School may vary the regular hours of employment of part-time employees provided that at least eight (8) weeks written notice is given of any variation, unless otherwise agreed by the School and the employee.

(ii) Both parties agree that where variations to hours of part-time employees are required, there will be a negotiation of the hours of duty and any retraining required before acceptance of work in other areas of the School.

(c) In determining the hours of a part time employee, the School acknowledges that such employees may wish to seek additional employment and agrees to negotiate hours of duty which, as far as practicable, suit the circumstances of the School and the employee.

(d) The minimum number of hours that a part-time worker shall be paid for shall be two (2) hours per day.

(4) **Occupational Safety and Health**

(a) The Board of Governors, senior management and staff believe that the safety and health of every one who works and studies at Bunbury Cathedral Grammar School is important and hence are committed to the successful management of occupational safety

and health throughout the School and its associated activities.

(b) The Headmaster is ultimately responsible for occupational safety and health within the School. Responsibility for the execution of the policy in areas under their control is delegated by the Headmaster to senior management, managers and supervisors.

(c) Every employee of Bunbury Cathedral Grammar School is expected to contribute to the achievement of a safe workplace in an atmosphere of meaningful consultation and genuine co-responsibility. To this end all employees of the School will report any hazards and actively consult with members of occupational safety and health committees in the School workplaces about the occupational safety and health of the School community.

(5) **Appraisal**

The parties agree to work to develop an ongoing appraisal procedure for all non-teaching staff within the lifetime of this agreement.

(6) **Professional Development**

(a) Professional development activities will be undertaken partly in School time and partly in the staff members' own time, where feasible, in equal proportions.

(b) There will continue to be consultation with staff members in the planning of professional development.

(7) **Notice of Termination**

(a) Except in the case of dismissal for misconduct an employee's service shall not be terminated unless she has received four week's previous notice or payment for such period in lieu thereof.

(b) Except by agreement with the employer no employee shall resign without first giving four week's notice and in the absence of such notice the employer may withhold holiday or other pay up to the amount of four week's wages.

(c) This clause shall not apply to casual employees.

14.—SUPERANNUATION

(1) The employer shall pay into a superannuation fund nominated by the employee, contributions calculated by multiplying the Gross Salary of the Employee by the relevant percentage (%) required under the Commonwealth Superannuation Guarantee (Administration) Act 1992 from time to time.

(2) Paragraph (1) does not apply to an Employee earning less than $450 per month.

(3) Contributions shall be paid monthly following the last fortnightly pay in each month.

(4) The employer shall notify the employee that the employee may nominate a superannuation fund into which the employer's contributions are to be paid.

(5) The employer shall notify the employee by providing the employee with a document containing the text of Form 1 of the Industrial Relations (Superannuation) Regulations 1997.

(6) The notification to the employee shall be given as soon as practicable after the commencement of employment or, where the employee is employed at the date of commencement of this agreement and has not previously been so notified, as soon as practicable after commencement of the agreement.

(7) Until such time as the employee nominates a superannuation fund, the employer shall pay the superannuation contributions into The Bunbury Cathedral Grammar School Superannuation Fund.

(8) The employer and the employee are bound by the employee's choice of superannuation fund and shall do all things necessary to give effect to the making of payments into the employee's choice of fund.

(9) An employee who has nominated a superannuation fund, may at any time, by agreement with the employer, change the superannuation fund into which the employer contributions are to be paid.

(10) The employer shall not unreasonably refuse to agree to a change in superannuation fund.

(11) In this clause "superannuation fund" means a fund or scheme which is a complying superannuation fund or a scheme within the meaning of the Commonwealth Government's Superannuation Guarantee (Administration) Act 1992 and which, under its governing rules, contributions may be made in respect of the employer's employees.

15.—EDUCATION OF CHILDREN OF MEMBERS OF STAFF

Until the Board decides otherwise, which it may do if it sees fit, a rebate for the children of Bunbury Cathedral Grammar School staff equal to the fees concession offered to members of the teaching staff will be given, but it is a condition of this concession that members of staff apply for entry for their children promptly after they are born, or promptly after the member of staff s appointment.

16.—REDUNDANCY PROVISIONS

(1) It is acknowledged that redundancy is a termination of services because the position the staff member occupied is no longer available.

(2) In considering which employee is to be made redundant the School will —

(a) assess its needs;

(b) look at the job being performed and not the individual;

(c) look at any flexibility offered by the employees being considered;

(d) check with staff as to future plan (for example, long service leave, early retirement options or leave without pay) which may impact on the need for a redundancy;

(e) terminate positions at the end of the School year whenever possible;

(f) a minimum of 4 weeks notice will be given to an employee/s if redundancy is proposed for their position/s;

(g) when there are a number of employees competing for a limited number of positions, decisions about which employees are to be retained will be made after a thorough review of the School's requirements in specific work areas and the experience, qualifications and service of the employees.

(3) The School will hold discussions with the employees and the employees' industrial union if so requested by the employee/s regarding the possible redundancies. The discussions will cover any reasons for the proposed redundancies of the employees concerned.

(4) To assist the redundant employee the School will —

(a) offer part-time or relief employment if this is possible;

(b) check with other schools to see whether there is a suitable vacancy;

(c) provide secretarial assistance with job applications;

(d) permit paid leave to attend job interviews;

(e) provide the employee with a reference and a statement to the effect that he/she is redundant if alternate employment is found either for or by the employee;

(f) provide the employee with a redundancy payment.

(5) The following severance pay scale will apply—

Where the School proposed to make one or more positions redundant the School shall make severance payments to the employees made redundant in accordance with the following scale—

Period of Service	Weeks of severance pay
Less than 1 year	Nil
One year and less than two years	4 weeks
Two years and less than three years	6 weeks
Three years and less than four years	7 weeks
Four years and above	2 weeks per year of service to a maximum of 12 weeks

17.—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. Employees, if they so wish, are able to access Union representation.

(3) If the matter is not then resolved it shall be referred to the Western Australian Industrial Relations Commission.

18.—CONSULTATION

(1) A Consultation Committee, six (6) in number, shall be established with 2 members representing the School and 4 members representing the employees covered by this Agreement.

(2) The employee representatives shall be elected by a ballot of employees.

(3) The Committee shall provide a forum in which to discuss matters that relate directly to the conditions of employment of a non-teaching staff. Meetings will be held at least once during each school term for the purpose of planning and monitoring the implementation of the agreement.

19.—NO FURTHER CLAIMS

It is a condition of this agreement that the parties involved will not seek any further claims, with respect to salaries or conditions, unless they are consistent with the State Wage Case Principles.

20.—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.

21.—SIGNATORIES

Common Seal	***Common Seal***
Signed	Signed
(Signature)	*(Signature)*
IRENE COMPTON BOURNE	T I HOWE
(Name of signatory in block letters)	*(Name of signatory in block letters)*
Bunbury Cathedral Grammar School	Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers
Signed	Signed
(Signature)	*(Signature)*
BRIAN CHARLES NEWING	HELEN MARGARET CREED
(Name of signatory in block letters)	*(Name of signatory in block letters)*
Bunbury Cathedral Grammar School	The Australian Liquor, Hospitality and Miscellaneous Workers Union, Workers Division, Western Australian Branch
Signed	
(Signatory)	
BARRY MICHAEL CARROLL	
(Name of signatory in block letters)	
Bunbury Cathedral Grammar School	

CATALANO & KURTH INDUSTRIAL AGREEMENT. No. AG 350 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

Catalano Kurth Pty Ltd.

No. AG 350 of 1997.

Catalano & Kurth Industrial Agreement.

COMMISSIONER P E SCOTT.

30 September 1998.

Order.

HAVING heard Mr J Maitland 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 Catalano & Kurth Industrial Agreement in the terms of the following schedule be registered on the 9th day of September 1998.

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

WAGE AGREEMENT

Schedule.

1.—TITLE

This Agreement will be known as the Catalano & Kurth 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. Site Allowance
12. Industry Standards
13. Clothing and Footwear
14. Training Allowance, Training Leave, Recognition of Prior Learning
15. Seniority
16. Sick Leave
17. Pyramid Sub-Contracting
18. Fares and Travelling
19. Drug and Alcohol, Safety and Rehabilitation Program
20. No Extra Claims

Appendix A—Wage Rates
Appendix B—Drug and Alcohol, Safety and Rehabilitation Program
Appendix C—Site Allowance

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builder's 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 Catalano Kurth Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Unions, its officers and members, and any person eligible to be members 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 12 employees covered by this agreement.

5.—DURATION

This Agreement shall commence from the first pay period on or after the 1st of August 1997 and shall continue in effect until 31 October 1999.

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 Awards 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 and allowances resulting in the wage rates in the Appendix A—Wage Rates.

11.—SITE ALLOWANCE

This Agreement provides for site allowances as per Appendix C—Site Allowance.

12.—INDUSTRY STANDARDS

1. Redundancy

It is a term of this Agreement that the Company will immediately increase its payments to $45 per week per employee into the Western Australian Construction Industry Redundancy Fund and then will increase this to $50 per week per employee on 1 August 1998.

2. Superannuation

The Company will immediately increase its payment to $60 per week per employee.

The Company will advise all employees subject to the Agreement of their Right to have payments made to a complying superannuation fund of their choice. The Company is bound by the employee's election. The aforementioned payment will then be made to that fund.

Until each employee nominates the fund of their choice the Company will make payments into the Construction + Building Unions Superannuation Scheme (the "C+BUSS").

In the event that any employee chooses a fund other than the C+BUSS the Company will, within seven days of the employee advising the Company of the fund of their choice, advise the Union in writing of the employee's decision.

In the event that the employee and the Company reach an agreement pursuant to section 49C(2)(d) of the Act to change the complying superannuation fund or scheme the Company will, within seven days of the employee and the Company reaching such an agreement, advise the Union in writing of the agreement. The employer will not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by the employee.

3. Apprentice Rates

The Company agrees to maintain a ratio of no more than four tradespeople to one apprentice employed.

13.—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.

14.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

1. A training allowance of $12.00 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-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

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.—PYRAMID SUB-CONTRACTING

1. "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

2. Provided that where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

3. Further provided that when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

4. A bona fide sub-contractor is generally an employer of labour, save for a machine owner operator.

5. Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

18.—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.

19.—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.

20.—NO EXTRA CLAIMS

The Union will make no further claims on the Company over conditions set out in this Agreement for the life of the Agreement. However the Union reserves the right to raise the unforseen matters. The Company agrees to insure the employees for sickness and accident cover. The terms of the policy will be agreed to between the Company and the Union.

Signed for and on behalf of—

The Unions: **BLPPU**

Signed ***Common Seal***
Date: 21/10/97
Signed
WITNESS

CMETU

Signed ***Common Seal***
Date: 21/10/97
Signed
WITNESS

The Company ***Common Seal***

Signed.
Date: 10/10/97
C Catalano
PRINT NAME
Signed
WITNESS

APPENDIX A—WAGE RATES

	1 August 1997 Hourly Rate $	1 February 1998 Hourly Rate $	1 August 1998 Hourly Rate $	1 February 1999 Hourly Rate $	1 August 1999 Hourly Rate $
Labourer Group 1	15.56	16.01	16.47	16.92	17.15
Labourer Group 2	15.03	15.47	15.90	16.34	16.56
Labourer Group 3	14.63	15.05	15.48	15.90	16.12
Plaster, Fixer	16.17	16.64	17.11	17.58	17.82
Painter, Glazier	15.81	16.27	16.73	17.19	17.42
Signwriter	16.15	16.62	17.09	17.56	17.80
Carpenter	16.27	16.75	17.22	17.70	17.93
Bricklayer	16.11	16.58	17.05	17.52	17.75
Refractory Bricklayer	18.50	19.04	19.58	20.12	20.38
Stonemason	16.27	16.75	17.22	17.70	17.93
Rooftiler	15.99	16.45	16.92	17.38	17.62
Marker/Setter Out	16.75	17.24	17.72	18.21	18.46
Special Class T	16.96	17.46	17.95	18.45	18.69

APPRENTICE RATES

	1 August 1997 Hourly Rate $	1 February 1998 Hourly Rate $	1 August 1998 Hourly Rate $	1 February 1999 Hourly Rate $	1 August 1999 Hourly Rate $
Plasterer, Fixer					
Yr 1	6.79	6.99	7.18	7.38	7.48
Yr 2 (1/3)	8.90	9.16	9.42	9.68	9.81
Yr 3 (2/3)	12.13	12.49	12.84	13.19	13.37
Yr 4 (3/3)	14.23	14.65	15.06	15.48	15.69
Painter, Glazier					
Yr 1 (.5/3./5)	6.64	6.84	7.03	7.22	7.32
Yr 2 (1/3), (1.5/3.5)	8.70	8.95	9.20	9.45	9.58
Yr 3 (2/3), (2.5/3.5)	11.86	12.20	12.55	12.89	13.06
Yr 4 (3/3), (3.5/3.5)	13.92	14.32	14.73	15.13	15.33
Signwriter					
Yr 1 (.5/3.5)	6.79	6.99	7.18	7.38	7.48
Yr 2 (1/3, 1.5/3.5)	8.88	9.14	9.40	9.65	9.78
Yr 3 (2/3, 2.5/3.5)	12.11	12.47	12.82	13.17	13.35
Yr 4 (3/3, 3.5/3.5)	14.21	14.63	15.04	15.46	15.66
Carpenter					
Yr 1	6.84	7.04	7.24	7.44	7.54
Yr 2 (1/3)	8.95	9.21	9.47	9.73	9.86
Yr 3 (2/3)	12.21	12.56	12.92	13.27	13.45
Yr 4 (3/3)	14.32	14.73	15.15	15.57	15.78
Bricklayer					
Yr 1	6.77	6.96	7.16	7.36	7.46
Yr 2 (1/3)	8.86	9.12	9.37	9.63	9.76
Yr 3 (2/3)	12.08	12.43	12.79	13.14	13.31
Yr 4 (3/3)	14.17	14.59	15.00	15.41	15.62
Stonemason					
Yr 1	6.84	7.04	7.24	7.44	7.54
Yr 2 (1/3)	8.95	9.21	9.47	9.73	9.86
Yr 3 (2/3)	12.21	12.56	12.92	13.27	13.45
Yr 4 (3/3)	14.32	14.73	15.15	15.57	15.78
Rooftiler					
6 months	9.12	9.38	9.65	9.91	10.04
2nd 6 months	10.02	10.31	10.61	10.90	11.04
Yr 2	11.71	12.05	12.39	12.73	12.90
Yr 3	13.74	14.14	14.54	14.94	15.14

APPENDIX B—DRUG AND ALCOHOL, SAFET 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.

APPENDIX C—SITE ALLOWANCE

1. This agreement is between the parties to this agreement and shall apply to construction work undertaken by principal contractors who are engaged in the commercial/industrial sector of the building industry in the state of Western Australia within a 50km radius of the Perth General Post Office.

2. This agreement provides for a site allowance to be paid to employees engaged on particular building projects, and for such site allowance to be paid in addition to the wage rates and allowances prescribed by the award as well as any industrial or certified agreements made in conjunction with the award which does not prescribe a site allowance.

3. The site allowance payable under this agreement is to be paid at a flat rate per hour for all hours worked to compensate for all special factors/disabilities on the project and in lieu of all award special rates, with the exception of rates relating to the lifting of heavy blocks, cleaning down brickwork and the use of explosive powered tools which will be payable to an employee when he/she encounters that particular disability.

4. **Site Allowance Formula**

At the commencement of a project the particular site allowance to apply shall be determined in accordance with the following formula—

4.1 Projects Located Within Perth C.B.D. (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.80
Above	$2.1m to $4.4m	$2.15
Over	$4.4m	$2.75

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500, 000 to $2.1m	$1.60
Above	$2.1m to $4.4m	$1.80
Over	$4.4m	$2.35

4.2 Projects Located Within West Perth (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.60
Above	$2.1m to $4.4m	$1.80
Over	$4.4m	$2.35

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.50
Above	$ 2.1m to $4.4m	$1.70
Over	$4.4m	$1.95

The site allowance on projects which are a combination of new and renovation work shall be governed by the majority of work involved. For example, where the majority of work is new work, then the site allowance appropriate to new work shall be paid for all employees on the project.

4.3 Projects within 50 km radius of Perth G.P.O. but not including the C.B.D. or West Perth (as defined)

Project Contractual Value		Site Allowance
Up to	$1m	NIL
Above	$1m to $2.1m	$1.20
Above	$2.1m to 5.8m	$1.50
Above	$5.8m to $11.6m	$1.75
Above	$11.6m to $23.6m	$1.95
Above	$23.6m to $58.6m	$2.25
Over	$58.6m	$2.45

"C.B.D."—Central Business District shall mean the area bounded by the Swan River South, Swan River East to Nile Street running into Wittenoom Street, Hill Street to Royal Street, Royal Street to Lord Street, Lord Street to Newcastle Street, along Newcastle Street to the Freeway, the Freeway South to the Perth Fremantle railway line, along the Perth-Fremantle railway line to Dyer Street, Dyer Street through to Havelock Street, Havelock Street to Kings Park Road, Kings Park Road to Fraser Avenue, Fraser Avenue projected through to the Swan River.

"West Perth"—shall mean the area contained within the boundaries formed by Thomas Street, Kings Park Road, Havelock Street, Dyer Street and the Perth-Fremantle railway line back to Thomas Street.

Boundary roads: If a road borders between two regions in which site allowances are to be paid as per this agreement, the parties confirm that one side of such a boundary road will be deemed to fall in one region and the other side of the boundary road will be deemed to fall in the other region. For example, the eastern side of Havelock Street will be in the "CBD" and the western side of Havelock Street shall be in "West Perth".

"Project Contractual Value"—shall be deemed to mean the value of all tendered work which falls under the scope of the principal contractor's contract.

5. The site/project allowance and project contractual value detailed in this agreement shall be adjusted on 1 October each year by the total C.P.I. movements for Perth during the preceding four quarters ending 30 June and accordingly, the site allowance amounts shall be adjusted up or down to the nearest five cents.

6. Project contractual values shall be subject to review at any renewal of this agreement, but in any event shall not be adjusted by a percentage less than the total CPI movements

for Perth during the preceding four quarters ending 30 June. Such adjustment being to the nearest $10,000.

7. The agreed site allowance once set pursuant to this agreement shall be recorded in a site agreement to which the applicable principal contractor and the Union will be signatories. The level of allowance once nominated at the commencement of the project will continue without change until completion of the project.

8. It is acknowledged that on certain projects a site agreement may be entered into between the principal contactor and the building trades group of unions for that project that may include matters regularly addressed within the industry, such as, but not limited to, the following—

- Disputes Procedures
- Occupational Health and Safety Procedures
- Demarcation Procedures
- First Aid Provisions and On-Site Amenities

and the unions will not unreasonably refuse to continue to discuss such matters if raised by the principal contractor.

9. This agreement does not apply to resource development projects or civil and engineering projects.

10. Where a dispute arises as to the application of the terms of this agreement, if the issue cannot be resolved in discussions between the parties, it is agreed that the matter will be referred to the appropriate industrial tribunal for resolution without recourse to industrial action.

11. It is a term of this agreement that all site allowance agreements entered into prior to this date will be honoured by all parties and will continue to apply for the life of the particular project.

12. Where because of a condition of contract the principal contractor is required not to allow for a site allowance, before final application of this agreement, discussions will be held between the parties with a view to resolving any problems that may arise as a result of this situation.

13. This agreement shall only apply to building contracts entered into on or after 1 October, 1995.

COVENTRY GROUP LTD trading as HOT MIX OR BITUMEN EMULSIONS CANNINGTON (ENTERPRISE BARGAINING) AGREEMENT 1997. No. AG 26 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Coventry Group Ltd trading as Hot Mix or Bitumen Emulsions Cannington.

No. AG 26 of 1998.

Coventry Group Ltd trading as Hot Mix or Bitumen Emulsions Cannington (Enterprise Bargaining) Agreement 1997.

COMMISSIONER P E SCOTT.

22 September 1998.

Order.

HAVING heard Mr G Ferguson on behalf of the Applicant and Ms A 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 Coventry Group Ltd trading as Hot Mix or Bitumen Emulsions Cannington (Enterprise Bargaining) Agreement 1997 in the terms of the following schedule be registered on the 31st day of August 1998.

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

SCHEDULE.

COVENTRY GROUP LTD trading as HOT MIX or BUTUMEN EMULSIONS CANNINGTON (ENTERPRISE BARGAINING) AGREEMENT 1997

1.—TITLE

This industrial agreement shall be referred to as the Coventry Group Ltd trading as Hot Mix or Bitumen Emulsions Cannington (Enterprise Bargaining) Agreement 1997.

2.—ARRANGEMENT

1. TITLE
2. ARRANGMENT
3. SCOPE AND PARTIES TO THIS ARRANGEMENT
4. RELATIONSHIP TO PARENT AWARDS
5. SINGLE BARGAINING UNIT
6. AIMS AND OBJECTIVES OF THE AGREEMENT
7. WAGES
8. AGREED PRODUCTIVITY IMPROVEMENTS
9. MEASURING PRODUCTIVITY IMPROVEMENTS
10. COMMITMENTS
11. TERM OF AGREEMENT
12. DISPUTE RESOLUTION PROCEDURE
13. NO FURTHER CLAIMS
14. NOT TO BE USED AS A PRECEDENT
15. COMMITMENT
16. SIGNATORIES TO THE AGREEMENT

3.—SCOPE AND PARTIES TO THIS AGREEMENT

3.1 This agreement shall apply to and be binding on Coventry Group Ltd trading as Hot Mix or Bitumen Emulsions ("the Company") and all the employees engaged in connection with the Transport Workers (General) Award No. 10 of 1961, at the company's Bickley Road, Cannington operations. The estimated number of employees to be covered by this agreement is 25.

3.2 This agreement shall also be binding upon the Transport Workers Union of Australia, Industrial Union Of Workers, Western Australia Branch.

3.3 The parties will oppose any applications by other parties to be joined to this agreement.

4.—RELATIONSHIP TO PARENT AWARD

4.1 This agreement shall be used and interpreted wholly in connection with the Transport Workers (General) Award No. 10 of 1961 ("the Award").

4.2 Where there is any inconsistency between this agreement and the award, this agreement shall prevail to the extent of any inconsistency.

5.—SINGLE BARGAINING UNIT

5.1 In accordance with the State Wage Decision, the employees and the Company have formed a single bargaining unit in respect to the Cannington operations.

5.2 The single bargaining unit will ensure that the framework of this enterprise agreement is adhered to by regularly conferring with the management through the meeting of the consultative committee.

5.3 The single bargaining unit will assist in the implementation of measurements that are designed to improve the efficiency and productivity of the enterprise agreement that have been agreed to by the parties.

6.—AIMS AND OBJECTIVES OF THE AGREEMENT

6.1 The purpose of entering into an enterprises bargaining agreement is to increase the productivity, efficiency and flexibility of the Cannington operations to ensure the Company remains competitive within the bitumen paving industry.

6.2 The company remains committed to the continual training of all Cannington personnel so that their skills base can be enhanced, and to provide an environment in which these skills can be utilised and recognised to the satisfaction of individual employees.

6.3 Pursuant to the Occupational Health and Safety Act 1984, the Company recognises the need to improve occupational health and safety for all employees and is therefore committed to the development and implementation of health and safety

initiatives. This agreement provides for the participation of all employees in these initiatives in order that the Cannington operations will become a safer working environment.

7.—WAGES

7.1 The wage rates shall apply pursuant to this agreement are as follows—

Award	Grade	Base Rate $	Eba June 97 $	Rate on Registration	Rate 22/6/98 $	Rate 21/6/99 $
Transport	1	375.20	44.70	432.66	447.67	462.68
Workers	2	390.50	49.80	453.58	469.20	484.82
(General)	3	398.20	50.70	462.44	478.37	494.30
Award	4	409.70	52.25	475.88	492.27	508.66
No. 10 of 1961	5	417.30	53.30	484.79	501.48	518.17
	6	425.00	54.20	493.65	510.65	527.65
	7	432.70	55.25	502.66	519.97	537.28

7.2 The increase prescribed in this clause shall operate with effect from the first pay period commencing on or after the registration of this agreement.

7.3 All current employees engaged under this agreement shall be paid at their existing grade.

7.4 All new employees will be paid at the grade at which they are engaged.

7.5 All casual employees shall be paid the award rate for weekly hired employees, plus 20%, plus the above enterprise bargaining agreement wage percentage increases.

8.—AGREED PRODUCTIVITY IMPROVEMENTS

8.1 **Shot Gun Starts**

8.1.1 Preparation of truck in own time e.g. Routine check on air, water, oil, fuel and tyres, etc.

8.1.2 Driver to be ready to commence work as per time displayed.

8.1.3 Workers compensation cover will commence from the moment the employee arrives on site at Cannington yard.

8.2 **Staggered Rest Periods**

Meal breaks may be staggered to ensure the continued use of plant and machinery. No employee will be required to commence a meal break before 11.00am or after 2.00pm.

8.3 **Occupational Health and Safety**

The parties to the agreement recognise the need to improve the Occupational Health and Safety of the work place by reducing lost time injuries to zero per year through the implementation of health and safety improvement programmes.

8.4 **Work Flexibility**

8.4.1 An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training.

8.4.2 An employer may direct and employee to carry out duties and use such tools and equipment as may be required that the employee has been properly trained in the use of such tools and equipment.

8.4.3 Any direction issued by an employer pursuant to paragraphs 8.4.1 and 8.4.2 shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

8.5 **Rostered Days Off (RDO)**

8.5.1 TWU employees to five full flexibility of RDO. Where ever possible the employer shall notify the employee with a minimum notification during working hours on the day prior or mutual consent of change to RDO. Deferred RDO to be taken at discretion of employer to suit work pattern.

8.5.2 TWU employees wanting to change RDO to suit themselves can do so provided management approve.

8.5.3 Intention is to accumulate RDO's and take during wet or slack periods.

8.6 **Overtime**

8.6.1 Where the employee and their supervisor agree, an employee who works overtime on a weekend may do so under the following conditions.

- The employee to be paid single time for the first eight (8) hours followed by double time for any other hours worked on the day.
- The day off during the week will be paid at eight (8) hours at single time.
- Where this condition is to be involved, the employee and their supervisor must reach agreement before the weekend work concerned is carried out.

8.6.2 If any employee wishes to be paid penalty rates for working on a weekend, it is their right to do so.

8.6.3 No employee shall be discriminated against on the basis for their elected choice.

9.—MEASURING PRODUCTIVITY IMPROVEMENTS

9.1 The parties to this agreement are committed to improving productivity over the life of this agreement.

9.2 This will be achieved through the successful implementation of Clause 8—Agreed Productivity Improvements, of this agreement.

10.—COMMITMENTS

10.1 The company recognises that employee contribution is essential to improve performance and therefore accepts those commitments by employees to work towards agreed targets as sincere and in the overall interest of increasing productivity and efficiency for the collective benefit of the Company and its workforce.

10.2 Furthermore, the Company maintains a commitment to multi-skilling and training so that employees can improve their skills base, develop a career within the Asphalt and Bitumen Industry and have greater job satisfaction.

10.3 All employees will agree to carry out any tasks which may or may not involve the use of tools, plant and equipment, within their skills, competency or training as directed by the Company.

11.—TERM OF AGREEMENT

This agreement shall remain in force for thirty (30) months from the date of registration.

12.—DISPUTE RESOLUTION PROCEDURE

12.1 Any grievance, complaint, claim or dispute, or any matter which is likely to result in a dispute, between any party to this awards, shall be subject to discussion procedures which ensure that the parties are promptly and fully informed of the issues involved, and any differences arising therefrom shall be discussed with a view to avoid industrial action.

12.2 The employer shall advise the accredited representative of the union of any changes in the normal pattern of working arrangements affecting members and if the matter is not resolved the general machinery provisions of this clause shall apply.

12.3 Where a worker or the job steward has submitted a request concerning any matter directly connected with employment to a foreman, or a more senior representative of management, and that request has been refused, the worker may, if he so desires, ask the job steward to submit the matter to management and the matter may then be submitted by the job steward to the depot or area supervisor.

12.4 If not settled at this stage the matter shall be the subject of formal discussion between the union and the employer.

12.5 Should the issue remain in dispute either party may refer the matter to the Western Australian Industrial Relations Commission for determination.

12.6 The settlement procedures provided by this clause shall be applied to all manner of disputes referred to in subclause 12.1 of this clause, and no party, or individual, or group of individuals, shall commence any other action, of whatever kind, which may frustrate a settlement in accordance with its procedures. Observance of these procedures shall in no way prejudice the right of any party, or individual, in dispute to refer the matter for resolution by the Western Australian Industrial Relations Commission.

12.7 The procedures referred to in subclauses in this clause shall provide for the persons involved in the question, dispute or difficulty to confer among themselves and make reasonable attempts to resolve questions, disputes or difficulties before taking those matters to the Commission.

13.—NO FURTHER CLAIMS

It is a condition of this agreement that the parties will not seek any further claims, with respect to wages and working conditions, unless they are consistent with the State Wage Case Principles.

14.—NOT TO BE USED AS A PRECEDENT

It is a condition of this agreement that the parties will not seek to use the terms contained herein as an example or precedent for other enterprise agreements whether they involve Coventry Group Ltd trading as Hot Mix or Bitumen Emulsions or not.

15.—COMMITMENT

15.1 The parties to this Agreement agree to commence discussion on the terms and conditions of any future agreement six (6) calendar months prior to the expiration of this agreement.

15.2 The parties are committed to ongoing negotiations with regard to the implementation of Income Protection Insurance.

16.—SIGNATORIES TO THIS AGREEMENT

Signed

.....

On behalf of COVENTRY GROUP LTD trading as HOT MIX OR BITUMEN EMULSIONS

Seal Seal

Signed

.....

On behalf of TRANSPORT WORKERS UNION OF AUSTRALIA, Industrial Union of Workers, Western Australian Branch

Common Seal

DAWSON AOC WATER SERVICES PTY LTD MECHANICAL AND ELECTRICAL MAINTENANCE ENTERPRISE BARGAINING AGREEMENT 1996 AMENDMENT AGREEMENT 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Dawson AOC Water Services Pty Ltd

and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch and Others.

AG No. 100 of 1998.

Dawson AOC Water Services Pty Ltd Mechanical and Electrical Maintenance Enterprise Bargaining Agreement 1996 Amendment Agreement, 1998.

COMMISSIONER S J KENNER.

31 August 1998.

Order.

HAVING heard Mr S Scott on behalf of the Applicant and Mr J Mossenton on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch, Mr J Murie on behalf of The Communications, Electrical, Electronics, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division Western Australian Branch and Ms Sue Ellery on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers Union 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 Dawson AOC Water Services Pty Ltd Mechanical and Electrical Maintenance Enterprise Bargaining Agreement 1996 Amendment Agreement, 1998 as filed in the Commission on 16 June 1998 be and is hereby registered as an industrial agreement.

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

Schedule.

1.—TITLE

This agreement shall be known as the Dawson AOC Water Services Pty Ltd Mechanical and Electrical Maintenance Enterprise Bargaining Agreement 1996 Amendment Agreement, 1998 and shall be referred to in this document as the "Agreement".

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Principal Agreement
4. Objectives
5. Area and Scope
6. Parties Bound
7. Term
8. Wages
9. Superannuation
10. Signatories to the Agreement

3.—PRINCIPAL AGREEMENT

The Dawson AOC Water Services Pty Ltd Mechanical and Electrical Maintenance Enterprise Bargaining Agreement 1996, No AG115 of 1996 is referred to in this document as the "Principal Agreement".

4.—OBJECTIVES

(1) The objectives of this Agreement are to replace nominated provisions of the Principal Agreement as specified in this Agreement.

(2) The provisions of Clause 36. Grievance and Dispute Settling Procedure of the Principal Agreement are deemed to be incorporated into this Agreement for the purposes of Section 49A of the Industrial Relations Act 1979.

5.—AREA AND SCOPE

(1) The Area and Scope of this Agreement shall be the same as that described by sub clauses (1) to (4) inclusive of Clause 3. Area and Scope of the Principal Agreement.

(2) At the date of registration of this Agreement, its terms and conditions will apply to 62 employees.

6.—PARTIES BOUND

The parties bound by this Agreement are—

(1) Dawson AOC Water Services Pty Ltd

(2) the Automotive, Foods, Metals, Engineering, Printing and Kindred Industries Union, Western Australian Branch;

(3) the Australian Liquor, Hospitality and Miscellaneous Workers Union Miscellaneous Division, Western Australian Branch; and

(4) the Communications, Electrical, Electronics, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Western Australian Branch.

7.—TERM

Subclause (2) of Clause 5. Term of the Principal Agreement is replaced by the following—

"(2) Provided that the wages and allowances contained in Clauses 15 and 16 shall be the subject of renegotiation commencing from 1 July 1998. The resultant revised wages and allowances shall be applied from the beginning of the first pay period commencing on or after 1 January 1999."

8.—WAGES

(1) Subclauses (1) and (2) of Clause 15. Wages of the Principal Agreement are replaced by the following.

"(1) (a) Subject to the provisions of subclause (12) of this Clause, the weekly wage payable to employees, other than apprentices, shall be those

specified for the appropriate classification, as detailed below—

Classification	Percentage Relationship	Weekly Wage
C6	125	733.95
C7	115	675.24
C8	110	645.88
C9	105	616.52
C10	100	587.16
C11A	99	581.29
C11	95	557.80
C12	90	528.44
DC6	135	792.66
DC7	130	763.31
DC8	125	733.95
DC9	120	704.59
DC10	115	675.24

(b) The classifications are defined in Appendix 1.

(2) The following weekly wage prescribed by subclause (1) shall be increased as follows—

(a) by 1% from the beginning of the first pay period commencing on or after 1 January 1998; and

(b) by 2% from the beginning of the first pay period commencing on or after 1 July 1998."

(2) The following subclause (12) is added to Clause 15. Wages—

"(12) Where an employee elects to participate in the pre-tax wages sacrifice arrangements envisaged by subclause (5) of Clause 19. Superannuation, the wages paid to the employee together with the amount of pre-tax wages sacrificed shall be deemed to comply with the level of wages provided for by this Agreement".

9.—SUPERANNUATION

Clause 18. Superannuation of the Principal Agreement is replaced by the following—

"18.—SUPERANNUATION

(1) The Company shall contribute, on behalf of each employee and to a complying superannuation fund nominated by each employee, an amount equal to that demanded by the Australian Superannuation Guarantee (Administration) Act 1992.

(2) The ordinary time earnings as defined by that Act and generated by the provisions of this Agreement shall form the basis of the contribution.

(3) Where an employee fails or declines to nominate a complying superannuation fund, the Company shall make the contribution described in subclause (1) to the C + Bus Superannuation Fund.

(4) The Company will provide employees with a facility to convert lump sum earnings generated by employment benefits into employer superannuation contributions on a "salary sacrifice" basis.

(5) The Company will provide employees with a facility to "salary sacrifice" part of their future earnings to be paid as additional employer contributions to the employee nominated and complying superannuation fund or to the C + Bus Superannuation Fund as applicable.

(6) The Company will provide employees with a facility to make periodic and/or regular contributions, to be paid as employee contributions, to the employee nominated and complying superannuation fund, or C + Bus Superannuation Fund as appropriate.

(7) Employees wishing to make contributions on a "salary sacrifice" basis are encouraged to seek their own financial advice before making a request to the Company.

(8) The additional cost of any Fringe Benefits Tax and other statutory charges arising from salary sacrifice or additional employee contributions shall be to the employee's account.

(9) Providing the Company's Superannuation Guarantee contributions for an employee continue to be paid to C + Bus, the Company shall pay to the C + Bus Superannuation Fund the cost of providing the following additional benefits to that employee—

(a) $250,000 death or permanent disability cover; and

(b) salary continuance of up to 75% of the weekly wage for up to 2 years.

(10) The Company will encourage employees to seek independent and personal advice at the employee's own expense prior to the employee nominating a complying superannuation fund."

(11) The Parties agree that, to comply with Section 49C(2) of the Industrial Relations Act 1979, and in addition to Company procedures already in place that give practical effect to that Section:

(a) the Company shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme; and

(b) the Company and employee are to be bound by the nomination of the employee unless the employee and the Company agree to change the complying superannuation fund or scheme to which contributions are to be made to which the Company will not unreasonably refuse.

10.—SIGNATORIES TO THE AGREEMENT

Signed for and on behalf of Dawson AOC Water Services Pty Ltd

K. H. Doble Date: 28/5/98.

Signed for and on behalf of Automotive, Foods, Metals, Engineering, Printing and Kindred Industries Union, Western Australian Branch

Helen Creed Date: 12/6/98.

Signed for and on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch.

Helen Creed Date: 15/6/98.

Signed for and on behalf of the Communications, Electrical, Electronics, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch.

James Murie Date: 5/6/98.

LEEDS PAINTING SERVICES INDUSTRIAL AGREEMENT.
No. AG 132 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders Labourers, Painters & Plasterers Union of Workers & Other

and

Leeds Paintng Services Pty Ltd.

AG 132 of 1998.

Leeds Painting Services Industrial Agreement.

COMMISSIONER S J KENNER.

14 September 1998.

Order.

HAVING heard Ms J Harrison as agent on behalf of the Applicant and there being no appearance from the Respondent and by consent the Commission, pursuant to the powers

conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Leeds Painting Services Industrial Agreement as filed in the Commission on 27 July 1998 be and is hereby registered as an industrial agreement.

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

WAGE AGREEMENT

Schedule.

1.—TITLE

This Agreement will be known as the Leeds Painting Services 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. Site Allowance
12. Industry Standards
13. Clothing and Footwear
14. Training Allowance, Training Leave, Recognition of Prior Learning
15. Seniority
16. Sick Leave
17. Pyramid Sub-Contracting
18. Fares and Travelling
19. Drug and Alcohol, Safety and Rehabilitation Program
20. Income Protection
21. No Extra Claims

Appendix A—Wage Rates
Appendix B—Drug and Alcohol, Safety and Rehabilitation Program
Appendix C—Site Allowance

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") Leeds Painting Services Leeds Painting Services Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Unions, its officers and members, and any person eligible to be members 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 three (3) 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 October 1999.

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 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 Awards 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 and allowances resulting in the wage rates in the Appendix A—Wage Rates.

11.—SITE ALLOWANCE

This Agreement provides for site allowances as per Appendix C—Site Allowance.

12.—INDUSTRY STANDARDS

1. **Redundancy**

It is a term of this Agreement that the Company will immediately increase its payments to $50 per week per employee.

2. **Superannuation**

The Company will immediately increase its level of payment to $60 per week per employee.

The Company will advise all employees subject to the Agreement of their right to have payments made to a complying superannuation fund or scheme of their choice. The Company is bound by the employee's election. The aforementioned payment will then be made to that fund.

Until each employee nominates the fund of their choice the Company will make payments into the Construction + Building Unions Superannuation Scheme (the "C+BUSS").

In the event that any employee chooses a fund other than the C+BUSS the Company will, within seven days of the employee advising the Company of the fund of their choice, advise the Union in writing of the employee's decision.

In the event that the employee and the Company reach an agreement pursuant to section 49C(2)(d) of the Act to change the complying superannuation fund or scheme the Company will, within seven days of the employee and the Company reaching such an agreement, advise the Union in writing of the agreement. The Company shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by the employee.

3. **Apprentice Rates**

The Company agrees to maintain a ratio of no more than four tradespeople to one apprentice employed.

13.—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.

14.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

1. A training allowance of $12.00 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-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

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.—PYRAMID SUB-CONTRACTING

1. "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

2. Provided that where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

3. Further provided that when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

4. A bona fide sub-contractor is generally an employer of labour, save for a machine owner-operator.

5. Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

18.—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.

19.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation program as outlines in Appendix B—Drug and Alcohol, Safety and Rehabilitation Program.

20.—INCOME PROTECTION

The Company agrees to insure employees covered by this Agreement for injury and sickness. The scheme is to be negotiated through the ACTU Insurance Broking Pty Limited (ACN. 069 795 875).

21.—NO EXTRA CLAIMS

The Union will make no further claims on the Company over conditions set out in this Agreement for the life of the Agreement.

Signed for and on behalf of—

The Unions: **BLPPU**

.....

Date: 24/7/98

.....

Witness

CMETU

.....

Date: 24/7/98

.....

Witness

The Company:

.....

Signature

Date: 22/7/98

Company Seal

James Alan McLevie

.....

Print Name

.....

Witness

APPENDIX A—WAGE RATES

	Date of Signing Hourly Rate $	1 February 1999 Hourly Rate $	1 August 1999 Hourly Rate $
Labourer Group 1	16.47	16.92	17.15
Labourer Group 2	15.90	16.34	16.56
Labourer Group 3	15.48	15.90	16.12
Plaster, Fixer	17.11	17.58	17.82
Painter, Glazier	16.73	17.19	17.42
Signwriter	17.09	17.56	17.80
Carpenter	17.22	17.70	17.93
Bricklayer	17.05	17.52	17.75
Refractory Bricklayer	19.58	20.12	20.38
Stonemason	17.22	17.70	17.93
Rooftiler	16.92	17.38	17.62
Marker/Setter Out	17.72	18.21	18.46
Special Class T	17.95	18.45	18.69

APPRENTICE RATES

	Date of Signing Hourly Rate $	1 February 1999 Hourly Rate $	1 August 1999 Hourly Rate $
Plasterer, Fixer			
Year 1	7.18	7.38	7.48
Year 2 (1/3)	9.42	9.68	9.81
Year 3 (2/3)	12.84	13.19	13.37
Year 4 (3/3)	15.06	15.48	15.69
Painter. Glazier			
Year 1 (.5/3/5)	7.03	7.22	7.32
Year 2 (1/3), (1.5/3.5)	9.20	9.45	9.58
Year 3 (2/3), (2.5/3.5)	12.55	12.89	13.06
Year 4 (3/3), (3.5/3.5)	14.73	15.13	15.33
Signwriter			
Year 1 (.5/3.5)	7.18	7.38	7.48
Year 2 (1/3, 1.5/3.5)	9.40	9.65	9.78
Year 3 (2/3. 2.5/3.5)	12.82	13.17	13.35
Year 4 (3/3, 3/5/3.5)	15.04	15.46	15.66
Carpenter			
Year 1	7.24	7.44	7.54
Year 2 (1/3)	9.47	9.73	9.86
Year 3 (2/3)	12.92	13.27	13.45
Year 4 (3/3)	15.15	15.57	15.78
Bricklayer			
Year 1	7.16	7.36	7.46
Year 2 (1/3)	9.37	9.63	9.76
Year 3 (2/3)	12.79	13.14	13.31
Year 4 (3/3)	15.00	15.41	15.62
Stonemason			
Year 1	7.24	7.44	7.54
Year 2 (1/3)	9.47	9.73	9.86
Year 3 (2/3)	12.92	13.27	13.45
Year 4 (3/3)	15.15	15.57	15.78
Rooftiler			
6 months	9.65	9.91	10.04
2nd 6 months	10.61	10.90	11.04
Year 2	12.39	12.73	12.90
Year 3	14.54	14.94	15.14

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.

APPENDIX C—SITE ALLOWANCE

1. This agreement is between the parties to this agreement and shall apply to construction work undertaken by principal contractors who are engaged in the commercial/industrial sector of the building industry in the state of Western Australia within a 50km radius of the Perth General Post Office.

2. This agreement provides for a site allowance to be paid to employees engaged on particular building projects, and for such site allowance to be paid in addition to the wage rates and allowances prescribed by the award as well as any industrial or certified agreements made in conjunction with the award which does not prescribe a site allowance.

3. The site allowance payable under this agreement is to be paid at a flat rate per hour for all hours worked to compensate for all special factors/disabilities on the project and in lieu of all award special rates, with the exception of rates relating to the lifting of heavy blocks, cleaning down brickwork and the use of explosive powered tools which will be payable to an employee when he/she encounters that particular disability.

4. **Site Allowance Formula**

At the commencement of a project the particular site allowance to apply shall be determined in accordance with the following formula—

4.1 **Projects Located Within Perth C.B.D. (as defined)**

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1 m	$1.80
Above	$2.1 m to $4.4m	$2.15
Over	$4.4m	$2.75

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.60
Above	$2.1m to $4.4m	$1.80
Over	$4.4m	$2.35

4.2 **Projects Located Within West Perth (as defined)**

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1 m	$1.60
Above	$2.1 *m* to $4.4m	$1.80
Over	$4.4m	$2.35

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.50
Above	$ 2.1 m to $4.4m	$1.70
Over	$4.4m	$1.95

The site allowance on projects which are a combination of new and renovation work shall be governed by the majority of work involved. For example, where the majority of work is new work, then the site

allowance appropriate to new work shall be paid for all employees on the project.

4.3 **Projects within 50 km radius of Perth G.P.O. but not including the C.B.D. or West Perth (as defined)**

Project Contractual Value		Site Allowance
Up to	$1 m	NIL
Above	$1 m to $2.1 m	$1.20
Above	$2.1m to 5.8m	$1.50
Above	$5.8m to $11.6m	$1.75
Above	$11.6m to $23.6m	$1.95
Above	$23.6m to $58.6m	$2.25
Over	$58.6m	$2.45

"C.B.D."—Central Business District shall mean the area bounded by the Swan River South, Swan River East to Nile Street running into Wittenoom Street, Hill Street to Royal Street, Royal Street to Lord Street, Lord Street to Newcastle Street, along Newcastle Street to the Freeway, the Freeway South to the Perth-Fremantle railway line, along the Perth-Fremantle railway line to Dyer Street, Dyer Street through to Havelock Street, Havelock Street to Kings Park Road, Kings Park Road to Fraser Avenue, Fraser Avenue projected through to the Swan River.

"West Perth"—shall mean the area contained within the boundaries formed by Thomas Street, Kings Park Road, Havelock Street, Dyer Street and the Perth-Fremantle railway line back to Thomas Street.

Boundary roads: If a road borders between two regions in which site allowances are to be paid as per this agreement, the parties confirm that one side of such a boundary road will be deemed to fall in one region and the other side of the boundary road will be deemed to fall in the other region. For example, the eastern side of Havelock Street will be in the "CBD" and the western side of Havelock Street shall be in "West Perth".

"Project Contractual Value"—shall be deemed to mean the value of all tendered work which falls under the scope of the principal contractor's contract.

5. The site/project allowance and project contractual value detailed in this agreement shall be adjusted on 1 October each year by the total C.P.I. movements for Perth during the preceding four quarters ending 30 June and accordingly, the site allowance amounts shall be adjusted up or down to the nearest five cents.

6. Project contractual values shall be subject to review at any renewal of this agreement, but in any event shall not be adjusted by a percentage less than the total CPI movements for Perth during the preceding four quarters ending 30 June. Such adjustment being to the nearest $10,000.

7. The agreed site allowance once set pursuant to this agreement shall be recorded in a site agreement to which the applicable principal contractor and the Union will be signatories. The level of allowance once nominated at the commencement of the project will continue without change until completion of the project.

8. It is acknowledged that on certain projects a site agreement may be entered into between the principal contactor and the building trades group of unions for that project that may include matters regularly addressed within the industry, such as, but not limited to, the following—

- Disputes Procedures
- Occupational Health and Safety Procedures
- Demarcation Procedures
- First Aid Provisions and On-Site Amenities

and the unions will not unreasonably refuse to continue to discuss such matters if raised by the principal contractor.

9. This agreement does not apply to resource development projects or civil and engineering projects.

10. Where a dispute arises as to the ,application of the terms of this agreement, if the issue cannot be resolved in discussions between the parties, it is agreed that the matter will be referred to the appropriate industrial tribunal for resolution without recourse to industrial action.

11. It is a term of this agreement that all site allowance agreements entered into prior to this date will be honoured by all parties and will continue to apply for the life of the particular project.

12. Where because of a condition of contract the principal contractor is required not to allow for a site allowance, before final application of this agreement, discussions will be held between the parties with a view to resolving any problems that may arise as a result of this situation.

13. This agreement shall only apply to building contracts entered into on or after 1 October, 1995.

METHODIST LADIES' COLLEGE (NON-TEACHING STAFF—BUILDING TRADES) ENTERPRISE BARGAINING AGREEMENT 1998. No. AG 118 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Methodist Ladies' College

and

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch.

No. AG 118 of 1998.

Methodist Ladies' College (Non-Teaching Staff-Building Trades) Enterprise Bargaining Agreement 1998.

COMMISSIONER P E SCOTT.

30 September 1998.

Order.

HAVING heard Dr I E Fraser on behalf of the Methodist Ladies' College and Mr G Giffard on behalf of the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—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 Methodist Ladies' College (Non-Teaching Staff—Building Trades) Enterprise Bargaining Agreement in the terms of the following schedule be registered on the 15th day of September 1998.

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

METHODIST LADIES' COLLEGE (NON-TEACHING STAFF—BUILDING TRADES) ENTERPRISE BARGAINING AGREEMENT 1998

Schedule.

1.—TITLE

This agreement shall be known as the Methodist Ladies' College (Non-Teaching Staff—Building Trades) Enterprise Bargaining Agreement 1998.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Relationships to Parent Awards
5. Scope of Agreement
6. Single Bargaining Unit
7. Date and Duration of Agreement
8. Objectives
9. Salary Rates
10. Classification
11. No reduction Clause
12. Leave
13. Efficiency Improvements
14. Superannuation
15. Insurance
16. Salary Packaging
17. Security of Tenure
18. Job Sharing
19. Dispute Resolution Procedure

20. Consultative Committee
21. No Further Claims
22. No Precedent
23. Signatories

Appendix G

3.—PARTIES TO THE AGREEMENT

This agreement is made between Methodist Ladies' College and the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers' Union of Australia (WA).

4.—RELATIONSHIP TO PARENT AWARDS

This agreement shall be read and interpreted in conjunction with the Building Trades Award 1968 (No. 31 of 1966).

Where there is any inconsistency between the Agreement and the relevant Award, the Agreement will prevail to the extent of the inconsistency.

5.—SCOPE OF AGREEMENT

This agreement shall apply to staff members who are employed within the scope of the award listed in Clause 4.

The number of staff employed within the scope of the Agreement is 2.

6.—SINGLE BARGAINING UNIT

The parties to this Agreement have formed a single bargaining unit. The single bargaining unit has conducted negotiations with the College and reached full agreement with the College represented by this Agreement.

7.—DATE AND DURATION OF AGREEMENT

This agreement shall come into effect on 1 November 1997 and shall apply until 31 December 1998. The parties have agreed to meet no later than 3 months prior to the expiry of this Agreement.

8.—OBJECTIVES

The College's foremost aim is to provide a broad, balanced, relevant, holistic and high quality education for students and prepare them for adulthood. Each and every employee, to varying degrees, has an input into the broader education process and through this agreement, should strive to achieve the following objectives—

(a) Re-affirm a mutual responsibility to maintain a working environment that will ensure that the College and its staff continue to be genuine participants and contributors to the College aims, objectives and philosophy.

(b) Safeguard and improve the quality and productivity of services at the College through the continual review of work practices and procedures and upgrading of professional skills and knowledge.

9.—SALARY RATES

(1) The minimum annual rate of salary payable to members of staff engaged covered by this Agreement shall be—

	1.11.97	1.1.98	1.7.98
Base rate per week	$494.00	$508.82	$529.29
Over Award	$ 11.07	$ 11.40	$ 11.94
Composite Allowance	$ 18.00	$ 18.54	$ 19.42

The base rate shall include the "Special payment" as prescribed in item 7 clause 2 of the Building Trades Award. As is the case in the current EBA, any safety net adjustments to the relevant award will be absorbed into the overall rate of pay.

The Composite Allowance is to be considered as being in lieu of and covering all items described in item 13 of the Building Trades Award, "Special Rates and Provisions". Previously the Composite Allowance has been included in the total gross rate of pay, but not itemised.

(2) In the event of any safety net adjustments being applied in the future to the Award, such shall be absorbed into the salary rates prescribed in this Agreement.

10.—CLASSIFICATION

Within four months of registration of this Agreement the parties agree to discuss, with a view to considering implementation, the Building Trades' classification schedule, based on Appendix D of the Building Trades (Government) Award, 31A/1966.

11.—NO REDUCTION CLAUSE

Nothing herein contained shall entitle the College to reduce the salary of any staff member who at the date of this Agreement was being paid a higher rate than the minimum prescribed for the staff member's classification at the time.

Salaries however may be capped at their current rate in cases where remuneration is considered to be in excess of the definitions prescribed in Clause 10—Classifications.

12.—LEAVE

(1) Long Service Leave

Any employee who has completed eight continuous years of service with the College shall be entitled to ten weeks long service leave on full pay. Pro rata entitlement on termination will be paid after seven years continuous service.

For each subsequent eight years of service the employee shall be entitled to an additional ten weeks paid long service leave.

Part time employees will be paid Long Service Leave on a pro rata basis in accordance with hours worked.

Long Service Leave will generally be taken in its entirety, however in special circumstances, which result in no additional cost to the College, leave may be taken in smaller portions at mutually agreed times.

(2) Parental Leave

The College will grant Parental Leave in accordance with current minimum conditions as contained in the West Australian Minimum Conditions of Employment Act (1993).

(3) Special Family Leave

The College agrees to the employee using three (3) of their sick leave days each calendar year to care for sick members of their immediate family. If more than one day is taken in succession the employee will be required to produce a medical certificate confirming the illness of the person concerned. Leave unused for this purpose will only accrue as normal sick leave.

13.—EFFICIENCY IMPROVEMENTS

(1) Flexibility of Hours

(a) The parties recognise that there is a wide range of duties and responsibilities associated in the operation of a Day and Boarding School. By necessity these duties and responsibilities are undertaken at a range of times during each twenty-four hour span.

(b) Appendix G addresses the issue of normal weekly working hours, overtime and other specific provisions for employees covered by this Agreement.

(d) As part of the daily structure of hours each employee will be entitled to a paid fifteen minute tea break, generally in the morning, and an unpaid thirty minute meal break.

(2) Workplace Culture

(a) Employees covered by this agreement agree to work collectively in an effort to achieve the objectives of the College.

(b) Employees will have commitment to and responsibility for the work that they undertake. This will include the ongoing improvement of work practices and the continuous search to provide a better quality of service within their team.

(c) Employees will strive to work together with others from all areas of the College, whether it be in a team or as an individual, to improve the delivery of service. Individuals and teams will take responsibility for finding solutions and be solutions based rather than problems based.

(3) Occupational Safety and Health

The College Council, senior management and staff believe that the safety and health of every one who works and studies at Methodist Ladies' College is important and hence are committed to the successful management of occupational safety and health throughout the school and its associated activities.

The Principal is ultimately responsible for occupational safety and health within the College. Responsibility for the execution of the policy in areas under their control is delegated by the Principal to senior management, managers and supervisors.

Every employee of Methodist Ladies' College is expected to contribute to the achievement of a safe workplace in an atmosphere of meaningful consultation and genuine

co-responsibility. To this end all employees of the school will report any hazards and actively consult with members of occupational safety and health committees in the college workplaces about the occupational safety and health of the college community.

(4) Appraisal

The parties agree to work together to develop an ongoing appraisal procedure for all non-teaching staff within the lifetime of this agreement.

(5) Development

Professional development activities will be undertaken partly in College time and partly in the staff members' own time, where feasible, in equal proportions.

There will continue to be consultation with staff members in the planning of professional development.

14.—SUPERANNUATION

1. The Superannuation Guarantee Levy, currently seven per cent of ordinary earnings, is payable when an employee's monthly salary exceeds $450.00.

2. The employee shall be entitled to nominate the complying superannuation fund or scheme to which contributions are to be made by or in respect of the employee;

3. The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable;

4. A nomination or notification of the type referred to in paragraphs (2) and (3) of this subclause shall, subject to the requirements of regulations made pursuant to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the employee to whom such is directed;

5. The employee and employer shall be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made;

6. The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by a employee;

7. If one or more complying superannuation funds or schemes to which contributions may be made be specified herein, the employer is required to make contributions to that fund or schemes, or one of those funds or schemes nominated by the employer;

or

8. If no complying superannuation fund or scheme to which contributions may be made be specified herein, the employer is required to make contributions to a complying fund or scheme nominated by the employer.

9. Employees who elect to contribute a minimum five per cent of base gross salary to the College fund will benefit from an additional College contribution to a maximum of ten per cent total College contribution.

10. Salary sacrifice of superannuation payments is available for all staff.

15.—INSURANCE

For the period of this agreement, the College will provide the following insurance cover for all employees covered by this Agreement—

(a) Journey Insurance—As per the Uniting Church Insurance policy.

(b) Personal Accident Insurance—As per the Uniting Church Insurance policy effective from the date of ratification of this Agreement.

(c) Salary Continuance Insurance—providing a benefit of seventy-five per cent of normal salary for a period of up to two years following a deferment of ninety days.

16.—SALARY PACKAGING

The College will offer Salary Packaging through the McMillan Shakespeare Group under the terms and conditions detailed in the information package.

17.—SECURITY OF TENURE

If, through no fault of their own an employee's position is no longer viable, the College will endeavour to offer alternative employment in some other area of the College. Nevertheless, there is no guarantee of a position being available.

If alternative work cannot be found, redundancy payments shall be in accordance with the Australian Industrial Relations Commission standard or the Award, whichever is greater.

18.—JOB SHARING

Where job sharing will not inconvenience the College, or be detrimental to the efficient performance of the duties of the position, job sharing will be allowed.

19.—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 immediate parties to the dispute shall make reasonable attempts to resolve the matter by mutual discussion and determination within five working days.

(2) If the immediate parties are unable to resolve the dispute the employee must make written application to meet with the Principal and/or an appointed delegate in an attempt to resolve the matter.

This meeting must take place within three weeks of the employees, written application, unless otherwise agreed to by the parties, and the employee will have the right to have a representative present.

(3) If the parties are still 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.

(4) If the matter is not then resolved it shall be referred to the Western Australian Industrial Relations Commission for hearing and determination.

20.—CONSULTATIVE COMMITTEE

A Consultative Committee shall be established with equitable representation of the College and employees covered by this Agreement.

The Employee representatives shall be elected by a Ballot of employees.

The Committee shall provide a forum in which to discuss matters that relate directly to the conditions of employment of non-teaching staff. Meetings will be held at least once during each school term for the purpose of planning and monitoring the implementation of this agreement.

21.—NO FURTHER CLAIMS

It is a condition of this Agreement that the parties involved will not seek any further claims, with respect to salaries or conditions, unless they are consistent with the State Wage Case Principles.

22.—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.

23.—SIGNATORIES

Signed on behalf of—

Signed

Margaret Thomas

Chair of Council

Methodist Ladies College

Signed

Joe McDonald

Construction, Mining, Energy, Timberyards, Sawmills And Woodworkers' Union of Australia (WA).

APPENDIX G

Building Trades (General) Award – Facilities

(1) Hours of Duty

Employees within this department will be required to work seventy-six (76) hours of normal time during each fortnightly cycle.

(2) Flexibility of Hours

To achieve a greater flexibility in working hours employees will be asked to undertake their normal hours of duty (seventy six per fortnight) at times best suited to fulfil the requirements of the College. This could be at various times between 6 am and 6 pm daily, although generally will be between the hours of 7 am and 4.30 pm.

(3) Overtime

Given reasonable notice, employees will be asked to undertake nominal amounts of overtime. Penalty rates will be as stipulated in the Award.

(4) Public Holidays

Given reasonable notice, employees will be asked to work on Public Holidays when students are in attendance. Penalty rates will be as stipulated in the Award.

(5) Rostered Days Off

The College offers three different applications in regard to employees accruing and taking Rostered Days Off. They are as follows—

(a) Work eight and one half hours per day for eight days in a fortnightly cycle and eight hours on the ninth day. The tenth day is then taken as a Rostered Day Off

(b) Work eight hours per day for ten days in each cycle with all time beyond the standard seventy-six hour fortnight accruing toward Rostered Days Off.

(c) Work seven hours and thirty-six minutes per day on ten days of each fortnightly cycle. With this option no Rostered Day Off is accrued.

Rostered Days Off not taken in any given fortnightly cycle may be accrued to a maximum of three days. All Rostered Days Off not taken will then be paid for at the employees' normal hourly rate of pay.

(6) Annual Leave

The department operates in and around the restrictions imposed by a girl's boarding school and as such, school term breaks are used to allow unrestricted access to boarding houses and classrooms. With this representing the peak times in work loads, employees will generally be asked not to take annual leave during term breaks, except in exceptional circumstances.

MINISTRY OF SPORT AND RECREATION 1998 ENTERPRISE AGREEMENT.

No. PSA AG 96 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Incorporated

and

Executive Director, Ministry of Sport and Recreation.

No. PSA AG 96 of 1998.

Ministry of Sport and Recreation 1998 Enterprise Agreement.

22 September 1998.

Order.

HAVING heard Ms J van den Herik on behalf of The Civil Service Association of Western Australia Incorporated and Ms F Graham on behalf of the Executive Director, Ministry of Sport and Recreation, now therefore, I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order —

1. THAT the agreement in the terms of the schedule which follows, to be known as the "Ministry of Sport and Recreation 1998 Enterprise Agreement" shall be and is registered with effect on and from the 10th day of September 1998.
2. THAT the Ministry of Sport and Recreation 1998 Enterprise Agreement shall replace the Ministry of Sport and Recreation 1996 Enterprise Agreement No. PSA AG 125 of 1996 with effect on and from the 10th day of September 1998.

(Sgd.) S.A. CAWLEY,
[L.S.] Commissioner,
Public Service Arbitrator.

Schedule.

1.—TITLE

This Agreement shall be known as the "Ministry of Sport and Recreation 1998 Enterprise Agreement" and shall replace the Ministry of Sport and Recreation 1996 Enterprise Agreement No PSA AG 125 of 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope
4. Parties To The Agreement
5. Duration of this Agreement
6. No Further Claims
7. Relationship to Parent Awards
8. Single Bargaining Unit
9. Dispute Settlement Procedures
10. Consultative Mechanism
11. Shared Vision—Overview of Agreement
12. Objectives of this Agreement
13. Improvement Strategies
14. Continuous Improvement
15. Salary Increases
16. Annual Leave Loading
17. Annual Leave Travel Concessions
18. Ceremonial Leave
19. Classification Level 1
20. Family Carers Leave
21. Hours of Duty
22. Long Service Leave
23. Parental Leave (Maternity, Paternity and Adoption Leave)
24. Public Service Holidays
25. Study Assistance
26. Future Issues for Negotiation
27. Employees Covered

Schedule 1—Salary Increases
Schedule 2—EEO Grievance Resolution Procedure

3.—SCOPE

The Ministry of Sport and Recreation 1998 Enterprise Agreement ("the Agreement") shall apply to all Ministry of Sport and Recreation employees who are eligible to be members of the Civil Service Association of Western Australia Incorporated, except those whose salaries and conditions are determined by the Salaries and Allowances Tribunal.

4.—PARTIES TO THE AGREEMENT

(1) The employer party to the Agreement is the Executive Director, Ministry of Sport and Recreation.

(2) The union party to the Agreement is the Civil Service Association of Western Australia Incorporated.

5.—DURATION OF THE AGREEMENT

(1) This Agreement shall operate for a period of two (2) years.

(2) The Agreement shall have effect from 10 September 1998.

(3) Negotiations between the parties for renewal of this Agreement or for the formulation of a new Agreement will

commence no later than six (6) months prior to the expiry date of this Agreement.

(4) 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 broad principles of this Agreement continue to be implemented.

6.—NO FURTHER CLAIMS

(1) The parties to this Agreement undertake that for its duration there shall be no further salary or wage increases sought or granted.

(2) However, the parties recognise that it is important to encourage future productivity improvement beyond those currently identified in this Agreement. Where such improvements are identified and implemented they will be considered for negotiations at the commencement of the next Agreement.

(3) This Agreement may be amended, cancelled or renewed at any time by consent between the parties.

7.—RELATIONSHIP TO PARENT AWARDS

(1) This Agreement shall be read in conjunction with the Public Service Award 1992 as amended and any General Orders that apply to the parties bound to this Agreement.

(2) In the case of any inconsistencies, this Agreement shall have precedence to the extent of the inconsistencies.

(3) Where this Agreement is silent the Public Service Award 1992 shall apply.

8.—SINGLE BARGAINING UNIT

(1) This Agreement has been negotiated through a Single Bargaining Unit.

(2) The Single Bargaining Unit parties comprises membership from the Ministry of Sport and Recreation and the Civil Service Association of Western Australia Incorporated.

9.—DISPUTE SETTLEMENT PROCEDURES

(1) The purpose of these Dispute Settlement Procedures is to allow all parties access to a system to discuss and resolve any questions, difficulties, issues and disputes relating to this Agreement. All parties agree to take all necessary steps to ensure that all issues receive prompt attention and are resolved by conciliation, preferably by informal, internal settlement.

(2) It is further agreed that a personal grievance of any employee relating to this Agreement will be settled with as much privacy and confidentiality as possible.

(3) For the duration of this Agreement all parties shall comply to the following dispute settlement procedures to deal with any dispute or grievance arising out of the implementation of this Agreement—

(a) Step 1 — The internal Ministry of Sport and Recreation Grievance Policy and Procedures (as per Schedule 2—EEO Grievance Resolution Procedure of this Agreement) will be applied by an employee of the Ministry.

(b) Step 2 — If the matter is still not settled then a conference will be held between a representative of the Ministry, a representative from the Civil Service Association and/or the employee.

(c) Step 3 — If the matter cannot be settled between the representatives, an application may be made to the Western Australian Industrial Relations Commission for the purpose of settling the dispute.

10.—CONSULTATIVE MECHANISM

(1) The parties are committed to working together to improve the working environment of the Ministry of Sport and Recreation.

(2) It is acknowledged by the parties to this Agreement that decisions will continue to be made by the Executive Director of the Ministry of Sport and Recreation ("the Ministry") who is responsible and accountable to Government through statute for the efficient and effective operation of the Ministry's business.

(3) Consultation in the context of this Agreement is defined as information sharing and discussion on relevant matters which are likely to have an effect on employees working lives.

(4) The Ministry will maintain the Consultative Team, established during the development of the initial Agreement, for the term of this Agreement.

(5) Membership for existing and new members appointed or elected will be for the life of this Agreement.

(6) The Consultative Team will review and establish their own terms of reference and operational processes subject to agreement between the parties.

(7) The objectives of the Team will be to—

(a) increase the effectiveness of the organisation and the quality of the services it provides to its clients

(b) provide a vehicle for consultation on matters which impact on employees' working lives

(c) improve the quality of information available for decision making in the Ministry.

(8) The Team will be made up of—

(a) four management representatives nominated by the Executive Director.

(b) one representative from each Division, each elected by the employees of that Division.

(c) one representative of the camps and reserves, elected by the camps and reserves employees.

(d) one representative of Level 1 and Level 2 officers, elected by those employees whose substantive classification is Level 1 or Level 2.

(e) an elected union delegate. Attendance of union officials will be by invitation.

(f) where a representative is unable to continue, a replacement will be nominated or elected from the same group.

(g) a Chairperson elected from within its membership.

The composition of the Consultative Team may be reviewed at any time during the course of this agreement.

11.—SHARED VISION— OVERVIEW OF AGREEMENT

(1) The following organisational improvements and initiatives are aimed at facilitating positive organisational change and improved productivity and will be further developed during the life of this Agreement for implementation in subsequent agreements.

(2) As an important component of a broader strategic planning process by which the Ministry is seeking to confirm and satisfy the expectations and needs of its client, the Ministry is committed to the development, implementation and evaluation of continuous improvement strategies. This procedure will also place the Ministry in a better position to develop specific targeted outcomes and milestones in future Agreements.

(3) Parties to this Agreement are committed to enhancement and further development of a positive, flexible culture in support of the Ministry's Corporate Ethos. The development and implementation of these initiatives will have the support and involvement of people throughout the organisation. A consultative mechanism has been established and education processes will be facilitated to assist the Ministry achieve these initiatives.

(4) In particular this Agreement will focus on—

(a) Communicating the direction and Corporate Ethos of the Ministry to all employees.

(b) Cultural change—development of work environments and work practices which encourage innovation and increased flexibility.

(c) Customer focus—create an organisational culture that improves the Ministry's image with clients.

(d) Employee development through team work, open communication, empowerment, training and accountability for outcomes.

(e) Performance measurement strategies.

(f) Focus on achieving long term aims whilst satisfying short term requirements.

(g) The continued development and implementation of organisational priority initiatives to improve functional effectiveness and efficiencies.

(h) Industry strategies to fulfil its role of leadership, education, information and support for the ongoing development of the sport and recreation industry within WA and to satisfy the expectations and needs of its clients.

12.—OBJECTIVES OF THIS AGREEMENT

(1) The parties to this Agreement are committed to working together to enhance the lifestyle of Western Australians through their participation and achievement in sport and recreation through the achievement of the vision for the Ministry which is to have—

(a) high quality physical environments in which people enjoy sport and recreation;

(b) well managed organisations and agencies in the community;

(c) skilled and informed people delivering services in the industry.

(2) This Agreement is an important component of a broader strategic planning process by which the Ministry is seeking to fulfil it's roles of leadership, education, information and support for the ongoing development of the sport and recreation industry within Western Australia and satisfy the expectations and needs of its clients.

The specific objectives of this Agreement are—

(a) To sustain and further encourage employee commitment, flexibility and contribution to the short-term and long-term objectives and direction of the Ministry of Sport and Recreation.

(b) To sustain the Ministry's capability to improve it's performance and implement the Government's policies.

(c) To improve the quality of the working life for all employees within the Ministry of Sport and Recreation by providing reward and recognition to Ministry employees for identified productivity savings and initiatives aimed at maximising the use of the limited human and financial resources available to successfully deliver programs to the community.

(d) To have a majority of employees actively supporting and contributing to the workplace reform process through a well coordinated Continuous Improvement Model.

(e) To have staff and management contributing to the creation of an environment where staff have a positive and supportive environment in which to work.

This Agreement commits the Ministry to putting the foundations in place to ensure the successful development of a replacement Agreement. It is intended the remuneration of employees in the replacement Agreement will be directly linked to performance.

13.—IMPROVEMENT STRATEGIES

The Ministry of Sport and Recreation will, during the life of this agreement, continue to build on the commitment and talent of it's employees, to develop work environments and work practices which encourage increased flexibility by—

(1) Fostering and sustaining the flexible, positive approach and commitment of employees experienced in the past. To assist the Ministry achieve this outcome, a number of improvements or additions to entitlements aimed at increasing flexibility have been offered to employees through this Agreement. These include amendments to Annual Leave Loading, Annual Leave Travel Concessions, Ceremonial Leave, Compaction of Level 1 salaries, Family Carers Leave, Hours of Duty, Long Service Leave, Parental Leave, Public Service Holidays and Study Assistance as outlined in clauses 16 to 25. This also provides for rewarding and recognising employees for their contribution to the Ministry's objectives.

(2) Undertake a range of specific "internally focussed" initiatives identified in the Continuos Improvement Model underpinned by a Productivity Improvement Matrix which provides for incremental development designed to instil a culture of positive change and innovation. Target areas include—

(a) Leadership;

(b) Policy and Planning;

(c) Information Analysis;

(d) Customer Focus and Partnership strategies;

(e) Cultural Improvement.

(3) Undertake a range of specific "industry focussed" initiatives. Target areas include—

(a) Recreation Industry Reform;

(b) Improved Sport Management;

(c) CSRFF Review.

14.—CONTINUOUS IMPROVEMENT

(1) This Enterprise Bargaining Agreement is based on the development and implementation of the Ministry's Continuous Improvement Model, underpinned for measurement purposes by a Productivity Improvement Matrix.

(2) This model will evolve over the next three to five years and embrace ongoing examination of the Ministry's work practices and processes to provide an overall review of the organisation based on a cluster of a matrix of indicators focusing on criteria in the following areas—

(a) Leadership;

(b) Policy and Planning;

(c) Information Analysis;

(d) Customer Focus;

(e) Cultural Improvement Strategies;

(f) Industry Strategies (including Partnership Strategies);

(g) Workforce Strategies;

(h) Operational Review Strategies.

(3) The Continuous Improvement Model is sustainable over a number of years and will allow the Ministry to initially pull together a number of 'internal' productivity initiatives that address some fundamental work practices within the Ministry. At the same time it provides the encouragement and incentive for employees to actively support and contribute to the process through ongoing identification and development of externally focused productivity initiatives.

(4) The process will include evaluation of work processes, a description of the changes necessary for the success of the organisation and involve managers and their work groups in the development of short term and longer term value added plans, allowing the Ministry to move at a pace the organisation can absorb yet moving beyond an ad hoc approach to change implementation.

(5) Corporate Executive and the Ministry's Consultative Team have committed to the development, implementation and review of this model over the next three to five years.

15.—SALARY INCREASES

The following salary increases will be payable during the life of this Agreement—

(1) an increase of 2.65% from the beginning of the pay period from the date of registration in the Western Australian Industrial Relations Commission;

(2) a further increase of 0.85% payable in January 1999, subject to the achievement of productivity improvements outlined in the Ministry's Continuous Improvement Model;

(3) a further increase of 2.65% payable 12 months from the date of registration, subject to the achievement of productivity improvements outlined in the Ministry's Continuous Improvement Model;

(4) a further increase of 0.50% payable in January 2000, subject to the achievement of productivity improvements outlined in the Ministry's Continuous Improvement Model;

(5) should the productivity targets as set out in the Ministry's Continuous Improvement Model not be achieved in full, then a pro rata payment for those targets achieved will be paid;

(6) payment for productivity initiatives will be subject to the Ministry obtaining endorsement from Cabinet Standing Committee on Labour Relations (CSCLR).

16.—ANNUAL LEAVE LOADING

(1) Employees will be paid the Annual Leave Loading as specified in clause 19 (11), Annual Leave Loading, Public Service Award 1992, on the first pay date in the month of December. This applies to employees whose conditions of service are those in accordance with the terms of this Agreement and are employed as at this date. The Executive Director may approve the payment of the annual leave loading in special circumstances other than those prescribed.

(2) Employees who have worked less than 12 months at that date or who have already taken part of their leave entitlement will receive a pro rata payment.

17.—ANNUAL LEAVE TRAVEL CONCESSIONS

(1) This is to be read in conjunction with clause 19 (10), Annual Leave (Travel Concessions), Public Service Award 1992.

(2) The following paragraph replaces clause 19 (10) (a) (i), Annual Leave (Travel Concessions, Officers stationed in remote areas), Public Service Award 1992.

Officers and employees stationed in remote areas.

The travel concessions contained in the table in the Public Service Award Clause 19.—Annual Leave, subclause (10) are provided to employees and their dependants when travelling on annual leave to a destination outside the geographical region of their headquarters and where the headquarters is situated in District Allowance Areas 3, 5 and 6 and in that portion of Area 4 located north of 30 degrees South latitude. Travel concessions shall not exceed the value of the return economy airfare from their headquarters to Perth, allowing employees to travel to other destinations within Australia.

18.—CEREMONIAL LEAVE

(1) An employee covered by this Agreement is entitled to time off for tribal, ceremonial or cultural purposes.

(2) Reasonable time off without pay may be granted by the Chief Executive Officer, taking account of the employee's tribal, ceremonial or cultural reasons and Ministry convenience. In this instance, usual leave without pay conditions apply.

19.—CLASSIFICATION LEVEL 1

(1) The parties agree that the adult Level 1 salary increment range will be reduced from 9 to 7 increment levels as provided for in the Salary Schedules of this Agreement.

(2) All Level 1 employees will progress to the nearest salary increment level in the new range of Schedule 1, Salary Increases Column B, provided that the new salary is not less than the salary that applied immediately prior to the registration of this Agreement.

20.—FAMILY CARERS LEAVE

Subject to the approval of the Chief Executive Officer, employees covered by this Agreement may use sick leave up to a maximum of 5 days per annum to provide care for another person. The days used can be taken from accrued leave.

Granting of this leave will be subject to—

(1) (a) The employee being responsible for the care of the person concerned.

(b) The person concerned being either—

(i) a member of the employee's immediate family; or

(ii) a member of the employee's household.

(c) The term "immediate family member " includes—

(i) A spouse (including former spouse, a defacto spouse and a former defacto spouse) of the employee. A defacto spouse, in relation to a person, means a person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married.

(ii) A child or an adult (including an adopted child, a step child or an ex nuptial child), parent, grandparent or grandchild or sibling of the employee or spouse of the employee.

(d) If required, production of satisfactory evidence of the need for care of the other person.

(2) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence.

(3) An employee may elect, with the consent of the Ministry, to take unpaid leave for the purpose of providing extended care to a family member who is incapacitated providing all other leave credits of the employee have been exhausted.

21.—HOURS OF DUTY

(1) In addition to other working arrangements as provided in clause 16, Hours, Public Service Award 1992, employees covered by this Agreement will be required to work 38 hours per week between the hours of 6.00am and 6.00 pm Monday to Friday (with a lunch break of not less than 30 minutes to be taken between 12 noon and 2.00 pm) with flexible daily starting and finishing times to be agreed to between the employee and their supervisor.

(2) The hours of duty in each four (4) week settlement period will be as indicated below—

Average Daily Hours	7 hours 36 minutes
Settlement Period	4 weeks
Hours of Duty in each Settlement Period	152 hours
Maximum Credit Hours	7 hours 36 minutes
Maximum Debit Hours	7 hours 36 minutes
Maximum Daily Hours	10 hours

For the purpose of leave, public holidays and public service holidays, a day shall be credited/debited as 7 hours 36 minutes.

22.—LONG SERVICE LEAVE

(1) Employees covered by this Agreement will be eligible for Long Service Leave as provided in clause 21, Long Service Leave, Public Service Award 1992.

(2) Long Service Leave entitlements may be cleared at a minimum rate of one week , subject to the approval the Chief Executive Officer.

(3) In special circumstances, the Executive Director may elect to buy out accumulated long service leave at the rate the leave would have been paid had the leave been taken, provided that at least one (1) full entitlement is taken every 15 years to comply with the Long Service Leave Act. In general, employees will be expected to take leave as entitlements accrue.

23.—PARENTAL LEAVE (MATERNITY, PATERNITY AND ADOPTION LEAVE)

(1) All parental leave is on the basis of unpaid leave.

(2) Definitions—for the purposes of this section—

(a) Employee includes full-time and part-time permanent employees; and full-time and part-time fixed term contract employees up until the end of their contract period but does not include an employee engaged upon casual work.

(b) Spouse includes a former spouse, a defacto spouse and a former defacto spouse of the employee. A defacto spouse, in relation to a person, means a person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married.

(c) Continuous service means service under an unbroken contract of employment and includes—

(i) any period of leave taken in accordance with this clause;

(ii) any period of part-time employment worked in accordance with the Public Service Award 1992; or

(iii) any period of leave or absence authorised by the Ministry or by this Agreement or by the Public Service Award 1992.

(d) Child for the purposes of maternity and paternity leave means a child of the employee or the employee's spouse under the age of one year.

(e) Child for the purposes of adoption leave 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 a child who has previously lived continuously with the employee for a period of six months or more.

(f) Former position means the position held by an employee immediately before proceeding on maternity, paternity or adoption leave 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 of equal status and pay to that of the position first mentioned in this definition.

(g) Replacement employees means an employee specifically engaged as a result of an employee proceeding on parental leave—

(i) Before engaging a replacement employee the Ministry shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(ii) Before engaging a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising their rights under this section, the Ministry shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

(iii) Nothing in this clause shall be construed as to require the Ministry to engage a replacement employee.

(3) MATERNITY LEAVE

(a) Eligibility for maternity leave

(i) An employee who becomes pregnant is 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.

(ii) Subject to subclauses (c) Transfers to safe job and (g) Maternity leave and other leave entitlements of this subclause, the period of maternity leave shall be unbroken.

(iii) Under special circumstances the Ministry may approve leave concurrent with the employee's spouse or in more than one period.

(b) Certification and notice requirements

Not less than 10 weeks prior to the presumed date of confinement the employee must provide the Ministry with a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement.

(i) An employee shall give not less than four weeks notice in writing to the Ministry of the date upon which she proposes to commence maternity leave stating the period of leave to be taken.

(ii) 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 the Ministry 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 period.

(iii) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice if such failure is occasioned by the confinement occurring earlier than the presumed date.

(c) Transfer to a safe job

(i) 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 be transferred to a safe job at the rate and on the conditions attaching to her former job until the commencement of maternity leave.

(ii) If the transfer to a safe job is not practicable, the employee may, or the Ministry 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.

(d) Variations of period of maternity leave

Provided the maximum period of maternity leave does not exceed 52 weeks, an employee proceeding on parental leave may elect to take a shorter period of maternity leave and may at any time during that period of leave elect to reduce or extend the period stated in the original application provided four weeks written notice is provided.

(e) Cancellation of maternity leave

(i) 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.

(ii) 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 Ministry which shall not exceed four weeks from the date of notice in writing by the employee to the Ministry that she wishes to resume work.

(f) Special maternity leave and sick leave

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 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.

(g) Maternity leave and other leave entitlements

An employee proceeding on maternity leave may elect to utilise—

(i) Accrued annual leave.

(ii) Accrued long service leave for the whole or part of the period referred to in subclause (3)(a) Eligibility for maternity leave. The periods of leave referred to in this sub clause, paragraphs (3) (g) (i) and (ii) which are utilised, shall be paid leave;

(iii) An employees may extend her period of maternity leave by taking accrued annual, long service leave or, with the consent of the Ministry, a further period of leave without pay;

(iv) 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.

(h) Effect of maternity leave on employment

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 Public Service Award 1992 or this Agreement.

(i) Termination of employment

(i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with the Public Service Award 1992.

(ii) The Ministry 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 Ministry in relation to termination of employment are not affected.

(j) Return to work after maternity leave

(i) An employee shall confirm her intention of returning to work by notice in writing to the Ministry given not less than four weeks prior to the expiration of her period of maternity leave.

(ii) An employee, upon returning to work after maternity leave 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 paragraphs (c) (i) and (ii) Transfer to a safe job of this subclause, the position which she held immediately before.

(iii) 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 of equal status and pay to that of her former position.

(4) PATERNITY LEAVE

(a) Eligibility for paternity leave

An employee, upon provision to the Ministry of the certificate required by paragraph (b) Certification and notice requirements of this subclause, is entitled to a period of up to 52 weeks of paternity leave, as follows—

(i) An unbroken period of up to one week at the time of confinement of their spouse.

(ii) A further unbroken period of up to 51 weeks in order to be the primary carer 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.

(iii) Under special circumstances the Ministry may approve leave concurrent with the spouse or in more than two periods.

(b) Certification and notice requirement

Not less than 10 weeks prior to the proposed period of leave the employee must provide the Ministry with 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.

(i) The employee shall, not less than 10 weeks prior to each proposed period of leave, give the Ministry notice in writing stating the dates on which he proposes to start and finish the period or periods of leave.

(ii) The employee shall not be in breach of this subclause as a consequence of failure to give the notice required if such failure is due to—

(aa) the birth occurring earlier than the expected date; or

(bb) the death of the mother of the child; or

(cc) other compelling circumstances.

(iii) The employee shall immediately notify the Ministry of any change in the information provided pursuant to this subclause.

(c) Variation of period of paternity leave

Provided the maximum period of paternity leave does not exceed 52 weeks, an employee proceeding on parental leave may elect to take a shorter period of paternity leave and may at any time during that period of leave elect to reduce or extend the period stated in the original application provided four weeks written notice is provided.

(d) Cancellation of paternity leave

Paternity leave, applied for but not commenced, shall be cancelled when the pregnancy of the employees spouse terminates other than by the birth of a living child.

(e) Paternity leave and other leave entitlements

An employee proceeding on paternity leave may elect to utilise—

(i) Accrued annual leave.

(ii) Accrued long service leave for the whole or part of the period referred to in paragraph (a) Eligibility for paternity leave of this subclause. The periods of leave referred to in this clause, paragraphs (e) (i) and (ii) of this subclause which are utilised, shall be paid leave.

(iii) An employee may extend his period of paternity leave by taking accrued annual, long service leave or, with the consent of the Ministry, a further period of leave without pay.

(iv) 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.

(f) Effect of paternity leave on employment

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 the Public Service Award 1992 or this Agreement.

(g) Termination of employment

(i) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with the Public Service Award 1992.

(ii) The Ministry shall not terminate the employment of an employee on the ground of their absence on paternity leave, but otherwise the rights of the Ministry in relation to termination of employment are not affected.

(h) Return to work after paternity leave

(i) An employee shall confirm his intention of returning to work by notice in writing to the Ministry given not less than four weeks prior to the expiration of the period of paternity leave.

(ii) An employee, upon returning to work after paternity shall be entitled to the position which he held immediately before proceeding on paternity leave.

(iii) 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 equal in status and pay to that of his former position.

(5) ADOPTION LEAVE

(a) Eligibility for adoption leave

An employee, upon provision to the Ministry of the documentation required by paragraph (b) of this subclause shall be entitled to adoption leave, the total of which shall not exceed 52 weeks as follows—

(i) A period of up to three weeks at the time of the placement of the child.

(ii) A period of up to 52 weeks from the time of the child's placement in order to be its primary care-giver. 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) (i) of this subclause.

(iii) Under special circumstances the Ministry may approve leave concurrent with the employee spouse or in more than one period.

(b) Certification

Before taking adoption leave the employee must provide the Ministry with—

(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.

(c) Notice Requirements

(i) Upon receiving notice of approval for adoption purposes an employee shall notify the Ministry of such approval and within two months of such approval shall further notify the Ministry of the period or periods of adoption leave the employee proposes to take.

(ii) An employee who commences employment with the Ministry after the date of approval for adoption purposes shall notify the Ministry upon commencing employment of the period or periods of adoption leave which the employee proposes to take.

(iii) An employee shall, 10 weeks before the proposed date of commencing any leave to be taken under paragraph (a) (iii) Eligibility for adoption leave of this subclause, give notice in writing to the Ministry of the date of commencing leave and the period of leave to be taken.

(iv) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of a spouse or other compelling circumstances.

(d) Variation of period of adoption leave

Provided the maximum period of adoption leave does not exceed 52 weeks, an employee proceeding on parental leave may elect to take a shorter period of adoption leave and may at any time during that period of leave elect to reduce or extend the period stated in the original application provided four weeks written notice is provided.

(e) Cancellation of adoption leave

(i) Adoption leave applied for but not commenced shall be cancelled should the placement of the child not proceed.

(ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the Ministry forthwith and the Ministry shall nominate a time not exceeding four weeks from receipt of notification for the employees resumption of work.

(f) Special leave

The Ministry 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, the Ministry may require the employee to take such leave in lieu of special leave.

(g) Adoption leave and other leave entitlements

An employee proceeding on adoption leave may elect to utilise—

(i) Accrued annual leave.

(ii) Accrued long service leave for the whole or part of the period referred to in paragraph (a), Eligibility for adoption leave of this subclause. The periods of leave referred to in this clause, paragraphs (g) (i) and (ii) of this subclause shall be paid leave.

(iii) Employees may extend their period of adoption leave by taking accrued annual and/or long service leave or, with the consent of the Ministry, a further period of leave without pay.

(iv) Paid sick leave or other paid authorise award absences (excluding annual leave or long service leave) shall not be available to employees during their absence on adoption leave.

(h) Effect of adoption leave on employment

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 the Public Service Award 1992 or this Agreement.

(i) Termination of employment

(i) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this award.

(ii) The Ministry 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 the Ministry in relation to termination of employment are hereby not affected.

(j) Return to work after adoption leave

(i) An employee shall confirm the intention of returning to work by notice in writing to the Ministry given not less than four weeks prior to the expiration of the period of adoption leave.

(ii) An employee, upon returning to work after adoption leave shall be entitled to the position held immediately before proceeding on such leave.

(iii) 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 equal in status and pay to that of the employees former position.

24.—PUBLIC SERVICE HOLIDAYS

In accordance with the terms and conditions of this Agreement, employees are no longer eligible for a day in lieu for each of the two previously prescribed public service holidays of Easter Tuesday and the extra day after New Year's Day.

25.—STUDY ASSISTANCE

(1) Employees covered by this Agreement will be eligible for Study Leave as provided by Clause 25.—Study Leave, of the Public Service Award 1992.

(2) Employees may be eligible to receive partial assistance with payment of fees (not Higher Education Charges Scheme) and/or cost of books, subject to the approval of the employee's Director. This provision will be subject to the successful completion of the units of study.

(3) Granting of this assistance will be subject to—

(a) the course being relevant to the current duties or duties likely to be performed by the employee;

(b) is relevant to the current and emerging needs of the Ministry;

(c) enhances the career development of the employee within the Ministry, and;

(d) can be financed from within the Divisional budget or the Ministry's training and development budget.

26.—FUTURE ISSUES FOR NEGOTIATION

(1) Within the life of this Agreement all parties have identified issues that may have a bearing upon future Enterprise Agreements within Ministry. These issues include further developments that build upon the negotiations and direction contained within this Agreement.

(2) Further discussions by the Consultative Team will consider (but not be limited to) investigating—

(a) alternative training and development processes;

(b) leave provisions;

(c) more flexible work arrangements;

(d) special conditions of employment for country service;

(e) further development of the Ministry's Continuous Improvement Model

(3) Progressive discussions on these issues and alternative issues identified by all parties prior to the expiry of this Agreement will facilitate the development of future arrangements.

27.—EMPLOYEES COVERED

As at 10 September 1998 the number of employees covered by this Agreement was ten.

SCHEDULE 1—SALARY INCREASES

Column A reflects the current salary rates as at 01/07/96 (as per Enterprise Agreement 1996).

Column B reflects the compaction of current rates for Level 1 only.

Column C reflects an increase of 2.65% from the beginning of the pay period from the date of registration in the Western Australian Industrial Relations Commission

Column D reflects a further increase of 0.85% payable in January 1999, subject to the achievement of productivity improvements outlined in the Ministry's Continuous Improvement Model;

Column E reflects a further increase of 2.65% payable 12 months from the date of registration, subject to the achievement of productivity improvements outlined in the Ministry's Continuous Improvement Model;

Column F reflects a further increase of 0.50% payable in January 2000, subject to the achievement of productivity improvements outlined in the Ministry's Continuous Improvement Model.

	A Current Salary	B Level 1 compaction	C Salary @ reg. (+ 2.65%)	D Salary @ 17/01/99 (+ 0.85%)	E Salary @ 12 mths from reg. (+ 2.65%)	F Salary @ 17/01/2000 (+ 0.50%)
Level 1						
Under 17 yrs	$11,634.11	$11,634.11	$11,942.41	$12,043.92	$12,363.09	$12,424.90
17 yrs	$13,596.49	$13,596.49	$13,956.80	$14,075.43	$14,448.43	$14,520.67
18 yrs	$15,859.54	$15,859.54	$16,279.82	$16,418.20	$16,853.28	$16,937.54
19 yrs	$18,357.99	$18,357.99	$18,844.48	$19,004.65	$19,508.28	$19,605.82
20 yrs	$20,615.69	$20,615.69	$21,162.01	$21,341.88	$21,907.44	$22,016.98
21 yrs	$22,646.55	1 yr $22,646.55	$23,246.68	$23,444.28	$24,065.55	$24,185.88
22 yrs	$23,344.19	2 yr $23,589.05	$24,214.16	$24,419.98	$25,067.11	$25,192.45
23 yrs	$24,040.76	3 yr $24,531.55	$25,181.64	$25,395.68	$26,068.67	$26,199.01
24 yrs	$24,733.05	4 yr $25,474.05	$26,149.11	$26,371.38	$27,070.22	$27,205.57
25 yrs	$25,429.62	5 yr $26,416.55	$27,116.59	$27,347.08	$28,071.78	$28,212.14
26 yrs	$26,126.19	6 yr $27,359.05	$28,084.06	$28,322.78	$29,073.33	$29,218.70
27 yrs	$26,927.62	7 yr $28,301.50	$29,051.49	$29,298.43	$30,074.84	$30,225.21
28 yrs	$27,481.88					
29 yrs	$28,301.50					

	A Current Salary	B Level 1 compaction	C Salary @ reg. (+ 2.65%)	D Salary @ 17/01/99 (+ 0.85%)	E Salary @ 12 mths from reg. (+ 2.65%)	F Salary @ 17/01/2000 (+ 0.50%)
Level 2						
1 yrs	$29,282.69		$30,058.68	$30,314.18	$31,117.51	$31,273.09
2 yrs	$30,034.90		$30,830.82	$31,092.89	$31,916.85	$32,076.43
3 yrs	$30,825.63		$31,642.51	$31,911.47	$32,757.12	$32,920.91
4 yrs	$31,661.30		$32,500.32	$32,776.58	$33,645.16	$33,813.38
5 yrs	$32,535.49		$33,397.68	$33,681.56	$34,574.12	$34,746.99
Level 2/4						
1 yrs	$29,282.69		$30,058.68	$30,314.18	$31,117.51	$31,273.09
2 yrs	$30,825.63		$31,642.51	$31,911.47	$32,757.12	$32,920.91
3 yrs	$32,535.49		$33,397.68	$33,681.56	$34,574.12	$34,746.99
4 yrs	$34,673.35		$35,592.19	$35,894.73	$36,845.94	$37,030.17
5 yrs	$37,988.21		$38,994.90	$39,326.35	$40,368.50	$40,570.35
6 yrs	$40,148.54		$41,212.48	$41,562.78	$42,664.20	$42,877.52
Level 3						
1 yrs	$33,737.10		$34,631.13	$34,925.50	$35,851.02	$36,030.28
2 yrs	$34,673.35		$35,592.19	$35,894.73	$36,845.94	$37,030.17
3 yrs	$35,638.49		$36,582.91	$36,893.86	$37,871.55	$38,060.91
4 yrs	$36,629.31		$37,599.99	$37,919.59	$38,924.46	$39,119.08
Level 4						
1 yrs	$37,988.21		$38,994.90	$39,326.35	$40,368.50	$40,570.35
2 yrs	$39,052.86		$40,087.76	$40,428.51	$41,499.86	$41,707.36
3 yrs	$40,148.54		$41,212.48	$41,562.78	$42,664.20	$42,877.52
Level 5						
1 yrs	$42,258.58		$43,378.43	$43,747.15	$44,906.45	$45,130.98
2 yrs	$43,684.89		$44,842.54	$45,223.70	$46,422.13	$46,654.24
3 yrs	$45,166.84		$46,363.76	$46,757.85	$47,996.94	$48,236.92
4 yrs	$46,704.43		$47,942.10	$48,349.61	$49,630.87	$49,879.02
Level 6						
1 yrs	$49,177.20		$50,480.40	$50,909.48	$52,258.58	$52,519.87
2 yrs	$50,858.17		$52,205.91	$52,649.66	$54,044.88	$54,315.10
3 yrs	$52,597.99		$53,991.84	$54,450.77	$55,893.71	$56,173.18
4 yrs	$54,455.51		$55,898.58	$56,373.72	$57,867.62	$58,156.96
Level 7						
1 yrs	$57,303.85		$58,822.40	$59,322.39	$60,894.44	$61,198.91
2 yrs	$59,274.79		$60,845.57	$61,362.76	$62,988.87	$63,303.82
3 yrs	$61,419.07		$63,046.68	$63,582.57	$65,267.51	$65,593.85
Level 8						
1 yrs	$64,904.06		$66,624.02	$67,190.32	$68,970.87	$69,315.72
2 yrs	$67,400.37		$69,186.48	$69,774.56	$71,623.59	$71,981.71
3 yrs	$70,495.88		$72,364.02	$72,979.11	$74,913.06	$75,287.63
Level 9						
1 yrs	$74,361.79		$76,332.38	$76,981.20	$79,021.20	$79,416.31
2 yrs	$76,973.66		$79,013.46	$79,685.08	$81,796.73	$82,205.71
3 yrs	$79,952.54		$82,071.28	$82,768.89	$84,962.26	$85,387.08

SCHEDULE 2—EEO Grievance Resolution Procedure

This procedure is devised to effectively resolve any problem or complaint, real or imagined, which may potentially affect the relationship between the employer (Chief Executive Officer, Ministry of Sport and Recreation) and the employee (you).

The Ministry undertakes to provide information to staff on their rights in using the Ministry's grievance resolution mechanisms. All staff members and all new staff members are to be given a personal copy of this EEO Grievance Resolution Procedure.

The Ministry has appointed three Grievance Officers who will provide information, support and guidance to staff members who feel aggrieved (eg discrimination, victimisation, harassment).

Your Grievance Officers are—

Joe Macri	(Perry Lakes)	Telephone: (08) 9387 9777
Steve Rose	(Bunbury)	Telephone: (08) 97910 800
Faye Graham	(Perry Lakes)	Telephone: (08) 9387 9715

The Ministry aims to deal with grievance issues internally and complainants are encouraged to exhaust all available internal resolution avenues before going to an external agency for assistance.

Should satisfactory results not be achieved internally, staff members have the option of referring their complaint direct to their union and/or the Equal Opportunity Commissioner.

Progression through the formal grievance channel will then commence.

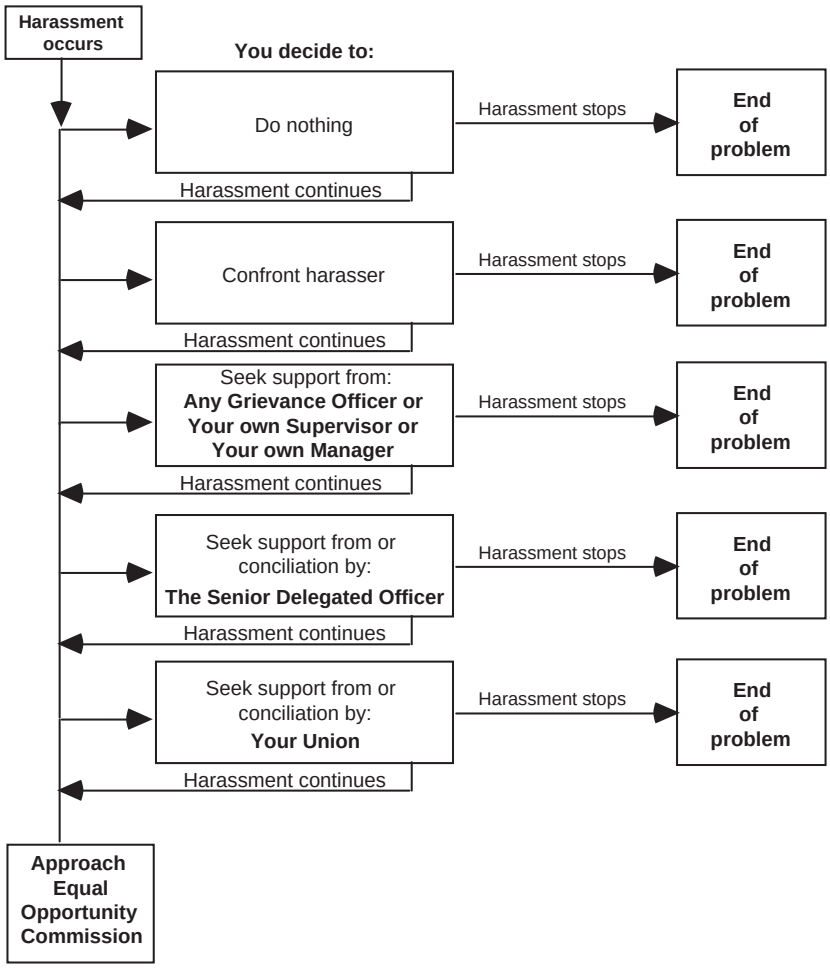
Making use of the following procedure means—

- The choice of resolution is always yours. You do not have to take each step in turn and could, if you wish, go straight to the Equal Opportunity Commission as your first step.
- You retain control. No action is taken or information given to anyone unless you so desire.
- The Ministry uses the same resolution procedures in dealing with sexual harassment and harassment in

relation to race, religion, political conviction, marital status, pregnancy or impairment.

- Grievance Officers will ensure that the privacy of all parties is respected and that all matters under investigation will be dealt with in absolute confidentiality.
- No employee involved will suffer victimisation as a result of the grievance procedures. Any person found to be victimising a complainant will be subject to the Ministry's disciplinary processes.

Employees who feel that they have a grievance to be resolved should adopt the steps in the following chart—



MULTI GLASS AND ALUMINIUM FABRICATORS INDUSTRIAL AGREEMENT.
No. AG 217 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

Multi Glass & Aluminium Fabricators Pty Ltd

No. AG 217 1997.

Multi Glass and Aluminium Fabricators Industrial Agreement.

COMMISSIONER P E SCOTT.

30 September 1998.

Order.

HAVING heard Mr J Maitland on behalf of the Applicant and there being no appearance on behalf of the Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Multi Glass and Aluminium Fabricators Industrial Agreement in the terms of the following schedule be registered on the 9th day of September 1998.

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

WAGE AGREEMENT

Schedule.

1.—TITLE

This Agreement will be known as the Multi Glass and Aluminium Fabricators 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. Site Allowance
12. Industry Standards
13. Clothing and Footwear
14. Training Allowance, Training Leave, Recognition of Prior Learning
15. Seniority
16. Sick Leave
17. Pyramid Sub-Contracting
18. Fares and Travelling
19. Drug and Alcohol, Safety and Rehabilitation Program
20. No Extra Claims

Appendix A—Wage Rates
Appendix B—Drug and Alcohol, Safety and Rehabilitation Program
Appendix C—Site Allowance

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builder's 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 Multi Glass and Aluminium Fabricators Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australian.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Unions, its officers and members, and any person eligible to be members 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 2 employees covered by this agreement.

5.—DURATION

This Agreement shall commence from the first pay period on or after the 1st of August 1997 and shall continue in effect until 31 October 1999.

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 Awards 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.—SITE ALLOWANCE

This Agreement provides for site allowances as per Appendix C—Site Allowance.

12.—INDUSTRY STANDARDS

1. Redundancy

It is a term of this Agreement that the Company will immediately increase its payments to $45 per week per employee into the Western Australian Construction Industry Redundancy Fund and then will increase this to $50 per week per employee on 1 August 1998.

2. Superannuation

The Company will immediately increase its payment to $60 per week per employee.

The Company will advise all employees subject to the Agreement of their Right to have payments made to a complying superannuation fund of their choice. The Company is bound by the employee's election. The aforementioned payment will then be made to that fund.

Until each employee nominates the fund of their choice the Company will make payments into the Construction + Building Unions Superannuation Scheme (the "C+BUSS").

In the event that any employee chooses a fund other than the C+BUSS the Company will, within seven days of the employee advising the Company of the fund of their choice, advise the Union in writing of the employee's decision.

In the event that the employee and the Company reach an agreement pursuant to section 49C(2)(d) of the Act to change the complying superannuation fund or scheme the Company will, within seven days of the employee and the Company reaching such an agreement, advise the Union in writing of the agreement. The employer will not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by the employee.

3. Apprentice Rates

The Company agrees to maintain a ratio of no more than four tradespeople to one apprentice employed.

13.—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.

14.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

1. A training allowance of $12.00 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-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

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.—PYRAMID SUB-CONTRACTING

1. "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

2. Provided that where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

3. Further provided that when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

4. A bona fide sub-contractor is generally an employer of labour, save for a machine owner operator.

5. Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

18.—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.

19.—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.

20.—NO EXTRA CLAIMS

The Union will make no further claims on the Company over conditions set out in this Agreement for the life of the Agreement. However the Union reserves the right to raise the unforseen matters. The company agrees to insure the employees for sickness and accident cover. The terms of the policy will be agreed to between the Company and the Union.

Signed for and on behalf of—

The Unions:	**BLPPU**	Signed ***Common Seal***
		Date: 27/8/97
		Signed
		WITNESS
	CMETU	Signed ***Common Seal***
		Date: 27/7/97
		Signed
		WITNESS
The Company		***Common Seal*** Signed
		Date: 25/8/97
		D J HEGARTY
		PRINT NAME
		Signed
		WITNESS

APPENDIX A—WAGE RATES

	1 August 1997 Hourly Rate	1 February 1998 Hourly Rate	1 August 1998 Hourly Rate	1 February 1999 Hourly Rate	1 August 1999 Hourly Rate
	$	$	$	$	$
Labourer Group 1	15.56	16.01	16.47	16.92	17.15
Labourer Group 2	15.03	15.47	15.90	16.34	16.56
Labourer Group 3	14.63	15.05	15.48	15.90	16.12
Plasterer, Fixer	16.17	16.64	17.11	17.58	17.82
Painter, Glazier	15.81	16.27	16.73	17.19	17.42
Signwriter	16.15	16.62	17.09	17.56	17.80
Carpenter	16.27	16.75	17.22	17.70	17.93
Bricklayer	16.11	16.58	17.05	17.52	17.75
Refractory Bricklayer	18.50	19.04	19.58	20.12	20.38
Stonemason	16.27	16.75	17.22	17.70	17.93
Rooftiler	15.99	16.45	16.92	17.38	17.62
Marker/Setter Out	16.75	17.24	17.72	18.21	18.46
Special Class T	16.96	17.46	17.95	18.45	18.69

APPRENTICE RATES

	1 August 1997 Hourly Rate	1 February 1998 Hourly Rate	1 August 1998 Hourly Rate	1 February 1999 Hourly Rate	1 August 1999 Hourly Rate
	$	$	$	$	$
Plasterer, Fixer					
Yr 1	6.79	6.99	7.18	7.38	7.48
Yr 2 (1/3)	8.90	9.16	9.42	9.68	9.81
Yr 3 (2/3)	12.13	12.49	12.84	13.19	13.37
Yr 4 (3/3/)	14.23	14.65	15.06	15.48	15.69
Painter, Glazier					
Yr 1 (.5/3/5)	6.64	6.84	7.03	7.22	7.32
Yr 2 (1/3), 1.5/3.5)	8.70	8.95	9.20	9.45	9.58
Yr 3 (2/3), 2.5/3.5)	11.86	12.20	12.55	12.89	13.06
Yr 4 (3/3), 3.5/3.5)	13.92	14.32	14.73	15.13	15.33
Signwriter					
Yr 1 (.5/3/5)	6.79	6.99	7.18	7.38	7.48
Yr 2 (1/3, 1.5/3.5)	8.88	9.14	9.40	9.65	9.78
Yr 3 (2/3, 2.5/3.5)	12.11	12.47	12.82	13.17	13.35
Yr 4 (3/3, 3.5/3.5)	14.21	14.63	15.04	15.46	15.66
Carpenter					
Yr 1	6.84	7.04	7.24	7.44	7.54
Yr 2 (1/3)	8.95	9.21	9.47	9.73	9.86
Yr 3 (2/3)	12.21	12.56	12.92	13.27	13.45
Yr 4 (3/3)	14.32	14.73	15.15	15.57	15.78
Bricklayer					
Yr 1	6.77	6.96	7.16	7.36	7.46
Yr 2 (1/3)	8.86	9.12	9.37	9.63	9.76
Yr 3 (2/3)	12.08	12.43	12.79	13.14	13.31
Yr 4 (3/3)	14.17	14.59	15.00	15.41	15.62
Stonemason					
Yr 1	6.84	7.04	7.24	7.44	7.54
Yr 2 (1/3)	8.95	9.21	9.47	9.73	9.86
Yr 3 (2/3)	12.21	12.56	12.92	13.27	13.45
Yr 4 (3/3)	14.32	14.73	15.15	15.57	15.78
Rooftiler					
6 months	9.12	9.38	9.65	9.91	10.04
2nd 6 months	10.02	10.31	10.61	10.90	11.04
Yr 2	11.71	12.05	12.39	12.73	12.90
Yr 3	13.74	14.14	14.54	14.94	15.14

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.

APPENDIX C—SITE ALLOWANCE

1. This agreement is between the parties to this agreement and shall apply to construction work undertaken by principal contractors who are engaged in the commercial/industrial sector of the building industry in the state of Western Australia within a 50km radius of the Perth General Post Office.

2. This agreement provides for a site allowance to be paid to employees engaged on particular building projects, and for such site allowance to be paid in addition to the wage rates and allowances prescribed by the award as well as any industrial or certified agreements made in conjunction with the award which does not prescribe a site allowance.

3. The site allowance payable under this agreement is to be paid at a flat rate per hour for all hours worked to compensate for all special factors/disabilities on the project and in lieu of all award special rates, with the exception of rates relating to the lifting of heavy blocks, cleaning down brickwork and the use of explosive powered tools which will be payable to an employee when he/she encounters that particular disability.

4. **Site Allowance Formula**

At the commencement of a project the particular site allowance to apply shall be determined in accordance with the following formula—

4.1 Projects Located Within Perth C.B.D. (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.80
Above	$2.1 m to $4.4m	$2.15
Over	$4.4m	$2.75

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500, 000 to $2.1m	$1.60
Above	$2.1m to $4.4m	$1.80
Over	$4.4m	$2.35

4.2 Projects Located Within West Perth (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1 m	$1.60
Above	$2.1 m to $4.4m	$1.80
Over	$4.4m	$2.35

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.50
Above	$ 2.1 m to $4.4m	$1.70
Over	$4.4m	$1.95

The site allowance on projects which are a combination of new and renovation work shall be governed by the majority of work involved. For example, where the majority of work is new work, then the site allowance appropriate to new work shall be paid for all employees on the project.

4.3 Projects within 50 km radius of Perth G.P.O. but not including the C.B.D. or West Perth (as defined)

Project Contractual Value		Site Allowance
Up to	$1m	NIL
Above	$1m to $2.1m	$1.20
Above	$2.1m to 5.8m	$1.50
Above	$5.8m to $11.6m	$1.75
Above	$11.6m to $23.6m	$1.95
Above	$23.6m to $58.6m	$2.25
Over	$58.6m	$2.45

"C.B.D."—Central Business District shall mean the area bounded by the Swan River South, Swan River East to Nile Street running into Wittenoom Street, Hill Street to Royal Street, Royal Street to Lord Street, Lord Street to Newcastle Street, along Newcastle Street to the Freeway, the Freeway South to the Perth Fremantle railway line, along the Perth-Fremantle railway line to Dyer Street, Dyer Street through to Havelock Street, Havelock Street to Kings Park Road, Kings Park Road to Fraser Avenue, Fraser Avenue projected through to the Swan River.

"West Perth"—shall mean the area contained within the boundaries formed by Thomas Street, Kings Park Road, Havelock Street, Dyer Street and the Perth-Fremantle railway line back to Thomas Street.

Boundary roads: If a road borders between two regions in which site allowances are to be paid as per this agreement, the parties confirm that one side of such a boundary road will be deemed to fall in one region and the other side of the boundary road will be deemed to fall in the other region. For example, the eastern side of Havelock Street will be in the "CBD" and the western side of Havelock Street shall be in "West Perth".

"Project Contractual Value"—shall be deemed to mean the value of all tendered work which falls under the scope of the principal contractor's contract.

5. The site/project allowance and project contractual value detailed in this agreement shall be adjusted on 1 October each year by the total C.P.I. movements for Perth during the preceding four quarters ending 30 June and accordingly, the site allowance amounts shall be adjusted up or down to the nearest five cents.

6. Project contractual values shall be subject to review at any renewal of this agreement, but in any event shall not be adjusted by a percentage less than the total CPI movements for Perth during the preceding four quarters ending 30 June. Such adjustment being to the nearest $10,000.

7. The agreed site allowance once set pursuant to this agreement shall be recorded in a site agreement to which the applicable principal contractor and the Union will be signatories. The level of allowance once nominated at the commencement of the project will continue without change until completion of the project.

8. It is acknowledged that on certain projects a site agreement may be entered into between the principal contactor and the building trades group of unions for that project that may include matters regularly addressed within the industry, such as, but not limited to, the following—

— Disputes Procedures

— Occupational Health and Safety Procedures

— Demarcation Procedures

— First Aid Provisions and On-Site Amenities

and the unions will not unreasonably refuse to continue to discuss such matters if raised by the principal contractor.

9. This agreement does not apply to resource development projects or civil and engineering projects.

10. Where a dispute arises as to the application of the terms of this agreement, if the issue cannot be resolved in discussions between the parties, it is agreed that the matter will be referred to the appropriate industrial tribunal for resolution without recourse to industrial action.

11. It is a term of this agreement that all site allowance agreements entered into prior to this date will be honoured by all parties and will continue to apply for the life of the particular project.

12. Where because of a condition of contract the principal contractor is required not to allow for a site allowance, before final application of this agreement, discussions will be held between the parties with a view to resolving any problems that may arise as a result of this situation.

13. This agreement shall only apply to building contracts entered into on or after 1 October, 1995.

NEW CONCRETE CO INDUSTRIAL AGREEMENT.
No. AG 245 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

Giovanna, Roger and Alessandro Ambrosino trading as New Concrete Co.

No. AG 245 of 1997.

New Concrete Co Industrial Agreement.

COMMISSIONER P E SCOTT.

30 September 1998.

Order.

HAVING heard Mr J Maitland 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 New Concrete Co Industrial Agreement in the terms of the following schedule be registered on the 9th day of September 1998

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

NEW CONCRETE AGREEMENT

Schedule.

1.—TITLE

This Agreement will be known as the New Concrete Co Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship with Awards
9. Enterprise Agreement
10. Wage Increase
11. Payment of Wages
12. Site Allowance
13. Industry Standards
14. Clothing and Footwear
15. Training Allowance, Training Leave, Recognition of Prior Learning
16. Seniority
17. Sick Leave
18. Pyramid Sub-Contracting
19. Fares and Travelling
20. Drug and Alcohol, Safety and Rehabilitation Program
21. No Extra Claims

Appendix A—Wage Rates
Appendix B—Drug and Alcohol, Safety and Rehabilitation Program
Appendix C—Site Allowance

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 Remjade Pty Ltd as trustee for the Ambrosino Business Trust trading as New Concrete Co (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 members 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 55 employees covered by this agreement.

5.—DURATION

This Agreement shall commence from the first pay period on or after the 1st of August 1997 and shall continue in effect until 31 October 1999.

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 Awards 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.—PAYMENT OF WAGES

All new employees shall be paid by EFT into a maximum of two (2) bank accounts of their choice. Employees will be able to choose the Bank/Building Society/Credit Union into which their pay is to be deposited. For employees working in remote areas, cash advances will be organised if banks are not easily accessible. All current employees are to commit to wages being paid weekly EFT no later than six months from the signing of this Agreement. This clause shall operate in conjunction with Clause 34, Payment of Wages of the Award.

12.—SITE ALLOWANCE

This Agreement provides for site allowances as per Appendix C—Site Allowance.

13.—INDUSTRY STANDARDS

1. **Redundancy**

It is a term of this Agreement that the Company will immediately increase its payments to $45 per week per employee into the Western Australian Construction Industry Redundancy Fund and then will increase this to $50 per week per employee on 1 August 1998.

2. **Superannuation**

The Company will immediately increase its payment to $60 per week per employee.

The Company will advise all employees subject to the Agreement of their Right to have payments made to a complying superannuation fund of their choice. The Company is bound by the employee's election. The aforementioned payment will then be made to that fund.

Until each employee nominates the fund of their choice the Company will make payments into the Construction + Building Unions Superannuation Scheme (the "C+BUSS").

In the event that any employee chooses a fund other than the C+BUSS the Company will, within seven days of the employee advising the Company of the fund of their choice, advise the Union in writing of the employee's decision.

In the event that the employee and the Company reach an agreement pursuant to section 49C(2)(d) of the Act to change the complying superannuation fund or scheme the Company will, within seven days of the employee and the Company reaching such an agreement, advise the Union in writing of the agreement. The employer will not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by the employee.

3. **Apprentice Rates**

The Company agrees to maintain a ratio of no more than four tradespeople to one apprentice employed.

14.—CLOTHING AND FOOTWEAR

1. The following items will be supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year)

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

15.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

1. A training allowance of $12.00 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.

16.—SENIORITY

1. The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

2. When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

3. It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6—Dispute Settlement Procedure.

4. An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

17.—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 the 1st of December of each year.

(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.

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.

21.—NO EXTRA CLAIMS

The Union will make no further claims on the Company over conditions set out in this Agreement for the life of the Agreement. However the Union reserves the right to raise the unforseen matters.

Signed for and on behalf of:

The Unions:	**BLPPU**	Signed ***Common Seal*** Date: 16/9/97 Signed **WITNESS**
	CMETU	Signed ***Common Seal*** Date: 16/9/97 Signed **WITNESS**
The Company:		Signed ***Common Seal*** Date: 16/9/97 ROGER AMBROSINO **PRINT NAME** Signed **WITNESS**

APPENDIX A—WAGE RATES

	1 August 1997 Hourly Rate	1 February 1998 Hourly Rate	1 August 1998 Hourly Rate	1 February 1999 Hourly Rate	1 August 1999 Hourly Rate
	$	$	$	$	$
Labourer Group 1	15.56	16.01	16.47	16.92	17.15
Labourer Group 2	15.03	15.47	15.90	16.34	16.56
Labourer Group 3	14.63	15.05	15.48	15.90	16.12
Plasterer, Fixer	16.17	16.64	17.11	17.58	17.82
Painter, Glazier	15.81	16.27	16.73	17.19	17.42
Signwriter	16.15	16.62	17.09	17.56	17.80
Carpenter	16.27	16.75	17.22	17.70	17.93
Bricklayer	16.11	16.58	17.05	17.52	17.75
Refractory Bricklayer	18.50	19.04	19.58	20.12	20.38
Stonemason	16.27	16.75	17.22	17.70	17.93
Rooftiler	15.99	16.45	16.92	17.38	17.62
Marker/Setter Out	16.75	17.24	17.72	18.21	18.46
Special Class T	16.96	17.46	17.95	18.45	18.69

APPRENTICE RATES

	1 August 1997 Hourly Rate	1 February 1998 Hourly Rate	1 August 1998 Hourly Rate	1 February 1999 Hourly Rate	1 August 1999 Hourly Rate
	$	$	$	$	$
Plasterer, Fixer					
Yr 1	6.79	6.99	7.18	7.38	7.48
Yr 2 (1/3)	8.90	9.16	9.42	9.68	9.81
Yr 3 (2/3)	12.13	12.49	12.84	13.19	13.37
Yr 4 (3/3/)	14.23	14.65	15.06	15.48	15.69
Painter, Glazier					
Yr 1 (.5/3/5)	6.64	6.84	7.03	7.22	7.32
Yr 2 (1/3), 1.5/3.5)	8.70	8.95	9.20	9.45	9.58
Yr 3 (2/3), 2.5/3.5)	11.86	12.20	12.55	12.89	13.06
Yr 4 (3/3), 3.5/3.5)	13.92	14.32	14.73	15.13	15.33
Signwriter					
Yr 1 (.5/3/5)	6.79	6.99	7.18	7.38	7.48
Yr 2 (1/3, 1.5/3.5)	8.88	9.14	9.40	9.65	9.78
Yr 3 (2/3, 2.5/3.5)	12.11	12.47	12.82	13.17	13.35
Yr 4 (3/3, 3.5/3.5)	14.21	14.63	15.04	15.46	15.66
Carpenter					
Yr 1	6.84	7.04	7.24	7.44	7.54
Yr 2 (1/3)	8.95	9.21	9.47	9.73	9.86
Yr 3 (2/3)	12.21	12.56	12.92	13.27	13.45
Yr 4 (3/3)	14.32	14.73	15.15	15.57	15.78
Bricklayer					
Yr 1	6.77	6.96	7.16	7.36	7.46
Yr 2 (1/3)	8.86	9.12	9.37	9.63	9.76
Yr 3 (2/3)	12.08	12.43	12.79	13.14	13.31
Yr 4 (3/3)	14.17	14.59	15.00	15.41	15.62
Stonemason					
Yr 1	6.84	7.04	7.24	7.44	7.54
Yr 2 (1/3)	8.95	9.21	9.47	9.73	9.86
Yr 3 (2/3)	12.21	12.56	12.92	13.27	13.45
Yr 4 (3/3)	14.32	14.73	15.15	15.57	15.78
Rooftiler					
6 months	9.12	9.38	9.65	9.91	10.04
2nd 6 months	10.02	10.31	10.61	10.90	11.04
Yr 2	11.71	12.05	12.39	12.73	12.90
Yr 3	13.74	14.14	14.54	14.94	15.14

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.

APPENDIX C—SITE ALLOWANCE

1. This agreement is between the parties to this agreement and shall apply to construction work undertaken by principal contractors who are engaged in the commercial/industrial sector of the building industry in the state of Western Australia within a 50km radius of the Perth General Post Office.

2. This agreement provides for a site allowance to be paid to employees engaged on particular building projects, and for such site allowance to be paid in addition to the wage rates and allowances prescribed by the award as well as any industrial or certified agreements made in conjunction with the award which does not prescribe a site allowance.

3. The site allowance payable under this agreement is to be paid at a flat rate per hour for all hours worked to compensate for all special factors/disabilities on the project and in lieu of all award special rates, with the exception of rates relating to the lifting of heavy blocks, cleaning down brickwork and the use of explosive powered tools which will be payable to an employee when he/she encounters that particular disability.

4. **Site Allowance Formula**

At the commencement of a project the particular site allowance to apply shall be determined in accordance with the following formula—

4.1 Projects Located Within Perth C.B.D. (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.80
Above	$2.1 m to $4.4m	$2.15
Over	$4.4m	$2.75

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500, 000 to $2.1m	$1.60
Above	$2.1 m to $4.4m	$1.80
Over	$4.4m	$2.35

4.2 Projects Located Within West Perth (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.60
Above	$2.1 m to $4.4m	$1.80
Over	$4.4m	$2.35

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.50
Above	$ 2.1 m to $4.4m	$1.70
Over	$4.4m	$1.95

The site allowance on projects which are a combination of new and renovation work shall be governed by the majority of work involved. For example, where the majority of work is new work, then the site allowance appropriate to new work shall be paid for all employees on the project.

4.3 Projects within 50 km radius of Perth G.P.O. but not including the C.B.D. or West Perth (as defined)

Project Contractual Value		Site Allowance
Up to	$1m	NIL
Above	$1m to $2.1m	$1.20
Above	$2.1m to 5.8m	$1.50
Above	$5.8m to $11.6m	$1.75
Above	$11.6m to $23.6m	$1.95
Above	$23.6m to $58.6m	$2.25
Over	$58.6m	$2.45

"C.B.D."—Central Business District shall mean the area bounded by the Swan River South, Swan River East to Nile Street running into Wittenoom Street, Hill Street to Royal Street, Royal Street to Lord Street, Lord Street to Newcastle Street, along Newcastle Street to the Freeway, the Freeway South to the Perth Fremantle railway line, along the Perth-Fremantle railway line to Dyer Street, Dyer Street through to Havelock Street, Havelock Street to Kings Park Road, Kings Park Road to Fraser Avenue, Fraser Avenue projected through to the Swan River.

"West Perth"—shall mean the area contained within the boundaries formed by Thomas Street, Kings Park Road, Havelock Street, Dyer Street and the Perth-Fremantle railway line back to Thomas Street.

Boundary roads: If a road borders between two regions in which site allowances are to be paid as per this agreement, the parties confirm that one side of such a boundary road will be deemed to fall in one region and the other side of the boundary road will be deemed to fall in the other region. For example, the eastern side of Havelock Street will be in the "CBD" and the western side of Havelock Street shall be in "West Perth".

"Project Contractual Value"—shall be deemed to mean the value of all tendered work which falls under the scope of the principal contractor's contract.

5. The site/project allowance and project contractual value detailed in this agreement shall be adjusted on 1 October each year by the total C.P.I. movements for Perth during the preceding four quarters ending 30 June and accordingly, the site allowance amounts shall be adjusted up or down to the nearest five cents.

6. Project contractual values shall be subject to review at any renewal of this agreement, but in any event shall not be adjusted by a percentage less than the total CPI movements for Perth during the preceding four quarters ending 30 June. Such adjustment being to the nearest $10,000.

7. The agreed site allowance once set pursuant to this agreement shall be recorded in a site agreement to which the applicable principal contractor and the Union will be signatories. The level of allowance once nominated at the commencement of the project will continue without change until completion of the project.

8. It is acknowledged that on certain projects a site agreement may be entered into between the principal contactor and the building trades group of unions for that project that may include matters regularly addressed within the industry, such as, but not limited to, the following—

— Disputes Procedures
— Occupational Health and Safety Procedures
— Demarcation Procedures
— First Aid Provisions and On-Site Amenities

and the unions will not unreasonably refuse to continue to discuss such matters if raised by the principal contractor.

9. This agreement does not apply to resource development projects or civil and engineering projects.

10. Where a dispute arises as to the application of the terms of this agreement, if the issue cannot be resolved in discussions between the parties, it is agreed that the matter will be referred to the appropriate industrial tribunal for resolution without recourse to industrial action.

11. It is a term of this agreement that all site allowance agreements entered into prior to this date will be honoured by all parties and will continue to apply for the life of the particular project.

12. Where because of a condition of contract the principal contractor is required not to allow for a site allowance, before final application of this agreement, discussions will be held between the parties with a view to resolving any problems that may arise as a result of this situation.

13. This agreement shall only apply to building contracts entered into on or after 1 October, 1995.

N. K. CEILING WALL AND CEILING INDUSTRIAL AGREEMENT.

No. AG 290 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

N K Ceilings (1992) Pty Ltd.

No. AG 290 of 1997.

N. K. Ceiling Wall and Ceiling Industrial Agreement.

COMMISSIONER P E SCOTT.

30 September 1998.

Order.

HAVING heard Mr J Maitland on behalf of the Applicant and there being no appearance on behalf of the Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the N. K. Ceiling Wall and Ceiling Industrial Agreement in the terms of the following schedule be registered on the 9th day of September 1998.

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

WALL AND CEILING AGREEMENT

Schedule.

1.—TITLE

This Agreement will be known as the N. K Ceiling Wall and Ceiling Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Objectives
7. Dispute Settlement Procedure
8. Single Enterprise
9. Relationship with Awards
10. Enterprise Agreement
11. Trades/Labour Ratios
12. Wage Increase
13. Payment of Wages
14. Site Allowance
15. Tool Allowance
16. Industry Standards
17. Clothing and Footwear
18. Training Allowance, Training Leave, Recognition of Prior Learning
19. Seniority
20. Overtime
21. Company Based Incentive Scheme
22. Sick Leave
23. Pyramid Sub-Contracting
24. Fares and Travelling
25. Drug and Alcohol, Safety and Rehabilitation Program
26. No Extra Claims
27. Consultation

Appendix A—Wage Rates
Appendix B—Drug and Alcohol, Safety and Rehabilitation Program
Appendix C—Site Allowance

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builder's Labourers, Painters, & Plasterers Union of Workers (hereinafter referred to as the "Union") and N K Ceilings (1992) Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award"). There are approximately 24 employees covered by this agreement.

The Agreement has been negotiated in consultation with the Association of Wall and Ceiling Contractors of WA Inc. (the "Association")

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 October 1999.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement. Any party may terminate the Agreement provided three months notice has first been given in writing. In the event of a fundamental breach the period of notice shall be one month. A breach by a limited number of Association members shall not constitute a fundamental breach.

6.—OBJECTIVES

The objectives of this agreement are to—

(a) Increase the efficiency of the Associations member companies by the effective utilisation of the skills and commitment of the employees in the industry.

(b) Improve the living standards, job satisfaction and continuity of employment of the member companies employees.

(c) Develop best practice standards that are internationally recognised based upon a culture of opportunity, continuous learning and improvement through training.

(d) Ensure that increases in efficiency on the job are implemented in such a way as to ensure that health and safety in the industry are maintained.

(e) Provide a mechanism by which disputes can be resolved quickly and in a manner which shall avoid lost time.

7.—DISPUTE SETTLEMENT PROCEDURE

This clause applies to any questions, disputes or difficulties arising out of the operation of this Agreement.

Company Specific Industrial Disputes

(a) In the first instance an employee should submit a request concerning a work related issue to his immediate Team Co-ordinator or Supervisor;

(b) If the matter cannot be resolved at this stage the employee shall raise the matter with the Union delegate, who shall submit the issue to the employees supervisor;

(c) If not settled at this stage, the delegate and the relevant union organiser may submit the matter to the Senior Company Supervisor for consideration;

(d) If not settled at this stage, the matter will be placed in the hands of the Company's Senior Management and State Secretary for the relevant union or his nominee;

(e) If the issue still exists after the abovementioned processes have been carried out, then the matter shall be referred to the Western Australian Industrial Relations Commission for determination. The Western Australian Industrial Relations Commission's decision will be accepted by all parties subject to legal rights of appeal.

(f) Whilst the above procedures are being followed work shall continue as it was prior to the issue occurring. No party shall be prejudiced by the final settlement, as a consequence of continuance of work in accordance with this clause.

2. Safety Dispute Resolution

It is agreed that management and their employees have responsibility to ensure that workplaces are safe and that employees are not exposed to hazards.

In the event of any disagreements on the necessity to carry out any safety measures or modify, reinforce or reinstate any safety device whatsoever, the procedures set out below shall be adopted.

(a) No person shall dismiss a safety complaint. Any complaint should be referred to the Company's Safety Officer or Workers Safety Representative to be dealt with in accordance with the following procedures.

(i) Where any employee becomes aware of an unsafe situation, that employee shall immediately notify the Company's Safety Officer or the Workers Safety Representative.

(ii) The Company's Safety Officer and the Workers Safety Representative shall take immediate action to have the unsafe situation rectified.

(b) Should the Company's Safety Officer consider that no safety precautions are necessary, he shall notify the Workers Safety Representative accordingly as soon as possible.

(c) Where there is disagreement on the ruling of the Company's Safety Officer, the Company's Safety Officer will arrange for the immediate transfer of any employee away from the disputed area.

(d) Should the Company's Safety Officer be of the opinion that no action is necessary and the Workers Safety Representative disagree with that decision, an appropriate Inspector from Worksafe WA shall be requested to undertake an inspection of the disputed area for the purpose of resolving any such matter.

(e) If disagreement still exists the Chief Inspector Construction Branch of Worksafe, or his nominee, shall be called in to assist in the resolution of the dispute.

(f) Whilst the above procedure is being followed, there shall be no stoppage of work in respect of the matter being considered, except in the area alleged to be unsafe.

(g) It is accepted that safety considerations do override normal work practices and depending on the degree of potential risk to persons on the job, or the general public, can over-ride normal demarcation practices.

8.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act 1979, as amended (the "Act").

9.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

10.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

11.—TRADES/LABOUR RATIOS

1. (a) It is recognised that there is an important role for labourers in this industry and it is agreed that they will be utilised in the industry.

(b) No fixed ratios are established by this agreement as the number of labourers will be determined on an as needs basis on the site. Where there is any disputation in relation to this sub-clause the matter shall be processed in accordance with the general principles and procedures specified in Clause 7.

(c) Tradespeople may handle materials and gear within a reasonable vicinity of their work area.

12.—WAGE INCREASE

1. The parties to this agreement are committed to ensuring that the measures contained in this agreement lead to real gains in efficiency.

As a prerequisite to the payment of the following increases to all employees covered by the agreement, the efficiency measures in Sections 1 –12 inclusive hereof shall be satisfied.

2. This agreement provides for increases of the Award hourly rate resulting in the wage rates in the Appendix A—Wage Rates, payable from the date of signing.

3. In addition to the rates prescribed by 12 (2) above, an allowance of $1.00 per hour all purpose shall apply to all projects. This allowance will be in lieu of the Structural Frame Allowance.

4. (a) A further allowance of $1.50 per hour for hours worked, shall be paid to employees required to handle or install tiled containing mineral fibres. It shall be a requirement of this agreement that the employees in receipt of this allowance wear the appropriate personal protective equipment and have been trained in the proper fitting, use and maintenance of that equipment.

(b) All of the Provisions of 4(a) above will be reviewed prior to the expiry of this agreement and such review shall include complete re-appraisal of the need to wear personal protective equipment. No allowance is payable if personal equipment is not required.

13.—PAYMENT OF WAGES

All new employees shall be paid by EFT into a maximum of two (2) bank accounts of their choice. Employees will be able to choose the Bank/Building Society/Credit Union into which their pay is to be deposited. For employees working in remote areas, cash advances will be organised if banks are not easily accessible. All current employees are to commit to wages being paid weekly EFT no later than six months from the signing of this Agreement. This clause shall operate in conjunction with Clause 34, Payment of Wages on the Award.

14.—SITE ALLOWANCE

This Agreement provides for site allowances as per Appendix C—Site Allowance.

15.—TOOL ALLOWANCE

In addition to the award tool allowance payment, an additional payment of 75 cents per hour worked will be made to all employees who provide their own tools. This amount is to be adjusted in line with annual CPI movements.

Alternatively, employees may purchase the relevant tools at cost price from the employer and have the cost repaid by the employee at 75 cents per hour for each hour worked until the full amount is re-imbursed.

Further, the employer may pay the cost of the relevant tools and the employee is to repay that amount at 75 cents per hours for each hour worked until the full amount is re-imbursed.

The cost of tagging all tools, and the cost of storage and security of tools used is to remain the responsibility of the employer in line with Clause 33 of the Award. In addition, the Company shall re-imburse the full cost of tools lost or stolen up to a maximum of $3,500.

The tools to be provided include—

Fixing Tools
1 Bevel Square
1 Bolt cutters
1 calculator
1 caulking gun
1 chalkline
1 cold chisel
1 electric drill (12mm)
2 electric extension leads
1 electric screw gun
1 flat bastard file
1 hacksaw
1 hammer
1 hammer drill (12mm Ramset Bit)
1 hand saw
1 hole saw set
1 key hole saw
1 ladder (1.8m)
1 mechanical hacksaw
1 nail bag
1 nail punch
1 pair pliers
1 pair scissors (large)
1 pair tin snips
4 pairs "C" clamps
4 pairs multigrips
6 pairs spring clips
1 paper pad
1 pencil
1 plumb bob
1 pop riveter
1 power box (4 points)
1 rod bender
1 screw driver (flat head)
1 screw driver (Phillips Head)
1 set square
1 smooth file
2 spanners
1 spirit level (1.2m)
1 Stabley knife
1 string line
1 stud crimper
1 surform
1 tape (20m)
1 tape (7m)
1 water level (20m)

Flushing Tools
1 broad knife (50mm)
1 broad knife (100mm)
1 broad knife (150mm)
3 buckets
1 caulking gun
1 curved trowel (200mm)
1 curved trowel (275mm)
1 electric drill
1 electric extension lead
1 flat trowel (280mm)
1 hacksaw
1 hammer
1 hand saw
1 internal tool—large
1 internal tool—small
1 ladder (1.8m)
1 metre box
1 mixer bit
1 nail bag
1 nail punch
1 paint brush (75mm)
1 pair tin snips
1 power box
1 sanding block
1 screw driver (flat head)
1 screw driver (Phillips Head)
1 screw gun
1 small tool
1 spirit level (1.2m)
1 sponge
1 Stanley knife
1 staple gun
1 surform
1 tape (7m)

16.—INDUSTRY STANDARDS

1. **Redundancy**

It is a term of this Agreement that the Company will immediately increase its payments to $45 per week per employee into the Western Australian Construction Industry Redundancy Fund and then will increase this to $50 per week per employee on 1 August 1998.

2. **Superannuation**

The Company will immediately increase its payment to $60 per week per employee.

The Company will advise all employees subject to the Agreement of their Right to have payments made to a complying superannuation fund of their choice. The Company is bound by the employee's election. The aforementioned payment will then be made to that fund.

Until each employee nominates the fund of their choice the Company will make payments into the Construction + Building Unions Superannuation Scheme (the "C+BUSS").

In the event that any employee chooses a fund other than the C+BUSS the Company will, within seven days of the employee advising the Company of the fund of their choice, advise the Union in writing of the employee's decision.

In the event that the employee and the Company reach an agreement pursuant to section 49C(2)(d) of the Act to change the complying superannuation fund or scheme the Company will, within seven days of the employee and the Company reaching such an agreement, advise the Union in writing of the agreement. The employer will not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by the employee.

3. **Apprentice Rates**

The Company agrees to maintain a ratio of no more than six tradespeople to one apprentice employed, unless otherwise agreed between the parties to the agreement in relation to a specific site.

17.—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.

18.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

1. The parties recognise the need to adopt a "total trade" concept for training and skills acquisition to meet the current and future requirements of the industry and where appropriate to provide a career path for employees in the wall and ceiling industry.

To this end the parties reaffirm their commitment to training and agree that training and retraining of both the workforce and supervision will occur on an ongoing basis.

Mature adult employees may be trained, initially as labourers and then in the skills of a tradesman through a structured improver system which will be recognised by the industry.

2. A training allowance of $12.00 per week per worker shall be paid by the employer to the Union Education and Training Fund. These payments will have a commencement date of 1 February 1998.

3. Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each 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.

4. 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.

5. It is agreed that safety training will be an important component in the structured training program.

6. The parties agree to participate in a Training Advisory Committee that shall consist of 3 representatives from the Association and 3 representatives from the Construction Skills Training Centre. The role of the Committee will be to advise the parties as to training priorities for the industry and the appropriateness of particular courses for the industry.

19.—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 7—Dispute Settlement Procedure.

4. An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

20.—OVERTIME

The allocation of overtime shall be at the employers prerogative provided that the employer shall not be adversely or unreasonably discriminate against any employees. The practice of one in all in shall be eliminated. An overtime roster may be introduced by the employer in conjunction with the employees.

21.—COMPANY BASED INCENTIVE SCHEME

Individual companies may negotiate company specific incentive schemes which will form an appendix to this agreement. These incentive schemes must ensure that the award provides the base safety net and that all workers in the site have the opportunity to share in the proposed scheme.

Once negotiated bonus based incentive schemes will be submitted to the Union prior to its implementation for confirmation that the relevant requirements have been satisfied.

22.—SICK LEAVE

For sick leave accrued after the date of signing of this agreement the following will apply—

(a) The Company's employees shall have the option of converting up to 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.

23.—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.

24.—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.

25.—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.

26.—NO EXTRA CLAIMS

The Union will make no further claims on the Company over conditions set out in this Agreement for the life of the Agreement. However the Union reserves the right to raise the unforseen matters. The Company agrees to insure the employees for sickness and accident cover. The terms of the policy will be agreed to between the Company and the Union.

27.—CONSULTATION

In relation to general industry matters not otherwise provided for in this Agreement the Union recognises the role of the Association and shall consult with the Association on matter of industry wide significance.

Signed for and on behalf of—

The Union:	Signed	***Common Seal*** **BLPPU**
	Date: 21/10/97	
The Company:	***Common Seal***	N.K. Ceiling 1992 Pty Ltd
	Date: 09/10/97	
	Signed	
	(Print Name)	

Dated this 09 day of October 1997.

APPENDIX A—WAGE RATES

	Date of Signing Hourly Rate $	1 February 1998 Hourly Rate $	1 August 1998 Hourly Rate $	1 February 1999 Hourly Rate $	1 October 1999 Hourly Rate $
Plasterer, Fixer	16.17	16.64	17.11	17.58	17.82
1st Year Apprentice	6.79	6.99	7.18	7.38	7.48
2nd Year Apprentice	8.90	9.16	9.42	9.68	9.81
3rd Year Apprentice	12.13	12.49	12.84	13.19	13.37
4th Year Apprentice	14.23	14.65	15.06	15.48	15.69

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.

APPENDIX C—SITE ALLOWANCE

1. This agreement is between the parties to this agreement and shall apply to construction work undertaken by principal contractors who are engaged in the commercial/industrial sector of the building industry in the state of Western Australia within a 50km radius of the Perth General Post Office.

2. This agreement provides for a site allowance to be paid to employees engaged on particular building projects, and for such site allowance to be paid in addition to the wage rates and allowances prescribed by the award as well as any industrial or certified agreements made in conjunction with the award which does not prescribe a site allowance.

3. The site allowance payable under this agreement is to be paid at a flat rate per hour for all hours worked to compensate for all special factors/disabilities on the project and in lieu of all award special rates, with the exception of rates relating to the lifting of heavy blocks, cleaning down brickwork and the use of explosive powered tools which will be payable to an employee when he/she encounters that particular disability.

4. **Site Allowance Formula**

At the commencement of a project the particular site allowance to apply shall be determined in accordance with the following formula—

4.1 **Projects Located Within Perth C.B.D. (as defined)**

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.80
Above	$2.1m to $4.4m	$2.15
Over	$4.4m	$2.75

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1 m	$1.60
Above	$2.1 m to $4.4m	$1.80
Over	$4.4m	$2.35

4.2 Projects Located Within West Perth (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.60
Above	$2.1m to $4.4m	$1.80
Over	$4.4m	$2.35

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1 m	$1.50
Above	$ 2.1 m to $4.4m	$1.70
Over	$4.4m	$1.95

The site allowance on projects which are a combination of new and renovation work shall be governed by the majority of work involved. For example, where the majority of work is new work, then the site allowance appropriate to new work shall be paid for all employees on the project.

4.3 **Projects within 50 km radius of Perth G.P.O. but not including the C.B.D. or West Perth (as defined)**

Project Contractual Value		Site Allowance
Up to	$1m	NIL
Above	$1m to $2.1m	$1.20
Above	$2.1m to 5.8m	$1.50
Above	$5.8m to $11.6m	$1.75
Above	$11.6m to $23.6m	$1.95
Above	$23.6m to $58.6m	$2.25
Over	$58.6m	$2.45

"C.B.D."—Central Business District shall mean the area bounded by the Swan River South, Swan River East to Nile Street running into Wittenoom Street, Hill Street to Royal Street, Royal Street to Lord Street, Lord Street to Newcastle Street, along Newcastle Street to the Freeway, the Freeway South to the Perth-Fremantle railway line, along the Perth-Fremantle railway line to Dyer Street, Dyer Street through to Havelock Street, Havelock Street to Kings Park Road, Kings Park Road to Fraser Avenue, Fraser Avenue projected through to the Swan River.

"West Perth"—shall mean the area contained within the boundaries formed by Thomas Street, Kings Park Road, Havelock Street, Dyer Street and the Perth-Fremantle railway line back to Thomas Street.

Boundary roads: If a road borders between two regions in which site allowances are to be paid as per this agreement, the parties confirm that one side of such a boundary road will be deemed to fall in one region and the other side of the boundary road will be deemed to fall in the other region. For example, the eastern side of Havelock Street will be in the "CBD" and the western side of Havelock Street shall be in "West Perth".

"Project Contractual Value"—shall be deemed to mean the value of all tendered work which falls under the scope of the principal contractor's contract.

5. The site/project allowance and project contractual value detailed in this agreement shall be adjusted on 1 October each year by the total C.P.I. movements for Perth during the preceding four quarters ending 30 June and accordingly, the site allowance amounts shall be adjusted up or down to the nearest five cents.

6. Project contractual values shall be subject to review at any renewal of this agreement, but in any event shall not be adjusted by a percentage less than the total CPI movements for Perth during the preceding four quarters ending 30 June. Such adjustment being to the nearest $10,000.

7. The agreed site allowance once set pursuant to this agreement shall be recorded in a site agreement to which the applicable principal contractor and the Union will be signatories. The level of allowance once Eliminated at the commencement of the project will continue without change until completion of the project.

8. It is acknowledged that on certain projects a site agreement may be entered into between the principal contactor and the building trades group of unions for that project that may include matters regularly addressed within the industry, such as, but not limited to, the following—

— Disputes Procedures
— Occupational Health and Safety Procedures
— Demarcation Procedures
— First Aid Provisions and On-Site Amenities

and the unions will not unreasonably refuse to continue to discuss such matters if raised by the principal contractor.

9. This agreement does not apply to resource development projects or civil and engineering projects.

10. Where a dispute arises as to the application of the terms of this agreement, if the issue cannot be resolved in discussions between the parties, it is agreed that the matter will be referred to the appropriate industrial tribunal for resolution without recourse to industrial action.

11. It is a term of this agreement that all site allowance agreements entered into prior to this date will be honoured by all parties and will continue to apply for the life of the particular project.

12. Where because of a condition of contract the principal contractor is required not to allow for a site allowance, before final application of this agreement, discussions will be held between the parties with a view to resolving any problems that may arise as a result of this situation.

13. This agreement shall only apply to building contracts entered into on or after 1 October, 1995.

PAINTERS' REGISTRATION BOARD ENTERPRISE AGREEMENT 1998.

No. PSA AG 92 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Incorporated

and

Painters' Registration Board.

No. PSA AG 92 of 1998.

Painters' Registration Board Enterprise Agreement—1998.

4 September 1998.

Order.

HAVING heard Ms J van den Herik on behalf of the applicant and Mr V Websdane on behalf of the respondent now therefore, I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order —

1. THAT the agreement to be known as the "Painters' Registration Board Enterprise Agreement—1998" reflected in the schedule to this order shall be and is registered with effect on the 4th day of August 1998.
2. THAT the Painters' Registration Board Enterprise Agreement—1998 shall replace the Painters' Registration Board Enterprise Agreement—1996, PSA AG 146 of 1996 with effect on the 4th day of August 1998.

[L.S.]

(Sgd.) S. A. CAWLEY,
Commissioner,
Public Service Arbitrator.

SCHEDULE.

1.—TITLE

This Enterprise Agreement shall be known as the "Painters' Registration Board Enterprise Agreement—1998" and replaces the Painters' Registration Board Enterprise Agreement—1996, PSA AG 146 of 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope of the Agreement
3A. Number of Employees Covered
4. Parties to the Agreement
5. Definitions
6. Term of the Agreement
7. No Further Claims
8. Relationship to Parent Award
9. Single Bargaining Unit
10. Shared Mission and Objectives
11. Continuous Improvement
12. Enterprise Bargaining Payments
13. Productivity Initiatives and Measurement Model
14. Hours
15. Sick Leave
16. Family Carers Leave
17. Annual Leave Loading
18. Short Leave
19. Parental Leave
20. Dispute Resolution Procedure
Schedule A—Salaries

3.—SCOPE OF THE AGREEMENT

The Painters' Registration Board Enterprise Agreement—1998 shall apply to all employees of the Painters' Registration Board who are members of or eligible to be members of the Civil Service Association of Western Australia Incorporated.

3A.—NUMBER OF EMPLOYEES COVERED

As at I June, 1998 the total number of employees subject to this Agreement was two.

4.—PARTIES TO THE AGREEMENT

This Agreement shall be binding upon the Painters' Registration Board and the Civil Service Association of Western Australia Incorporated.

5.—DEFINITIONS

(1) "Agreement" means the Painters' Registration Board Enterprise Agreement—1998.

(2) "Award" means the Government Officers Salaries, Allowances and Conditions Award 1989.

(3) "PRB" means the Painters' Registration Board.

(4) "Union" means the Civil Service Association of Western Australia Incorporated.

(5) "WAIRC" means the Western Australian Industrial Relations Commission.

6.—TERM OF THE AGREEMENT

(1) This agreement shall operate from the beginning of the first pay period commencing on or after 4 August 1998 and shall remain in operation for a period of two (2) years from that date.

(2) The parties agree to commence negotiations for a new agreement six months prior to the expiration of this agreement.

(3) The parties will assess achievements in performance, productivity and efficiency against the targets detailed in the model presented in Clause 13.—Productivity Initiatives and Measurement Model during the term of this agreement.

(4) The pay quantum achieved as a result of the Agreement will remain and form the new base pay rates for future Agreements or continue to apply in the absence of a further Agreement subject to the continuation of the conditions of this Agreement.

7.—NO FURTHER CLAIMS

(1) The parties to this agreement undertake that for the duration of the agreement there shall be no further salary or wage increases sought or granted except for those provided under the terms of the Agreement.

(2) The parties recognise that it 's important to encourage further productivity improvements beyond those currently identified in the Agreement and agree that where such improvements are identified and implemented they will be negotiated as part of the next enterprise agreement. Where achievements in excess of the expectations stipulated by the agreement are achieved, the excess will be recognised in the next enterprise agreement.

(3) This Agreement shall not operate so as to cause an employee to suffer a reduction in ordinary time earnings.

8.—RELATIONSHIP TO PARENT AWARD

(1) Except as provided by this Agreement the conditions of employment and rates of salary payable to employees are those provided by the Government Officers Salaries, Allowances and Conditions Award 1989.

(2) In the case of any inconsistencies, this Agreement shall have precedence to the extent of the inconsistencies.

(3) Where the Agreement is silent the Award shall apply.

9.—SINGLE BARGAINING UNIT

This Agreement has been negotiated through a Single Bargaining Unit comprising management and employees of the PRB and Union Representatives.

10.—SHARED MISSION AND OBJECTIVES

(1) The mission of the Painters' Registration Board is to raise the status of registration of painters and the quality of service provided and to provide a cost efficient, impartial forum for the resolution of painting disputes.

(2) The parties to this agreement are committed to achieving the mission in subclause (1) of this clause. To achieve this and provide a continuously improving quality of service to all stake holders, the parties are committed to the organisational objectives as detailed in the corporate plan along with the following supporting objectives—

(a) To build on the clear commitment and talents of our employees by developing a work environment which values and rewards initiative, effort and excellence.

(b) To develop and pursue changes on a co-operative and continuing basis through the implementation of a continuous improvement program.

(c) To pursue best management practices through the implementation of a corporate management structure.

(d) To encourage greater flexibility in decision making and the allocation of human and other resources.

(e) To improve organisational performance through the targeted and programmed training and development of staff.

11.—CONTINUOUS IMPROVEMENT

The Painters' Registration Board is committed to continually improving productivity and overall performance. Enterprise bargaining and the implementation of a continuous improvement program assists by—

(1) Achieving pay increases for staff based on improvements in efficiency, service provision, quality and general productivity.

(2) Facilitating an improvement program which encourages all employees and management to identify and deal with real productivity barriers in a clear and participative manner.

(3) Achieving continuous improvement of all processes to achieve improved quality, work Organisation, customer service, delivery, timeliness, safety and training.

(4) Providing a forum and process in which staff are encouraged to contribute ideas and initiatives for productivity improvements and which will assist in their implementation.

(5) Making use of, and improving existing consultative processes.

12.—ENTERPRISE BARGAINING PAYMENTS

(1) Four general salary adjustments shall apply—

(a) an increase of 2% payable from the first pay period commencing on or after the date of registration, as detailed in Schedule A—Salaries, of this Agreement;

(b) an increase of 1% payable from the calendar date six months after the effective date of the first salary adjustment as provided for in paragraph (a) of this subclause, and as detailed in Schedule A—Salaries, of this Agreement, subject to the parties agreeing on the actual achievement of targets identified in the productivity model and Government approval;

(c) an increase of 2% payable from the calendar date 12 months after the effective date of the first salary adjustment as provided for in paragraph (a) of this subclause, and as detailed in Schedule A—Salaries, of this Agreement, subject to the parties agreeing on the actual achievement targets identified in the productivity model and Government approval;

(d) an increase of 2% payable from the calendar date 18 months after the effective date of the first salary adjustment as provided for in paragraph (a) of this subclause, and as detailed in Schedule A—Salaries, of this Agreement, subject to the parties agreeing on the actual achievement of targets identified in the productivity model and Government approval;

(2) The Single Bargaining Unit will appoint a representative committee to monitor progress toward the achievement of targets.

(3) Where targets are not met due to unforseen circumstances, the Single Bargaining Unit may substitute targets of equivalent productivity benefit with the agreement of the parties hereto.

(4) The parties agree to the targets established in the productivity model at Clause 13.—Productivity Initiatives and Measurement Model which will allow the organisations to meet those targets.

13.—PRODUCTIVITY INITIATIVES AND MEASUREMENT MODEL

(1) The parties agree that the assessment and monitoring of productivity improvements is important because it provides critical feedback on the performance of the Organisation to management, workforce and stakeholders.

(2) It is agreed that management and employees' understanding of productivity measurement concepts is vital for performance monitoring arrangements to be successful on an ongoing basis.

(3) Consistent with the above it is agreed that a performance improvement monitoring program be jointly developed between management, employees and the union.

(4) The parties agree to implement the following initiatives, aimed at improving the productivity of the Organisation, and to the measurement of the effectiveness and of these initiatives through the model produced below. The parties further agree to the payment of salary increases detailed at Clause 12.—Enterprise Bargaining Payments subject to the parties agreeing on the actual achievement of targets established within the model.

(5) Productivity Initiatives

The following productivity initiatives will be implemented within the life of the Agreement. Those listed in Stream A are directly related to the achievement of targets set in the productivity model which in turn relate directly to the achievement of the organisations' stated Objectives. Those initiatives listed in Stream B are related to improved service provision generally and are indicative of a range of initiatives to be investigated and implemented by the parties.

(a) Stream A

(i) Review and streamline administrative processes related to complaint receipt and handling.

(ii) Review inspection and assessment procedures and establish performance standards for inspectors.

(iii) Introduce multi-skilling of registration staff (including training initiatives as necessary) in conjunction with the Builders' Registration Board and review staffing levels and profiles.

(iv) Introduce tracking and records management systems for files, complaints and prosecutions, in conjunction with the Builders' Registration Board.

(v) Investigate, develop and where appropriate, implement an efficient system for Business Names searches.

(vi) Investigate, develop and where appropriate, implement a computerised Quality Assurance Management System, in conjunction with the Builders' Registration Board.

(b) Stream B

(i) Upgrade computer systems and ensure that all are 2000 compliant.

(ii) Development of an appropriate web site, providing a range of information on the organisations, legislation, procedures and Registers.

(iii) Provision of laminated certificates within existing fee structure (no additional cost to customer).

(iv) Extension of general enquiries service from 8am to 1pm daily to 8am to 3pm, daily and general office hours from 8am to 5pm.

(6) Productivity Model

Performance Indicator	Base Measure	Target 6 Months (% value)	Target 12 Months (% value)	Target 18 Months (% value)
Average cost of workmanship complaint from receipt to internal resolution.	$255.84		13% reduction (.5%)	13% reduction (.5%)
Average cost of processing registrations including Board deliberation time.	$254.00	2% reduction (1%)	3% reduction (.5%)	3% reduction (.5%)

14.—HOURS

Notwithstanding Clause 16.—Hours of the Government Officers Salaries, Allowances and Conditions Award 1989, employees will be required to work—

(1) seventy six (76) hours instead of seventy five (75) hours per fortnight;

(2) one hundred and fifty two (152) hours instead of one hundred and fifty (150) per four (4) week period;

(3) seven (7) hours thirty six (36) minutes instead of seven (7) hours thirty (30) minutes per day;

(4) thirty eight (38) hours instead of thirty seven (37) hours thirty (30) minutes per week.

15.—SICK LEAVE

This clause replaces subclauses (2), (4) and (10) of Clause 22.—Sick Leave of the Government Officers Salaries Allowances and Conditions Award 1989 and the following provisions shall apply—

(1) In the case of personal illness, injury or where there is a need for an employee to visit a health professional, including a dentist, physiotherapist or chiropractor, the PRB shall grant that employee leave of absence in accordance With the provisions contained in this clause.

(2) On the date of appointment an employee shall be credited with 76 hours leave on full pay for the purposes of sick leave. On the completion of 12 months continuous service and on completion of each successive period of twelve months continuous service, the employee will be credited with a further 76 hours paid leave. All leave credits shall be cumulative.

(3) In the event of serious illness or exceptional circumstances, the Board retains the discretion to approve paid sick leave beyond the abovementioned entitlements following production of a certificate from a registered medical practitioner.

16.—FAMILY CARERS LEAVE

Employees covered by this Agreement may use sick leave to a maximum of 38 hours per annum in accordance with this clause to provide care for another person subject to—

(1) The employee being responsible for the care of the person concerned.

(2) The person concerned being either a member of the employee's immediate family or a member of the employee's household.

(3) The term "immediate family" includes a partner (including a spouse or defacto spouse), child or adult child (including an adopted child, foster child, step child or ex nuptial child), parent, grandparent, grandchild or sibling of the employee or partner of the employee.

(4) Where any application for leave pursuant to this clause exceeds two consecutive days the employee shall provide to the Board satisfactory evidence of the need for care of the other person.

(5) The employee shall, where practicable, give the employer prior notice of the intention to take leave, details of their relationship to the person requiring care, the reasons for taking such leave and the estimated length of absence. In any event the particulars required by the prior notice must be provided to the PRB as soon as practicable, in default of which there win be no entitlement to paid leave under this clause.

17.—ANNUAL LEAVE LOADING

Notwithstanding the provisions of Clause 19.—Annual Leave of the Government Officers Salaries, Allowances and Conditions Award 1989 the following provision shall apply to all employees—

Annual leave loading will no longer be paid at the time of taking such annual leave but shall instead form a part of the fortnightly salary.

18.—SHORT LEAVE

The provisions of Clause 26.—Short Leave of the Government Offices Salaries Allowances and Conditions Award 1989 shall no longer apply pursuant to the Agreement provided that the provisions for Bereavement Leave within the Minimum Conditions of Employment Act shall continue to apply.

Provided that in exceptional circumstances the PRB may approve paid leave for an employee to deal with an emergency situation.

19.—PARENTAL LEAVE

(1) Definitions

"Replacement employee" is an employee specifically engaged to replace the employee proceeding on parental/adoption leave.

(2) Eligibility for Parental/Adoption Leave

(a) The employee is entitled to a period of up to fifty-two (52) weeks unpaid parental leave in respect of the birth of a child to the employee or the employee's spouse/partner.

(b) Where the employee applying for the leave is the partner of a pregnant spouse one (1) week unpaid leave may be taken at the birth of the child.

(c) Where the employee is adopting a child under the age of five (5) years, he/she shall be entitled to three (3) weeks unpaid adoption leave at the placement of the child and a further period of adoption leave up to a maximum of fifty-two (52) weeks.

(d) Where the employee is seeking to adopt a child, he/she shall be entitled to two (2) days unpaid leave for the employee to attend interviews or examination required for the adoption procedure.

(e) Where both partners are employed by the PRB the leave shall not be taken concurrently except for—

(i) One (1) week unpaid leave at the birth of the child as specified in paragraph (b) of this subclause, or

(ii) under special circumstances and with the approval of the Registrar.

(3) Other Leave Entitlements

(a) The employee when proceeding on parental/adoption leave, may elect to utilise any accrued annual leave or accrued long service leave for the whole or part of the period of parental/adoption leave or extend the period of parental/adoption leave with such leave, subject to the Registrar's approval.

(b) The period of the parental/adoption leave can be extended with the leave detailed in paragraph (a) of this subclause with the approval of the Registrar.

(c) The employee when on parental/adoption leave is not entitled to paid sick leave.

(d) Where the pregnancy of the employee terminates other than by the birth of a living child, then the employee shall be entitled to such paid sick leave or unpaid leave for a period certified as necessary by a registered medical practitioner.

(e) Where the employee is pregnant and not on parental leave suffers illness related to the employee's pregnancy or is required to undergo a pregnancy related procedure the employee may take any paid sick leave to which the employee is entitled or such further unpaid leave for a period certified as necessary by a registered medical practitioner.

(4) Notice and Variation

(a) The employee shall, where practicable, give the Registrar ten (10) weeks prior notice of the date the employee proposes to commence parental leave stating the period of leave to be taken.

(b) The employee when proceeding on parental leave, may elect to take a shorter period of parental leave and may at any time during that period of leave elect to reduce or extend the period stated in the original application provided four (4) weeks written notice is provided.

(5) Transfer to Safe Job

(a) Where illness or risks arising out of pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue her present duties, the duties shall be modified or the employee may be transferred to a safe position at the same classification until the commencement of maternity leave.

(b) If the transfer to a safe position is not practicable, the employee may take leave in accordance with the award for such period as is certified necessary by a registered medical practitioner.

(6) Return to Work

(a) The employee shall confirm the intention to return to work by notice in writing to the Registrar not less than four (4) weeks prior to the expiration of the period of parental/adoption leave.

(b) The employee on return from parental/adoption leave shall be entitled to the position which the employee occupied immediately prior to proceeding on parental/adoption leave. Where the employee was transferred to a safe job pursuant to subclause (5) of this clause, the employee is entitled to return to the position occupied immediately prior to the transfer.

(c) The employee may chose to return to work on a part—time basis to the same position at the same classification level in accordance with the Part Time provisions of the Government Officers Salaries, Allowances and Conditions Award.

(d) Where the position occupied by the employee no longer exists, the employee shall be entitled to a position of the same classification level with duties similar, where possible, to that of the abolished position.

(7) Effect of Leave on Employment Contract

(a) Fixed Term Contract

An employee employed on a fixed term contract shall not have the entitlement to parental/adoption leave extend beyond the term of this Agreement.

(b) Continuous Service

Absence on parental/adoption leave shall not break the continuity of service of the employee but shall not be taken into account in calculating the period of service for any purpose this Agreement.

(c) Termination of Employment

The employee whilst on parental/adoption leave may terminate employment at any time during the period of leave by written notice in accordance with the provisions of this Agreement.

20.—DISPUTE RESOLUTION PROCEDURE

(1) In the event of any questions, disputes or difficulties arising between an employee, group of employees or the Union and management concerning any interpretation or the implementation of this agreement, the following procedure shall apply—

(a) The Union representative and/or the employees concerned shall discuss the matters with the immediate supervisor or employer's representative, as appropriate

(b) If the matter is not resolved within five (5) working days following the discussions in accordance with subclause (1) above the matter shall be referred to the Chief Executive Officer, or his nominee, for resolution.

(c) The parties to the dispute may individually or collectively seek advice and assistance from any appropriate organisation or person in an attempt to resolve the matter.

(d) If the matter is not resolved within ten (10) working days following notification pursuant to subclause (2) it may be referred by either party to the WAIRC for resolution.

(2) In implementing the above procedure the following principles shall be applied—

(a) decisions made are unbiased and are seen to be unbiased;

(b) all parties to the dispute have the opportunity to put their cases fully;

(c) appropriate confidentiality is to be maintained;

(d) employees will not be subject to any discrimination as a result;

(e) of using the dispute resolution procedure.

SCHEDULE A—SALARIES

LEVELS	ANNUAL SALARY PRE-AGREEMENT	2% +2% FROM DATE OF REGISTRATION	1% +1% 6 MONTHS AFTER REGISTRATION	2% +2% 12 MONTHS AFTER REGISTRATION	2% +2% 18 MONTHS AFTER REGISTRATION
Level 1/U 17	13,636.62	13,909.35	14,048.45	14,329.41	14,616.00
Level 1/17 yrs	15,706.91	16,021.05	16,181.26	16,504.88	16,834.98
Level 1/18 yrs	18,094.39	18,456.28	18,640.84	19,013.66	19,393.93
Level 1/19 yrs	20,730.22	21,144.82	21,356.27	21,783.40	22,219.07
Level 1/20 yrs	23,112.66	23,574.30	23,810.04	24,286.25	24,771.97
Level 1.1	25,254.58	25,759.67	26,017.27	26,537.61	27,068.37
Level 1.2	25,990.58	26,510.39	26,775.50	27,311.01	27,857.23
Level 1.3	26,725.45	27,259.96	27,532.56	28,083.21	28,644.87
Level 1.4	27,455.81	28,004.93	28,284.98	28,850.67	29,427.69
Level 1.5	28,190.68	28,754.49	29,042.04	29,622.88	30,215.34
Level 1.6	28,925.55	29,504.06	29,799.10	30,395.08	31,002.99
Level 1.7	29,771.05	30,366.47	30,670.14	31,283.54	31,909.21
Level 1.8	30,355.78	30,962.90	31,272.52	31,897.98	32,535.93
Level 1.9	31,220.47	31,844.88	32,163.33	32,806.59	33,462.73
Level 2.1	32,255.61	32,900.72	33,229.73	33,894.32	34,572.21
Level 2.2	33,049.18	33,710-16	34,047.27	34,728.21	35,422.77
Level 2.3	33,883.39	34,561.06	34,906.67	35,604.80	36,316.90
Level 2.4	34,765.01	35,460.31	35,814.91	36,531.21	37,261.84
Level 2.5	35,687.27	36,401.02	36,765.03	37,500.33	38,250.33
Level 3.1	36,954.95	37,694.05	38,070.99	38,832.41	39,609.06
Level 3.2	37,942.68	38,701.53	39,088.55	39,870.32	40,667.73
Level 3.3	38,960.89	39,740-11	40,137.51	40,940.26	41,759.06
Level 3.4	40,006.19	40,806.31	41,214.38	42,038.66	42,879.44
Level 4.1	41,439.80	42,268.60	42,691.28	43,545.11	44,416.01
Level 4.2	42,562.99	43,414.25	43,848.39	44,725.36	45,619.87
Level 4.3	43,718.92	44,593.30	45,039.23	45,940.02	46,858.82
Level 5.1	45,944.98	46,863.88	47,332.52	48,279.17	49,244.75
Level 5.2	47,449.72	48,398.71	48,882.70	49,860.36	50,857.56
Level 5.3	49,013.15	49,993.41	50,493.35	51,503.21	52,533.28
Level 5.4	50,635.29	51,648.00	52,164.48	53,207.77	54,271.92
Level 6.1	53,244.02	54,308.90	54,851.99	55,949.03	57,068.01
Level 6.2	55,017.42	56,117.77	56,678.95	57,812.53	58,968.78
Level 6.3	56,852.90	57,989.96	58,569.86	59,741.25	60,936.08
Level 6.4	58,812.56	59,988.81	60,588.70	61,800.47	63,036.48
Level 7.1	61,817.51	63,053.86	63,684.40	64,958.09	66,257.25
Level 7.2	63,896.83	65,174.77	65,826.51	67,143.04	68,485.91
Level 7.3	66,159.01	67,482.19	68,157.01	69,520.15	70,910.56
Level 8.1	69,835.62	71,232.33	71,944.66	73,383.55	74,851.22
Level 8.2	72,469.19	73,918.57	74,657.76	76,150.91	77,673.93
Level 8.3	75,734.91	77,249.61	78,022.10	79,582.55	81,174.20

SCHEDULE A—SALARIES—*continued*

LEVELS	ANNUAL SALARY PRE-AGREEMENT	2% +2% FROM DATE OF REGISTRATION	1% +1% 6 MONTHS AFTER REGISTRATION	2% +2% 12 MONTHS AFTER REGISTRATION	2% +2% 18 MONTHS AFTER REGISTRATION
Level 9.1	79,813.39	81,409.66	82,223.75	83,868.23	85,545.59
Level 9.2	82,568.87	84,220.25	85,062.45	86,763.70	88,498.97
Level 9.3	85,711.55	87,425.78	88,300.04	90,066.04	91,867.36

PRESBYTERIAN LADIES' COLLEGE (ENTERPRISE BARGAINING) AGREEMENT 1998.

No. AG 127 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

and

Presbyterian Ladies' College.

No. AG 127 of 1998.

Presbyterian Ladies' College (Enterprise Bargaining) Agreement 1998.

COMMISSIONER P E SCOTT.

9 September 1998.

Order.

HAVING heard Ms T I Howe on behalf of the Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers and there being no appearance on behalf of Presbyterian Ladies' College, and by consent, 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 1998 in the terms of the following schedule be registered on the 20th day of August 1998.

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

Schedule.

1.—TITLE

This Agreement shall be known as the Presbyterian Ladies' College (Enterprise Bargaining) Agreement 1998 and shall replace the Presbyterian Ladies' College (Enterprise Bargaining) Agreement 1997.

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

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 teachers covered by this agreement is 92.

5.—DATE AND DURATION OF AGREEMENT

This agreement shall come into effect on 20th day of August 1998 and shall expire on 31st December, 1998. 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 teachers 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 College and teachers share responsibility for professional development by undertaking both in-service and external courses and training partly during school time and partly during teachers' time.

9.—SALARY RATES

(1) The minimum annual rate of salary payable to teachers engaged in the classifications prescribed in Clause 11.—Salaries of the award shall be—

Step	From 1st January 1998 2.5% $ per annum	From 1 July 1998 2.5% $ per annum
1	28,337	29,045
2	30,057	30,808
3	31,004	31,779
4	32,942	33,766
5	34,751	35,620
6	36,301	37,209
7	37,851	38,797
8	39,787	40,782
9	41,918	42,966
10	43,663	44,755
11	45,214	46,344
12	47,154	48,333
13	49,089	50,316

(2) Indexation of Promotional Positions—

Level 1	(Head of Department)	13.0%	Step 13
Level 2		9.1%	Step 13
Level 3	(Co-ordinator)	7.0%	Step 13
Level 4		3.9%	Step 13

(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 (1) of this clause.

10.—EFFICIENCY IMPROVEMENTS

(1) Professional Development

(a) Professional Development activities shall be undertaken partly in College time and partly in teachers' own time; where feasible in equal proportions.

(b) There will continue to be consultation with teachers in the planning of appropriate professional development.

(c) (i) The use of information technology is a distinctive and important feature of the teaching and learning approach at the College. Teachers will be required to undertake professional development in order to keep apace with new technology and facilities within the College.

(ii) 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.

(iii) The College will give appropriate in-service in laptop computers to teachers 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 consent of the teacher to such variation shall be in writing.

(b) The periods taught will be considered as a fraction of the normal teaching load of a full time teacher for the purposes of calculating salary. A nominal period allocation of 27 periods per cycle will be used.

(c) As members of the teaching 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 College 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) 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.

(7) Deferred Salary Option

Teachers 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.

(8) Superannuation Scheme

Early retirement is available to all teachers at the age of 55 in line with the availability of the superannuation package.

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 PROCEDURES

(1) 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—

(a) The parties to the dispute shall make reasonable attempts 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 teachers.

14.—NO REDUCTION

Nothing contained herein shall entitle the College to reduce the salary or conditions of a teacher 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

.....Signed.....
(Signature)

B J BLACKWOOD

(Name of signatory in block letters)

Presbyterian Ladies' College

.....Signed..... *Common Seal*
(Signature)

T I HOWE

(Name of signatory in block letters)

Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

PROFESSIONAL CEILINGS SERVICES WALL AND CEILING INDUSTRIAL AGREEMENT.

No. AG 45 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Roscic Holdings Pty Ltd trading as Professional Ceiling Services.

No. AG 45 of 1998.

Professional Ceilings Services Wall and Ceiling Industrial Agreement.

COMMISSIONER P E SCOTT.

30 September 1998.

Order.

HAVING heard Mr J Maitland on behalf of the Applicant and there being no appearance on behalf of the Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Professional Ceilings Services Wall and Ceiling Industrial Agreement in the terms of the following schedule be registered on the 9th day of September 1998.

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

———

WALL AND CEILING AGREEMENT

Schedule.

1.—TITLE

This Agreement will be known as the Professional Ceilings Services Wall and Ceiling Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Objectives
7. Dispute Settlement Procedure
8. Single Enterprise
9. Relationship with Awards
10. Enterprise Agreement
11. Trades/Labour Ratios
12. Wage Increase
13. Payment of Wages
14. Site Allowance
15. Tool Allowance
16. Industry Standards
17. Clothing and Footwear
18. Training Allowance, Training Leave, Recognition of Prior Learning
19. Seniority
20. Overtime
21. Company Based Incentive Scheme
22. Sick Leave
23. Pyramid Sub-Contracting
24. Fares and Travelling
25. Drug and Alcohol, Safety and Rehabilitation Program
26. No Extra Claims
27. Consultation

Appendix A—Wage Rates
Appendix B—Drug and Alcohol, Safety and Rehabilitation Program
Appendix C—Site Allowance

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters & Plasterers Union of Workers (hereinafter referred to as the "Union") and Roscic Holdings Pty Ltd trading as Professional Ceiling Services (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award"). There are approximately 10 employees covered by this agreement.

The Agreement has been negotiated in consultation with the Association of Wall and Ceiling Contractors of WA Inc. (the "Association").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 October 1999.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement. Any party may terminate the Agreement provided three months notice has first been given in writing. In the event of a fundamental breach the period of notice shall be one month. A breach by a limited number of Association members shall not constitute a fundamental breach.

6.—OBJECTIVES

The objectives of this agreement are to—

(a) Increase the efficiency of the Associations member companies by the effective utilisation of the skills and commitment of the employees in the industry.

(b) Improve the living standards, job satisfaction and continuity of employment of the member companies employees.

(c) Develop best practice standards that are internationally recognised based upon a culture of opportunity, continuous learning and improvement through training.

(d) Ensure that increases in efficiency on the job are implemented in such a way as, to ensure that health and safety in the industry are maintained.

(e) Provide a mechanism by which disputes can be resolved quickly and in a manner which shall avoid lost time.

7.—DISPUTE SETTLEMENT PROCEDURE

This clause applies to any questions, disputes or difficulties arising out of the operation of this Agreement.

1. Company Specific Industrial Disputes

(a) In the first instance an employee should submit a request concerning a work related issue to his immediate Team Co-ordinator or Supervisor;

(b) If the matter cannot be resolved at this stage the employee shall raise the matter with the Union delegate, who shall submit the issue to the employees supervisor;

(c) If not settled at this stage, the delegate and the relevant union organiser may submit the matter to the Senior Company Supervisor for consideration;

(d) If not settled at this stage, the matter will be placed in the hands of the Company's Senior Management and State Secretary for the relevant union or his nominee;

(e) If the issue still exists after the abovementioned processes have been carried out, then the matter shall be referred to the Western Australian Industrial Relations Commission for determination. The Western Australian Industrial Relations Commission's decision will be accepted by all parties to legal rights of appeal.

(f) Whilst the above procedures are being followed work shall continue as it was prior to the issue occurring. No party shall be prejudiced by the final settlement as a consequence of continuance of work in accordance with this clause.

2. Safety Dispute Resolution

It is agreed that management and their employees have responsibility to ensure that workplaces are safe and that employees are not exposed to hazards.

In the event of any disagreements on the necessity to carry out any safety measures or modify, reinforce or reinstate any safety device whatsoever, the procedures set out below shall be adopted.

(a) No person shall dismiss a safety complaint. Any complaint should be referred to the Company's Safety Officer or Workers Safety Representative to be dealt with in accordance with the following procedures.

(i) Where any employee becomes aware of an unsafe situation, that employee shall immediately notify the Company's Safety Officer or the Workers Safety Representative.

(ii) The Company's Safety Officer and the Workers Safety Representative shall take immediate action to have the unsafe situation rectified.

(b) Should the Company's Safety Officer consider that no safety precautions are necessary, he shall notify the Workers Safety Representative accordingly as soon as possible.

(c) Where there is disagreement on the ruling of the Company's Safety Officer, the Company's Safety Officer will arrange for the immediate transfer of any employee away from the disputed area.

(d) Should the Company's Safety Officer be of the opinion that no action is necessary and the Workers Safety Representative disagree with that decision, an appropriate Inspector from Worksafe WA shall be requested to undertake an inspection of the disputed area for the purpose of resolving any such matter.

(e) If disagreement still exists the Chief Inspector Construction Branch of Worksafe, or his nominee, shall be called in to assist in the resolution of the dispute.

(f) Whilst the above procedure is being followed, there shall be no stoppage of work in respect of the matter being considered, except in the area alleged to be unsafe.

(g) It is accepted that safety considerations do override normal work practices and depending on the degree of potential risk to persons on the job, or the general public, can over-ride normal demarcation practices.

8.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act 1979, as amended (the "Act").

9.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

10.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

11.—TRADES/LABOUR RATIOS

1. (a) It is recognised that there is an important role for labourers in this industry and it is agreed that they will be utilised in the industry.

(c) Tradespeople may handle materials and gear within a reasonable vicinity of their work area.

12.—WAGE INCREASE

1. The parties to this agreement are committed to ensuring that the measures contained in this agreement lead to real gains in efficiency.

2. This agreement provides for increases of the Award hourly rate resulting in the wage rates in the Appendix A—Wage Rates, payable from the date of signing.

3. In addition to the rates prescribed by 12 (2) above, an allowance of $1.00 per hour all purpose shall apply to all projects. This allowance will be in lieu of the Structural Frame Allowance.

4. (a) A further allowance of $1.50 per hour for hours worked, shall be paid to employees required to handle or install tiled containing mineral fibres. It shall be a requirement of this agreement that the employees in receipt of this allowance wear the appropriate personal protective equipment and have been trained in the proper fitting, use and maintenance of that equipment.

(b) All of the Provisions of 4(a) above will be reviewed prior to the expiry of this agreement and such review shall include complete re-appraisal of the need to wear personal protective equipment. No allowance is payable if personal equipment is not required.

13.—PAYMENT OF WAGES

All new employees shall be paid by EFT into a maximum of two (2) bank accounts of their choice. Employees will be able to choose the Bank/Building Society/Credit Union into which their pay is to be deposited. For employees working in remote areas, cash advances will be organised if banks are not easily accessible. All current employees are to commit to wages being paid weekly EFT no later than six months from the signing of this Agreement. This clause shall operate in conjunction with Clause 34—Payment of Wages in the Award.

14.—SITE ALLOWANCE

This Agreement provides for site allowances as per Appendix C—Site Allowance.

15.—TOOL ALLOWANCE

In addition to the award "tool allowance" an additional payment of $0.75 per hour worked on site will be paid to all employees who provide the tools listed below. This amount is to be adjusted in line with annual CPI movements. The Company will facilitate the purchase of any tools requested. Employees purchasing tools from the Company shall reimburse the Company for the cost of the tools at the rate of $0.75 per hour worked, until the full amount owed is paid. In addition, the Company shall re-imburse the full cost of tools lost or stolen, and the cost of tagging all tools, and the cost of storage and security of tools used is to remain the responsibility of the employer in line with Clause 33 of the Award.

The parties agree that any change to the current Award tool allowance, excluding CPI increases will be discussed with a view to absorption within this additional payment.

The tools to be provided include—

Fixing Tools
1 Bevel Square
1 Bolt cutters
1 calculator
1 caulking gun
1 chalkline
1 cold chisel
1 electric drill (12mm)
2 electric extension leads
1 electric screw gun
1 flat bastard file
1 hacksaw
1 hammer
1 hammer drill (12mm Ramset Bit)
1 hand saw
1 hole saw set
1 key hole saw
1 ladder (1.8m)
1 mechanical hacksaw
1 nail bag
1 nail punch
1 pair pliers
1 pair scissors (large)
1 pair tin snips
4 pairs "C" clamps
4 pairs multigrips
6 pairs spring clips
1 paper pad
1 pencil
1 plumb bob
1 pop riveter
1 power box (4 points)
1 rod bender
1 screw driver (flat head)
1 screw driver (Phillips Head)
1 set square
1 smooth file
2 spanners
1 spirit level (1.2m)
1 Stanley knife
1 string line
1 stud crimper
1 surform
1 tape (20m)
1 tape (7m)
1 water level (20m)

Flushing Tools
1 broad knife (50mm)
1 broad knife (100mm)
1 broad knife (150mm)
3 buckets
1 caulking gun
1 curved trowel (200mm)
1 curved trowel (275mm)
1 electric drill
1 electric extension lead
1 flat trowel (280mm)
1 hacksaw
1 hammer
1 hand saw
1 internal tool—large
1 internal tool—small
1 ladder (1.8m)
1 metre box
1 mixer bit
1 nail bag
1 nail punch
1 paint brush (75mm)
1 pair tin snips
1 powerbox
1 sanding block
1 screw driver (flat head)
1 screw driver (Phillips Head)
1 screw gun
1 small tool
1 spirit level (1.2m)
1 sponge
1 Stanley knife
1 staple gun
1 surform
1 tape (7m)

16.—INDUSTRY STANDARDS

1. Redundancy

It is a term of this Agreement that the Company will immediately increase its payments to $45 per week per employee into the Western Australian Construction Industry Redundancy Fund and then will increase this to $50 per week per employee on 1 August 1998.

2. Superannuation

The Company will immediately increase its payment to $60 per week per employee.

The Company will advise all employees subject to the Agreement of their Right to have payments made to a complying superannuation fund of their choice. The Company is bound by the employee's election. The aforementioned payment will then be made to that fund.

Until each employee nominates the fund of their choice the Company will make payments into the Construction + Building Unions Superannuation Scheme (the "C+BUSS").

In the event that any employee chooses a fund other than the C+BUSS the Company will, within seven days of the employee advising the Company of the fund of their choice, advise the Union in writing of the employee's decision.

In the event that the employee and the Company reach an agreement pursuant to section 49C(2)(d) of the Act to change the complying superannuation fund or scheme the Company will, within seven days of the employee and the Company reaching such an agreement, advise the Union in writing of the agreement. The employer will not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by the employee.

3. Apprentice Rates

It is recognised that there is an important role for apprentices in this industry and it is agreed that they will be utilised in the industry.

The number of apprentices will be determined on an "as needs" basis on each site. Where there is a disputation in relation to this sub-clause the matter shall be resolved in accordance with clause 7 of this agreement.

17.—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.

18.—TRAINING ALLOWANCES, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

1. The parties recognise the need to adopt a "total trade" concept for training and skills acquisition to meet the current and future requirements of the industry and where appropriate to provide a career path for employees in the wall and ceiling industry.

To this end the parties reaffirm their commitment to training and agree that training and retraining of both the workforce and supervision will occur on an ongoing basis.

Mature adult employees may be trained, initially as labourers and then in the skills of a tradesman through a structured improver system which will be recognised by the industry.

2. A training allowance of $12.00 per week per worker shall be paid by the employer to the Union Education and Training Fund.

3. Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each 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.

4. 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.

5. It is agreed that safety training will be an important component in the structured training program.

6. The parties agree to participate in a Training Advisory Committee that shall consist of 3 representatives from the Association and 3 representatives from the Construction Skills Training Centre. The role of the Committee will be to advise the parties as to training priorities for the industry and the appropriateness of particular courses for the industry.

19.—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 7 Dispute Settlement Procedure.

4. An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

20.—OVERTIME

The allocation of overtime shall be at the employers prerogative provided that the employer shall not be adversely or unreasonably discriminate against any employees. The practice of one in all in shall be eliminated. An overtime roster may be introduced by the employer in conjunction with the employees.

21.—COMPANY BASED INCENTIVE SCHEME

Individual companies may negotiate company specific incentive schemes which will form an appendix to this agreement. These incentive schemes must ensure that the award provides the base safety net and that all workers in the site have the opportunity to share in the proposed scheme.

Once negotiated bonus based incentive schemes will be submitted to the Union prior to its implementation for confirmation that the relevant requirements have been satisfied.

22.—SICK LEAVE

For sick leave accrued after the date of signing of this agreement the following will apply—

(a) The Company's employees shall have the option of converting up to 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.

23.—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.

24.—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.

25.—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.

26.—NO EXTRA CLAIMS

The Union will make no further claims on the Company over conditions set out in this Agreement for the life of the Agreement. However the Union reserves the right to raise the unforseen matters. The Company agrees to insure the employees for sickness and accident cover. The terms of the policy will be agreed to between the Company and the Union.

27.—CONSULTATION

In relation to general industry matters not otherwise provided for in this Agreement the Union recognises the role of the Association and shall consult with the Association on matter of industry wide significance.

Signed for and on behalf of—

The Union:	*Common Seal*	.....Signed.....
		BLPPU
		Date: 13/3/98
The Company:	*Common Seal*	.....Signed.....
		Date: 6/3/98
		CRAIG ROSCIC
		(Print Name)

Dated this Sixth day of March 1998.

APPENDIX A—WAGE RATES

	Date of Signing Hourly Rate $	1 August 1998 Hourly Rate $	1 February 1999 Hourly Rate $	1 October 1999 Hourly Rate $
Plasterer, Fixer	16.64	17.11	17.58	17.82
1st Year Apprentice	6.99	7.18	7.38	7.48
2nd Year Apprentice	9.16	9.42	9.68	9.81
3rd Year Apprentice	12.49	12.84	13.19	13.37
4th Year Apprentice	14.65	15.06	15.48	15.69

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.

APPENDIX C—SITE ALLOWANCE

1. This agreement is between the parties to this agreement and shall apply to construction work undertaken by principal contractors who are engaged in the commercial/industrial sector of the building industry in the state of Western Australia within a 50km radius of the Perth General Post Office.

2. This agreement provides for a site allowance to be paid to employees engaged on particular building projects, and for such site allowance to be paid in addition to the wage rates and allowances prescribed by the award as well as any industrial or certified agreements made in conjunction with the award which does not prescribe a site allowance.

3. The site allowance payable under this agreement is to be paid at a flat rate per hour for all hours worked to compensate for all special factors/disabilities on the project and in lieu of all award special rates, with the exception of rates relating to the lifting of heavy blocks, cleaning down brickwork and the use of explosive powered tools which will be payable to an employee when he/she encounters that particular disability.

4. Site Allowance Formula

At the commencement of a project the particular site allowance to apply shall be determined in accordance with the following formula—

4.1 Projects Located Within Perth C.B.D. (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.80
Above	$2.1m to $4.4m	$2.15
Over	$4.4m	$2.75

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.60
Above	$2.1m to $4.4m	$1.80
Over	$4.4m	$2.35

4.2 Projects Located Within West Perth (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.60
Above	$2.1m to $4.4m	$1.80
Over	$4.4m	$2.35

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.50
Above	$ 2.1m to $4.4m	$1.70
Over	$4.4m	$1.95

The site allowance on projects which are a combination of new and renovation work shall be governed by the majority of work involved. For example, where the majority of work is new work, then the site allowance appropriate to new work shall be paid for all employees on the project.

4.3 Projects within 50 km radius of Perth G.P.O. but not including the C.B.D. or West Perth (as defined)

Project Contractual Value		Site Allowance
Up to	$1m	NIL
Above	$1m to $2.1m	$1.20
Above	$2.1m to 5.8m	$1.50
Above	$5.8m to $11.6m	$1.75
Above	$11.6m to $23.6m	$1.95
Above	$23.6m to $58.6m	$2.25
Over	$58.6m	$2.45

"C.B.D."—Central Business District shall mean the area bounded by the Swan River South, Swan River East to Nile Street running into Wittenoom Street, Hill Street to Royal Street, Royal Street to Lord Street, Lord Street to Newcastle Street, along Newcastle Street to the Freeway, the Freeway South to the Perth-Fremantle railway line, along the Perth-Fremantle railway line to Dyer Street, Dyer Street through to Havelock Street, Havelock Street to Kings Park Road, Kings Park Road to Fraser Avenue, Fraser Avenue projected through to the Swan River.

"West Perth"—shall mean the area contained within the boundaries formed by Thomas Street, Kings Park Road, Havelock Street, Dyer Street and the Perth-Fremantle railway line back to Thomas Street.

Boundary roads: If a road borders between two regions in which site allowances are to be paid as per this agreement, the parties confirm that one side of such a boundary road will be deemed to fall in one region and the other side of the boundary road will be deemed to fall in the other region. For example, the eastern side of Havelock Street will be in the "CBD" and the western side of Havelock Street shall be in "West Perth".

"Project Contractual Value"—shall be deemed to mean the value of all tendered work which falls under the scope of the principal contractor's contract.

5. The site/project allowance and project contractual value detailed in this agreement shall be adjusted on 1 October each year by the total C.P.I. movements for Perth during the preceding four quarters ending 30 June and accordingly, the site allowance amounts shall be adjusted up or down to the nearest five cents.

6. Project contractual values shall be subject to review at any renewal of this agreement, but in any event shall not be adjusted by a percentage less than the total CPI movements for Perth during the preceding four quarters ending 30 June. Such adjustment being to the nearest $10,000.

7. The agreed site allowance once set pursuant to this agreement shall be recorded in a site agreement to which the applicable principal contractor and the Union will be signatories. The level of allowance once nominated at the commencement of the project will continue without change until completion of the project.

8. It is acknowledged that on certain projects a site agreement may be entered into between the principal contactor and the building trades group of unions for that project that may include matters regularly addressed within the industry, such as, but not limited to, the following—

- Disputes Procedures
- Occupational Health and Safety Procedures
- Demarcation Procedures
- First Aid Provisions and On-Site Amenities

and the unions will not unreasonably refuse to continue to discuss such matters if raised by the principal contractor.

9. This agreement does not apply to resource development projects or civil and engineering projects.

10. Where a dispute arises as to the application of the terms of this agreement, if the issue cannot be resolved in discussions between the parties, it is agreed that the matter will be referred to the appropriate industrial tribunal for resolution without recourse to industrial action.

11. It is a term of this agreement that all site allowance agreements entered into prior to this date will be honoured by all parties and will continue to apply for the life of the particular project.

12. Where because of a condition of contract the principal contractor is required not to allow for a site allowance, before final application of this agreement, discussions will be held between the parties with a view to resolving any problems that may arise as a result of this situation.

13. This agreement shall only apply to building contracts entered into on or after 1 October, 1995.

R.A.C. ASSISTANCE CENTRE (ENTERPRISE BARGAINING) AGREEMENT 1998.

No. AG 176 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Australian Municipal, Administrative, Clerical and Services Union of Employees, W.A. Clerical and Administrative Branch

and

Royal Automobile Club of WA.

No. AG 176 of 1998.

R.A.C. Assistance Centre (Enterprise Bargaining) Agreement 1998.

30 September 1998.

Order.

HAVING heard Mr R Dhue on behalf of the Applicant and Mr K Chilvers on behalf of the Respondent now therefore, I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order —

1. THAT the agreement to be known as the "R.A.C. Assistance Centre (Enterprise Bargaining) Agreement 1998" reflected in the schedule to this order shall be and is registered with effect on the 15th day of September 1998.
2. THAT the R.A.C. Assistance Centre (Enterprise Bargaining) Agreement 1998 shall replace R.A.C. Assistance Centre (Enterprise Bargaining) Agreement 1996 (No. AG 215 of 1996).

(Sgd.) S. A. CAWLEY,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the "R.A.C. Assistance Centre (Enterprise Bargaining) Agreement 1998".

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Scope
4. Incidence and Parties Bound
5. Operation of Agreement
6. Relationship to Parent Award
7. Commitments
8. Annual Leave
9. Long Service Leave
10. Sick and Personal Leave
11. Bereavement/Compassionate Leave
12. Carer's Leave
13. Journey Cover Insurance
14. Travelling Expenses
15. Wage Increases
16. Shift Loadings
17. Hours—Part Time Employees
18. Employee Consultation
19. Dispute Settlement Procedure
20. Number of Employees Covered by this Agreement

3.—AREA AND SCOPE

The area and scope of this Agreement shall be that prescribed in the Clerks' (R.A.C. Control Room Officers) Award of 1988 (No. A 42 of 1987).

4.—INCIDENCE AND PARTIES BOUND

(1) This Agreement shall be binding on the parties to the Agreement individually and collectively and shall apply to employees of the Royal Automobile Club of W.A. (Inc.) who are members, or eligible to be members, of the organisation of employees party to this Agreement and who are covered by the award detailed in Clause 3.—Area and Scope of this Agreement.

(2) The parties to this Agreement are—

(a) Australian Municipal Administrative, Clerical and Services Union of Employees, West Australian Clerical and Administrative Branch.

(b) Royal Automobile Club of W.A. (Inc.) ("R.A.C.").

5.—OPERATION OF AGREEMENT

This Agreement shall operate from the commencement of the first pay period on or after 1 August, 1998 and shall remain in operation until 1 August, 2000.

6.—RELATIONSHIP TO PARENT AWARD

(1) This Agreement shall be read and interpreted wholly in conjunction with the relevant award as identified in Clause 3.—Area and Scope, of this Agreement.

(2) Where there is any inconsistency between this Agreement and the award, this Agreement shall prevail to the extent of any inconsistency.

7.—COMMITMENTS

(1) The concept of continuous improvement in all aspects of R.A.C. operations is seen as fundamental to it's survival and prosperity in an increasingly competitive market. The parties and all employees are committed to this concept as a cornerstone of this and subsequent agreements and in particular, the parties recognise—

(a) That the success of the Assistance Centre depends upon the highest possible standards of telephone procedures and techniques and it is recognised that the provision of quality training is essential in achieving these standards;

(b) There will be positive cooperation between employees and management with regard to the introduction of the Team Concept, Membership Services and new rostering arrangements into the Assistance Centre;

(c) There will be positive cooperation and genuine consultation between employees and management with the establishment of new services, such as Security Services.

(2) A new flexible range of duties, for which if required training will be provided, will be undertaken by employees, including those specified below—

BASIS FOR GRADES 1—5

(a) Grade 1

This will be reserved for future casual employees who may be employed purely on routine telephone duties.

(b) Grade 2

Existing Grade 1 employees will move to this grade and be paid accordingly. Duties will be routine telephone and membership processing work. These employees will not be required to relieve in higher duties. No Plus calls will be dealt with.

Existing staff at this grade will have the choice of undertaking the above duties and remaining on Grade 2, or skilling up to a higher grade.

(c) Grade 3

Employees will be encouraged to undergo training to reach this grade and be paid accordingly, but this will not be mandatory. In addition to Grade 2 duties, the duties at this grade will include Plus calls and after hours Insurance calls but not plotting or radio duties. There is no mandatory requirement to relieve in higher duties.

(d) Grade 4

In addition to the Grade 2 and Grade 3 duties, the duties of this grade will take on the additional duties of Dispatch (i.e. plotting and radio). Relief of Team Supervisors (Grade 5), at the higher rate of pay, will be encouraged, but not compulsory. If necessary, Senior Patrols can be used to fill any shortfall in this respect.

(e) Grade 5

This grade will incorporate the new position of Team Supervisor. Employees at this grade will be required to provide relief for the position of Team Manager and this is recognised in the rate of pay and a higher duties payment will not be made during periods of relief that do not exceed five (5) weeks in any one year.

(3) WORK PRACTICES

(a) Given the improved facilities at the Maddington premises arrangements for after hours meals will change from the practice of bringing in meals due to the provision of self catering facilities on site.

(b) Staff are to be ready to work at the work station with necessary equipment set up from the commencement of each shift. This state of readiness shall continue until the end of the shift.

(4) The parties are committed to the establishment of a Joint Consultative Committee (JCC) comprising representatives from management and at least one employee from each of the three Teams.

The JCC will meet as required as a forum to discuss any work related issue. It will also be responsible for the establishment of a sub-committee comprising of Team Managers and Team Supervisors that will be responsible for reviewing all aspects of the newly created position of Team Supervisor and, if necessary, make recommendations to management in relation to issues that need to be addressed. This will occur during the first six (6) months of the term of this Agreement.

8.—ANNUAL LEAVE

(1) Any annual leave accrued during the life of this agreement unless otherwise agreed must be taken within 12 months of it falling due.

(2) Employees may by agreement elect to have accrued annual leave in excess of 25 days paid out.

(3) The associated leave loading will also be paid, and the appropriate marginal rate of taxation will be applied to the payment.

9.—LONG SERVICE LEAVE

(1) In lieu of the Long Service Leave General Order entitlement and at the employee's request and by agreement, long service leave may be taken as follows—

(a) eight weeks after the completion of 10 years service;

(b) an additional five weeks after the completion of 15 years service.

(2) The rate of pay in each case will be the rate of pay being earned when the leave is taken.

(3) In the event of termination an employee will be paid pro-rata leave based on 13 weeks less any leave taken/paid pursuant to this clause.

10.—SICK AND PERSONAL LEAVE

(1) Sick and personal leave shall accrue pro-rata on a weekly basis (1.4615 hours per week) to a maximum of ten (10) days (76 hours).

(2) Sick leave and personal leave not taken in any year accumulates to a total not exceeding 52 working weeks.

(3) Medical evidence of illness or injury is to be provided when requested or in any case where an absence extends beyond two (2) or more consecutive days.

(4) Accumulated sick and personal leave entitlements as at the date of this Agreement is registered will be carried into this Agreement.

11.—BEREAVEMENT/COMPASSIONATE LEAVE

(1) An employee shall be entitled to four (4) days paid bereavement leave in the event of the death of a family member.

(2) An employee shall be entitled to 4 days paid compassionate leave per annum in the event of the serious illness of a family member.

(3) The scope of the leave provided for in subclauses (1) and (2) of this subclause shall be extended to include grandparents.

(4) The employee may be required to produce documentary evidence relating to the death and/or serious illness of the family member.

(5) This leave is not cumulative.

12.—CARER'S LEAVE

(1) An employee with responsibilities in relation to either members of their immediate family or household who need their care and support is entitled to use up to five (5) days per annum of their sick and personal leave entitlement to provide care and support for such persons when they are ill. Leave may be taken for part of a single day.

(2) The entitlement to use sick and personal leave is subject to the employee being responsible for the care of the person concerned.

(3) The employee must, if required by the employer, establish by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another.

(4) In normal circumstances an employee must not take leave under this clause where another person has taken leave to care for the same person.

(5) The employee must, where 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 reason for taking such leave and the estimated length of such absence. If it is not practicable for the employee to give prior notice of absence, the employee must notify the employer by telephone of such absence at the first opportunity on the day of the absence.

(6) Each day or part of a day of leave taken under this clause is to be deducted from the quantum of sick and personal leave provided for by this Agreement up to a maximum of five (5) days per annum.

(7) An employee is entitled to use accumulated sick leave as paid carer's leave if the employee has used the current year's personal leave entitlement. An exception to this is where an employee has already taken five (5) days carer's leave in the current year.

(8) An employee may elect, with consent of the employer, to take unpaid leave for the purpose of providing care to a family or household member who is ill.

13.—JOURNEY COVER INSURANCE

The R.A.C. shall ensure that all employees are provided with Journey Cover Insurance and that the cost of providing such insurance shall be met solely by the R.A.C.

14.—TRAVELLING EXPENSES

When an employee is temporarily required to work or train at a location other than the employee's usual place of work, the employer will pay any expenses over what is normally incurred.

15.—WAGE INCREASES

(1) The following increases shall apply to the employees covered by this Agreement—

(a) 5% increase payable from the first pay period commencing on or after 1 August 1998.

(b) 4% increase payable from the first pay period commencing on or after 1 August 1999.

(2) The increases detailed in sub-clause (1) shall be based on each employees actual base rate of pay as of 1 August 1998.

(3) Wages Schedule

	Base Rate	5%	4%
Grade 1			
Level 1	457.18	480.04	498.33
Level 2	460.32	483.34	501.75
Grade 2			
Level 1	468.94	492.39	511.14
Level 2	473.65	497.33	516.28
Grade 3			
Level 1	480.14	504.15	523.35
Level 2	494.14	518.85	538.61
Grade 4			
Level 1	505.12	530.38	550.58
Level 2	522.14	548.25	569.13
Grade 5			
Level 1	555.63	583.41	605.64
Level 2	574.35	603.07	626.04

16.—SHIFT LOADINGS

(1) A loading of twenty percent on the ordinary rate of pay shall be paid for time worked on all shifts that commence between 6.00pm and 4.00am.

(2) The loading referred to in subclause (1) above shall not apply to any work performed on Saturdays, Sundays or holidays as prescribed by the award.

17.—HOURS—PART TIME EMPLOYEES

(1) (a) By agreement between the employer and a part time employee, the hours of work of a part time employee during a particular roster cycle may be increased up to 38 hours per week.

(b) Where such agreement, as provided for in paragraph (a) above, is reached, the additional hours worked shall be deemed to be ordinary hours and shall be paid for at the prevailing ordinary rate of pay, penalties and shift loadings.

(2) The commencement time of a rostered shift may be varied by no more than 1 hour by the employer giving no less than four (4) weeks' notice. This will assist the Assistance Centre in dealing with changes in demand that arise from, for example, holidays and the weather.

(3) A part time employee shall not be required to commence work prior to 6.00am.

18.—EMPLOYEE CONSULTATION

The R.A.C. is committed to providing employees with the opportunity to actively participate in decision making which affects their employment and the prosperity of the business. R.A.C. undertakes to keep employees informed of developments and changes in the workplace.

(1) Where an issue or decision is likely to affect the Assistance Centre or a Team, employees may elect a representative from each affected Team to participate in consultations. Representatives must make every endeavour to inform the employees affected at regular intervals.

(2) Employees participating in consultation, as a representative of a group of employees shall be allowed reasonable time off duty to prepare for and participate in the consultation process and to consult with affected employees.

(3) At any stage of a consultation process employees are encouraged to discuss the impact of the proposed change with their immediate supervisor. An employee aggrieved by the proposed change shall apply the Dispute Settlement Procedure.

(4) There are times when the subject matter of the consultation is confidential to the R.A.C. Whilst the R.A.C. respects employees' right to seek advice on representation on significant issues affecting their employment, all reasonable steps must be taken to ensure issues of confidentiality are not disclosed to unauthorised persons.

19.—DISPUTE SETTLEMENT PROCEDURE

Subject to the provisions of the Industrial Relations Act, 1979 any dispute, question or difficulty arising under this clause shall be dealt with as follows—

(1) As soon as is practicable after the dispute, question or difficulty has arisen, the employee concerned will take the matter up with his or her immediate supervisor offering him or her the opportunity to remedy the cause of the dispute, question or difficulty.

(2) Where any such attempt at settlement has failed, or where the dispute, question or difficulty is of such a nature that a direct discussion between the employee and his or her immediate supervisor would be inappropriate, the employee concerned will as soon as practicable take the matter up with his or her department head and/or Human Resources affording the department head or Human Resources Manager the opportunity to remedy the cause of the dispute, question or difficulty.

(3) Where any such attempt at settlement has failed, or where the dispute, question or difficulty is of such a nature that a direct discussion between the employee and his or her department head and Human Resources Manager would be inappropriate, the employee may notify a duly authorised representative of his or her Union who, if he or she considers that there is some substance in the dispute, question or difficulty, shall forthwith take the matter up with the employer or its representative.

(4) If the matter is not settled it shall be submitted to the Western Australian Industrial Relations Commission for a determination and, subject to the rights of appeal, all parties shall abide by, by the determination.

(5) Without prejudice to either party, work shall continue in accordance with this award while the matters in dispute are being dealt with in accordance with this paragraph.

20.—NUMBER OF EMPLOYEES COVERED BY THIS AGREEMENT

This Agreement shall apply to approximately 50 employees.

RAPTOR COMMERCIAL DEMOLITION INDUSTRIAL AGREEMENT.

No. AG 299 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Timothy Tristram Brent trading as Raptor Commercial Demolition.

No. AG 299 of 1997.

Raptor Commercial Demolition Industrial Agreement.

COMMISSIONER P E SCOTT.

30 September 1998.

Order.

HAVING heard Mr J Maitland on behalf of the Applicant and there being no appearance on behalf of the Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Raptor Commercial Demolition Industrial Agreement in the terms of the following schedule be registered on the 9th day of September 1998.

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

DEMOLITION AGREEMENT

Schedule.

1.—TITLE

This Agreement will be known as the Raptor Commercial Demolition Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Aims and Objectives of this Agreement
6. Term and Renewal of Agreement
7. Wages and Allowances
8. Clothing
9. Dispute Settlement Procedure
10. Safety Dispute Resolution
11. First on Last Off
12. Overtime
13. Company Based Incentive Scheme
14. Industry Standards
15. Training Allowance, Training Leave, Recognition of Prior Learning
16. Sick Leave
17. Pyramid Sub-Contracting
18. Fares and Travelling
19. Drug and Alcohol, Safety and Rehabilitation Program
20. No Extra Claims
21. Signatories to the Agreement

Appendix A—Wage Rates
Appendix B—Drug and Alcohol, Safety and Rehabilitation Program

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters, & Plasterers Union of Workers (hereinafter referred to as the "Union") and Timothy Tristram Brent and Mike Harper trading as Raptor Commercial Demolition (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

1. This Agreement shall be binding upon the Company, the Union and its officers and employees eligible to be members of the Union employed by the Company, on demolition work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the relevant Award). There are approximately 6 employees covered by this agreement.

2. The additional over award payments outlined in clause 7 shall only apply on projects in excess of $75,000 or where the Company is engaged to carry out work for a Building Contractor who has signed an EBA with the BLPPU.

3. The provisions of this Agreement are in addition to entitlements specified in the relevant Award and where there is an inconsistency the Agreement shall prevail.

5.—AIMS AND OBJECTIVES OF THE AGREEMENT

The Objectives of this Agreement are to—

1. Increase the efficiency of the Company by the effective use of the skills and commitment of the employees of the Company.
2. Improve the living standards, job satisfaction and continuity of employment of the Company's employees.
3. Develop best practice standards that are based upon a culture of opportunity, continuous learning and improvement through training.

4. Ensure that increases in efficiency on the job are implemented in such a way as to ensure that health and safety standards in the industry are maintained.
5. Provide a mechanism by which disputes can be resolved quickly and in a manner which shall avoid lost time.

6.—TERM AND RENEWAL OF AGREEMENT

1. This Agreement shall come into operation from the date of signing an shall remain in force until 31 October 1999.

2. The parties agree to commence discussions on the terms and conditions of any future Agreement three calendar months prior to the expiration of this Agreement.

7.—WAGES AND ALLOWANCES

1. Wage increases in this Agreement will be granted in accordance with an agreed skills enhancement programme. Any agreed programmes will provide training in NBCITC accredited general common and task specific skills.

2. The parties shall monitor the introduction of any skills enhancement programme.

3. Employees will be classified into the following categories, although employees will not be precluded from moving to a higher category, where they have been employed for the specified periods, for the lack of appropriate training—

(a) Entry Level Demolition Worker

This category will apply to a new employee with little or no demolition experience who will undergo assessment, for a period not exceeding 10 weeks, of suitability for continued employment, after which time employees will be offered training in a basic demolition course agreed to by the Company and the Union.

Employees in this category will be expected to demonstrate a safety conscious work attitude, an aptitude for demolition work, good housekeeping practices and productive and diligent work ethics.

In addition to other allowances prescribed by the Award and this Agreement, employees in this category will be paid as a Builders' Labourer Group 3 as outlined in Appendix A—Wage Rates.

The Company shall not employ more than 25% Entry Level employees in any demolition team.

(b) Basic Demolition Worker

This category will apply to an employee who has completed the requirements of an Entry Level Worker and who is gaining knowledge and experience onsite in general demolition skills, including sound knowledge of the Occupational Health, Safety and Welfare Act 1984, as amended.

In addition to the requirements of the Entry Level Demolition Worker employees will be expected to demonstrate safety conscious work practices and an understanding of demolition work.

An employee in this category will be, after a period not exceeding 13 weeks classified as a Skilled Demolition Worker and will be offered further training in a demolition course agreed to by the Company and the Union.

In addition to the other allowances prescribed by the Award and this Agreement, employees in this category will be paid as a Builders' Labourer Group 2 as outlined in Appendix A—Wage Rates.

(c) Skilled Demolition Worker

This category will apply to an employee who has completed the requirements of a Basic Demolition Worker who has a broad knowledge of demolition work.

In addition to the requirements of the Basic Demolition Worker employees will be expected to assist with the on-the-job training and guidance in public and workplace safety; general demolition skill; and the plant, equipment and methods utilised, of Entry Level and Basic Demolition Workers.

In addition to other allowances prescribed by the Award and this Agreement, employees in this category will be paid as Builders' Labourer Group 1 as outlined in Appendix A—Wage Rates.

4. Unless otherwise agreed in writing between the Company and the Union, employees will be paid an allowance of $4.50 per hour worked to compensate for the additional disabilities associated with demolition work.

5. This rate is in lieu of Clause 9 of the Award or allowances contained in particular site agreements.

8.—CLOTHING

The following clothing will be supplied to all employees and will be replaced on a fair wear and tear basis—

(a) 1 pair safety boots
(b) 2 T-shirts
(c) 1 bluey jacket

9.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be the same as that outlined in clause 46 of the Award.

10.—SAFETY DISPUTE RESOLUTION

1. It is agreed the Company and their employees have a responsibility to ensure that workplaces are safe and that employees are not exposed to hazards.

2. In the event of any disagreements on the necessity to carry out any safety measure or modify, reinforce or reinstate any safety device whatsoever, the procedures set out in this clause will be adopted.

3. No person shall dismiss a safety complaint. Any complaint should be referred to the Company's safety officer or worker's safety representative to be dealt with in accordance with the following procedures—

(a) Where any employee becomes aware of an unsafe situation, that employee will immediately notify the Company's safety officer or the worker's safety representative.
(b) The Company's safety officer and the worker's safety representative will take immediate action to have the unsafe situation rectified.
(c) Should the Company's safety officer consider that no safety precautions are necessary, he/she will notify the worker's safety representative accordingly as soon as possible.
(d) While there is disagreement on the ruling of the Company's safety officer, the Company's safety officer will arrange for the immediate transfer of all employees from the disputed area.
(e) Should the Company's safety officer be of the opinion that no action is necessary and the employees safety representative disagrees, an appropriate inspector from Worksafe will be requested to undertake an inspection of the disputed area for the purpose of resolving any such matter.
(f) If disagreement still exists the chief inspector, construction branch of Worksafe or his/her nominee will be called in to assist in the resolution of the dispute.
(g) If no agreement can be reached between the parties the matter may be referred to the Western Australian Industrial Relations Commission to be determined in accordance with Section 26 of the Industrial Relations Act 1979, as amended.

4. Whilst the above procedure is being followed there will be no stoppage of work in respect of the matter being considered, except in the area alleged to be unsafe.

5. It is accepted that safety considerations override normal work practices and depending on the degree of potential risk to persons on the job, or the general public, can override normal demarcation practices.

11.—FIRST ON LAST OFF

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 10—Dispute Settlement Procedure.

4. An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/ re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

12.—OVERTIME

1. The allocation of overtime will be at the employer's prerogative provided that the employer will not discriminate against any employee.

2. The practice of "one in all in" will not occur.

13.—COMPANY BASED INCENTIVE SCHEME

The Company may negotiate incentive schemes which will not affect the terms of this Agreement. These schemes must ensure that the Award provides the base safety net and that all workers on-site have the opportunity to share in the proposed scheme.

14.—INDUSTRY STANDARDS

1. Redundancy

It is a term of this Agreement that the Company will immediately increase its payments to $45 per week per employee into the Western Australian Construction Industry Redundancy Fund and then will increase this to $50 per week per employee on 1 August 1998.

2. Superannuation

The Company will immediately increase its payment to $60 per week per employee.

The Company will advise all employees subject to the Agreement of their Right to have payments made to a complying superannuation fund of their choice. The Company is bound by the employee's election. The aforementioned payment will then be made to that fund.

Until each employee nominates the fund of their choice the Company will make payments into the Construction + Building Unions Superannuation Scheme (the "C+BUSS").

In the event that any employee chooses a fund other than the C+BUSS the Company will, within seven days of the employee advising the Company of the fund of their choice, advise the Union in writing of the employee's decision.

In the event that the employee and the Company reach an agreement pursuant to section 49C(2)(d) of the Act to change the complying superannuation fund or scheme the Company will, within seven days of the employee and the Company reaching such an agreement, advise the Union in writing of the agreement. The employer will not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by the employee.

15.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

1. A training allowance of $12.00 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.

16.—SICK LEAVE

For sick leave accrued after 2 September 1998 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 or by agreement between the parties.

(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.—PYRAMID SUB-CONTRACTING

1. "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a subcontract is originally awarded, sub-letting that contract or part thereof to another subcontractor.

2. Provided that where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

3. Further provided that when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

4. A bona fide sub-contractor is generally an employer of labour, save for a machine owner operator.

5. Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

18.—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.

19.—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.

20.—NO EXTRA CLAIMS

The Union will make no further claims on the Company over conditions set out in this Agreement for the life of the Agreement. However the Union reserves the right to raise the unforseen matters. The Company agrees to insure the employees for sickness and accident cover. The terms of the policy will be agreed to between the Company and the Union.

21.—SIGNATORIES TO THE AGREEMENT

.....signed.....	.....
Signed on behalf of the Company	Company Stamp
Signed on behalf of:	.....signed.....
	The Western Australian Builders' Labourers, Painters & Plasterers Union of Workers
	Common Seal

Dated this 21 day of October 1997

APPENDIX A—WAGE RATES

Pursuant to Clause 7 of the Agreement, the following rates of pay for a 38 hour week will apply to employees covered by the Agreement in addition to the $4.50 per hour worked demolition allowance.

	Date of Signing Hourly Rate $	1 February 1998 Hourly Rate $	1 August 1998 Hourly Rate $	1 February 1999 Hourly Rate $	1 August 1999 Hourly Rate $
Labourer Group 1	15.56	16.01	16.47	16.92	17.15
Labourer Group 2	15.03	15.47	15.90	16.34	16.56
Labourer Group 3	14.63	15.05	15.48	15.90	16.12

APPENDIX B—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PRGRAM.

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.

READYMIX JANDAKOT INDUSTRIAL AGREEMENT.
No. AG 67 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

CSR Ltd trading as CSR Readymix Quarries

and

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch.

No. AG 67 of 1998.

Readymix Jandakot Industrial Agreement.

COMMISSIONER P E SCOTT.

30 July 1998.

Order.

HAVING heard Ms N Embleton on behalf of the Applicant and Ms J Harrison 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 Readymix Jandakot Industrial Agreement in the terms of the following schedule be registered on the 19th day of June 1998.

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

Schedule.

INDUSTRIAL AGREEMENT

1.—TITLE

This Agreement shall be known as the Readymix Jandakot Industrial Agreement and shall replace AG 18 of 1994.

2. —ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Resolution Procedure
7. Single Enterprise
8. Relationship with the Award
9. Wage Increase
10. Accident and Sickness Policy
II. Personal Protective Equipment and Clothing
12. Training
13. Redundancy
14. Improvements to Productivity, Efficiency and Flexibility
    i. Hours of Work
    ii. Meal Periods
    iii. Teamwork
    iv. Performance Management
    v. Payment of Wages
15. Drug and Alcohol Policy
16. No Extra Claims
Appendix A—Wage Schedule

3.—AREA AND PARTIES BOUND

This is an Agreement between the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch (hereinafter referred to as the "Union") and CSR Limited (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be members of the Union employed by the Company on work covered by the terms and of the Engine Drivers (Quarries, Sand Pits and Limestone Quarries) Agreement 1991 (the "Award"). There are 3 employees covered by this Agreement.

5.—DURATION

This Agreement shall commence from the first pay period on or after the 11 December 1997 for a period of 24 months.

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 RESOLUTION PROCEDURE

In the event of the single bargaining unit failing to reach agreement on any questions, disputes or difficulties arising under this Agreement such matters then shall be dealt with through the dispute resolution procedure as prescribed by the Metal Trades (General) Award 1966. The parties agree to confer among themselves and make reasonable attempts to resolve any questions, disputes or difficulties before taking those matters to the Commission.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41 A(2) of the WA Industrial Relations Act 1979, as amended (the "Act").

8.—RELATIONSHIP WITH THE AWARD

This Agreement shall be read wholly in conjunction with the Award and shall take precedence to the extent of any inconsistencies. The wages provided for in this Agreement are all inclusive and shall not increase except as provided for in this Agreement.

9.—WAGE INCREASE

This Agreement provides for increases in the hourly rate and allowances resulting in the wage rates in Appendix A—Wage Rates.

10.—ACCIDENT AND SICKNESS POLICY

The Company will make time available for its employees to invite and discuss with any designated insurance organisation, its policy and requirements regarding sickness and accident cover.

11.—PERSONAL PROTECTIVE EOUIPMENT AND CLOTHING

The Company shall supply to the employees such items of personal protective clothing and equipment, including safety glasses, hard hats and safety boots, as are appropriate to the work carried out by the employees, provided always that the Site Safety Committee is recognised as the proper forum to discuss issues of safety, including the use and type of personal protective clothing and equipment supplied by the Company.

12.—TRAINING

The Company recognises the need for training of its employees in order to gain better efficiencies to both parties.

To achieve this the parties agree—

i. To be committed to the development and implementation of effective training programs in order to provide for continual development of employees.

ii. That the Company will pay all costs associated with training whether it is formal, informal, external or on the job. The Company will provide time off without loss of pay during normal hours for all approved training.

iii. where possible training will be competency based and accreditation will be sought at a State or National level.

13.—REDUNDANCY

The Company recognises that its employees are one of its greatest assets. Should circumstances arise that could lead to job losses, the Company will take all reasonable steps to exhaust any options available prior to redundancies. Should redundancies be necessary, the Company will consult with the Consultative Committee to determine the selection criteria to be applied, however, the Company shall have the final discretion over those to be selected for redundancies.

Where the company terminates any employee other than for reasons of misconduct, unsatisfactory performance or behaviour, abandonment of employment, the employee shall receive from the date of this Agreement, severance payments and services—

- 3 weeks ordinary pay per completed year of service to a maximum of 104 weeks ordinary pay.
- An additional ex-gratia payment of 8 weeks ordinary pay.
- Payment of accrued long service leave on a pro-rata basis after one years service.
- Suitable financial, job and personal counselling.

14.—IMPROVEMENTS TO PRODUCTIVITY, EFFICIENCY AND FLEXIBILITY

i. Hours of Work

(1) The ordinary hours of work shall be an average of 38 hours per week, five days per week, Monday to Friday and shall be between 0500 hours and 1730 hours. The ordinary hours will not exceed 8 hours on any day, unless otherwise agreed in writing between the parties.

(2) Start and finish times of ordinary hours, will normally occur as follows—

- Start—Between 6.00am and 6.30am
- Finish—Between 2.00pm and 2.30pm

Start and finish times are subject to change by the employer based on operational requirements.

(3) Ordinary hours may be banked for the purposes of RDO's up to a maximum of 5 days.

ii Meal Periods

All meal and rest periods will be arranged flexibly, as close as possible to their normal time, so as to minimise disruption to the work process and to satisfy customer requirements.

iii Team Work

Continuous improvement in all aspects of the work process is an important part of the Companies commitment to its customers. Employees agree to participate in a team environment to develop and analyse workplace improvements and to collect and record both routine and non-routine data and information that assists in running and improving the business. The employees agree to run their own area and solve their own problems acting as a self managed team. Supervisors will act in a support role providing assistance to the team.

iv Performance Management

The parties agree to undertake to establish a set of performance measures and benchmarks related to key aspects of the business which can be influenced by the operators. Three areas shall be measured—

i. Plant and Machine fuel consumption

ii. Truck delivery cycles

iii. Specific work related requirements as described by the Companies work instructions

v. Payment of Wages

Wages will be calculated weekly and paid on a weekly basis direct to a bank account nominated by the employee. Payment will be by Electronic Fund Transfer.

15.—DRUG AND ALCOHOL POLICY

The Site Safety Committee will develop a "Drug and Alcohol" policy which will ensure the health and safety of all employees in the workplace. During the development of the policy the committee may invite for advice the Union's drug and alcohol officer and any other source that may be required for assistance and expertise.

16.—NO EXTRA CLAIMS

The parties agree that there shall be no additional claims made for increases in wages or allowances for the period of this Agreement.

Signed for and on behalf of—

The Union:

Signed ***COMMON SEAL***

DULY AUTHORISED OFFICER

Date 02/04/98

LEONIE DOWDEN

PRINT WITNESS

Signed

WITNESS

The Company Signed
DULY AUTHORISED OFFICER
Date 15/04/98

RICHARD WHITING
PRINT WITNESS

Signed
WITNESS

APPENDIX A—WAGE RATES

WAGE AND JOB CLASSIFICATION FOR CSR READYMIX JANDAKOT SAND OPERATIONS

Level	Title	Date of Sign Wage Rate	Wage at July 1 1998
Level 1	Quarry Operator	$482.60 per week ($12.70/hr)	$494.00 per week ($13.00/hr)
Level 2	Quarry Operator	$470.06 per week ($12.37/hr)	$481.46 per week ($12.67/hr)
Level 3	Quarry Operator	$457.52 per week ($12.04/hr)	$468.92 per week ($12.34/hr)
Level 4	Quarry Operator	$444.98 per week ($11.7 1 /hr)	$456.92 per week ($12.02/hr)

The above rates are, for all purposes and inclusive of all service and industry allowances.

Job Skills

1. Loader Operation
2. Dump Truck Operation
3. Water Truck Operation
4. Processing Plant Operator
5. Weighbridge Operation
6. Drill Operation
7. Shotfirer
8. MIS Reporting and Quality Assurance

In addition to the above primary activities, the employee agrees to carry out any ancillary activities that may or may not involve the use of tools, plant and equipment that are within the limits of the employee's skill, competency and training. Each of these skills need to be assessed prior to classification by an approved assessment agency nominated by the Company.

Level 1—Quarry Operator

Is required and able to use at least 4 of the Job Skills listed above.

Level 2—Quarry Operator

Is required and able to use at least 3 of the Job Skills listed above.

Level 3—Quarry Operator

Is required and able to use at least 2 of the Job Skills listed above.

Level 4—Quarry Operator

New employees who do not possess specific skills, as required in each of the levels, will be employed as a level 4 Quarry Operator, and if required to perform duties of a higher level shall, in the first three months of employment, receive appropriate training for those higher duties.

Additional Allowance

• An employee placed in charge of not less than 3 employees shall be paid an additional allowance of $40.00 per week.

• If all parties agree to take responsibility and act as self managed team, this allowance of $40.00 per week, will be shared between full-time site employees, whether covered by this Agreement or not. The rate will vary based on the number of full time employees working on site in any given week.

• For the purposes of this Agreement, the additional allowance shall not form part of the base wage rate of the employee(s) under either of the options specified above.

Classification Structure

The parties agree, within a period of 12 months, to discuss the appropriateness of the classification structure specified in this Agreement from both a career and operational perspective.

SCOTCH COLLEGE ADMINISTRATIVE AND TECHNICAL OFFICERS (ENTERPRISE BARGAINING) AGREEMENT 1998.

No. AG 97 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers and Scotch College.

No. AG 97 of 1998.

Scotch College Administrative and Technical Officers (Enterprise Bargaining) Agreement 1998.

COMMISSIONER P E SCOTT.

14 September 1998.

Order.

HAVING heard Ms T Howe on behalf of the Applicant and Mr T Stacy on behalf of Scotch College and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Scotch College Administrative and Technical Officers (Enterprise Bargaining) Agreement 1998 in the terms of the following schedule be registered on the 6th day of August 1998.

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

Schedule.

1.—TITLE

This agreement shall be known as the Scotch College Administrative and Technical Officers (Enterprise Bargaining) Agreement 1998 and shall replace the Scotch College Administrative and Technical Officers (Enterprise Bargaining) Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Relationship to Parent Award
5. Scope of Agreement
6. Date and Duration of Agreement
7. Single Bargaining Unit
8. Objectives
9. Salary Rates
10. Conditions of Employment
11. Dispute Resolution Procedure
12. No Reduction
13. Consultation
14. No Further Claims
15. No Precedent
16. Signatories
Appendix 1

3.—PARTIES TO THE AGREEMENT

This agreement is made between Scotch College (the College) and the Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (the ISSOA), a registered organisation of employees.

4.—RELATIONSHIP TO PARENT AWARD

This agreement shall be read and interpreted in conjunction with the Independent Schools Administrative and Technical Officers Award 1993 (the award).

Where there is any inconsistency between this agreement and the award this agreement will prevail to the extent of the inconsistency.

5.—SCOPE OF AGREEMENT

(1) This agreement shall apply to all staff who are employed within the scope of the Independent Schools Administrative and Technical Officers Award 1993.

(2) The number of employees covered by this agreement is 28.

6.—DATE AND DURATION OF AGREEMENT

This agreement shall come into effect on and from 6 August 1998 and shall apply until the 30th day of September 1998.

7.—SINGLE BARGAINING UNIT

The parties to this agreement have formed a single bargaining unit.

The single bargaining unit has conducted negotiations with the College and reached full agreement with the College represented by this agreement.

8.—OBJECTIVES

The nature and purposes of this agreement are to—

(1) Consolidate and further develop initiatives arising out of the award restructuring process.

(2) Re-affirm a mutual responsibility to maintain a working environment which will ensure that the College and its staff continue to be genuine participants and contributors to the College's aims, objectives and philosophy.

9.—SALARY RATES

(1) Determination of Previous Changes

Following the matters finalised as part of the 1996 agreement, the following changes are to be ratified by this agreement—

(a) Revised salary scales for all levels in accordance with Appendix 1

(b) Any increases in rates to apply from 01/07/97

(c) The addition of a new pay level 5 in accordance with Appendix 1

(d) All staff employed as at 01/07/97 in levels 1 to 4 move up one step annually, until step 6 is reached.

(e) Staff in level 5 and new appointments to level 4 only progress to the next step annually after satisfactory appraisal and recommendation.

(f) No individual will received a lower rate of pay as a consequence of any of the above rate changes.

(2) Fortnightly Salary Calculation

(a) As from the pay period commencing on 5 January 1998 (paid on 16 January 1998) fortnightly pays will be calculated by dividing the annual salary by 26.0893, rather than 26.

The new denominator is reached by dividing 365.25 days by 14 days, to the nearest four decimal places.

(b) As from the same pay period, all annual salary rates will be increased by 0.343 of one per cent to compensate for what would otherwise result in a decrease in fortnightly gross pay.

(3) Salary Scales—1997/8

(a) As from the pay period commencing on 29 September 1997 all salary rates from Level 1 to Level 5 will be increased by 0.7 of one per cent, to take account of the Western Australia rate of inflation for the year ended 30 June 1997.

(b) As from the pay period commencing on 5 January 1998, all salary rates from Level 1 to Level 5 will be increased by either two per cent, or the change in the Bureau of Statistics WA Consumer Price Index (CPI) for the six months ending 31 December 1997, whichever is the greater. The adjustment to account for the 26.0893 denominator (see above) is not included in this increase.

(c) As from the first pay period commencing after 1 July 1998, all salary rates from Level 1 to Level 5 will be increased by either two per cent, or the changes in the Western Australia CPI for the 6 months ending 30 June 1998, whichever is the lesser.

10.—CONDITIONS OF EMPLOYMENT

(1) Professional Development

An employee shall be eligible to apply for up to 5 days per annum for relevant professional development without deduction of pay. Professional development approved by the College shall be fully funded by the College, including reimbursement of incidental expenses.

(2) Parental Leave

The College will grant parental leave in accordance with current minimum provisions as contained in the Workplace Relations Act 1996.

(3) Superannuation

All permanent employees may from the first pay period commencing in the tax year 1997/98, become contributing members (category B) and thereby pay 5.5% of their gross earning to the plan, with the College contributing a further 7.5% plus 3% productivity on their behalf. Members shall be able to "salary sacrifice" their contributions, in the same manner as "category A" members of the plan, as per the award.

(4) Leave

(a) (i) Employees under this agreement will be entitled to four weeks annual leave in accordance with the underlying award, such leave to be taken at a time mutually agreed with the College.

(ii) When leave is taken during the period the College is normally closed at Christmas the weekdays (excluding public holidays) between Christmas Day and New Year's Day will not be counted as part of the four weeks annual leave days but as additional paid annual leave.

(b) Long service leave will accrue in accordance with the underlying award—i.e. 10 weeks' paid leave after 10 years' service.

(5) Appraisal System

A formal system of annual appraisal will continue to be developed by mutual consultation. The object will be to introduce regular appraisals of each employee to—

(i) provide a means to ensure correct level and step grading

(ii) provide encouragement and counselling where needed

(iii) encourage communication between staff members and supervisors

(iv) assess each individual's potential for promotion

(v) identify professional development needs

(6) Other Conditions

No tuition fee concession will apply for sons of Administrative and Technical Officers enrolled at the College. However, as in the past, the Headmaster is authorised to consider applications from non-teaching staff for a "sons of staff" concession.

11.—DISPUTE RESOLUTION PROCEDURE

A dispute is defined as any question, dispute or difficulty arising out of this agreement.

The following procedure shall apply to the resolution of any dispute—

(1) The parties to the dispute shall make reasonable attempts to resolve the matter by mutual discussion and determination.

(2) If the parties are unable to resolve the dispute, the matter, at the request of either party, shall be referred to a meeting between the parties, together with a representative if requested by either party.

(3) If the matter is not then resolved it may be referred to the Western Australian Industrial Relations Commission.

12.—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.

13.—CONSULTATION

(1) There shall be established a Consultative Committee with equitable representation of employers and non-teaching staff from the College. The Committee shall provide a forum in which to discuss any matters brought to the Committee, provided they relate directly to the conditions of employment of non-teaching staff.

(2) Either party can call a meeting at a mutually convenient time.

14.—NO FURTHER CLAIMS

It is a condition of this agreement that the parties will not seek any further claims with respect to salaries or conditions unless they are consistent with the State Wage Case Principles.

15.—NO PRECEDENT

It is a condition of this agreement that the parties will not seek to use the terms contained herein as a precedent for other enterprise agreements, whether they involved the College or not.

16.—SIGNATORIES

.....(signed)..... *Common Seal*

(Signature)

T K STACEY, N W McKERRACHER

(Name of signatory in block letters)

Scotch College

.....(signed)..... *Common Seal*

(Signature)

T I HOWE

(Name of signatory in block letters)

Independent Schools Salaried Officers' Association of Western Australia Industrial Union of Workers

APPENDIX 1

AS FROM 1/7/97						
Denominator	26.00000					
ATO RATES	Change	Level 1	Level 2	Level 3	Level 4	Level 5
Step 1		21914	24230	28285	31100	34868
Step 2		22197	24787	28964	32002	36054
Step 3		22483	25357	29659	32930	37279
Step 4		22773	25941	30371	33885	38547
Step 5		23067	26537	31100	34868	39857
Step 6		23364	27148	31846	35879	41213
AS FROM 1/10/97	+0.7%					
Denominator	26.00000					
ATO RATES		Level 1	Level 2	Level 3	Level 4	Level 5
Step 1		22067	24400	28483	31318	35112
Step 2		22352	24961	29167	32226	36306
Step 3		22640	25534	29867	33161	37540
Step 4		22932	26123	30584	34122	38817
Step 5		23228	26723	31318	35112	40136
Step 6		23528	27338	32069	36130	41501
AS FROM 1/1/98	+2.0%					
Denominator	26.08930					
ATO RATES		Level 1	Level 2	Level 3	Level 4	Level 5
Step 1		22584	24971	29150	32051	35935
step 2		22876	25545	29850	32981	37157
Step 3		23171	26133	30566	33937	38420
Step 4		23470	26735	31300	34922	39726
Step 5		23773	27349	32051	35935	41076
Step 6		24079	27979	32820	36977	42474
AS FROM 1/7/98		Level 1	Level 2	Level 3	Level 4	Level 5
Step 1	(lesser of)					
Step 2	CPI-6					
Step 3	MONTHS					
Step 4	JAN-JUN					
Step 5	1998					
Step 6	OR 2%					

SHIRE OF SWAN (BUILDING OPERATIONS) ENTERPRISE BARGAINING AGREEMENT. No. AG 102 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Shire of Swan

and

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch and Others.

No. AG 102 of 1998.

Shire of Swan (Building Operations) Enterprise Bargaining Agreement.

COMMISSIONER P E SCOTT.

22 September 1998.

Order.

HAVING heard Mr M D Fitz Gerald on behalf of the Applicant and Mr D Smith 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 Shire of Swan (Building Operations) Enterprise Bargaining Agreement in the terms of the following schedule be registered on the 2nd day of September 1998.

(Sgd.) P. E. SCOTT,
Commissioner.

[L.S.]

Schedule.

1.—TITLE

This Agreement shall be known as the Shire of Swan (Building Operations) Enterprise Bargaining Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope
4. Parties to the Agreement
5. Date of Operation
6. Objectives

7. Application of Award
8. Code of Negotiating Conduct
9. Enterprise Model
10. Private Works Contracts
11. Reserved Matter
12. Code of Work Conduct
13. Method of Work
14. Ordinary Hours
15. Job Start
16. Job Finish
17. Meal Break
18. Rostered Days Off
19. Annual Leave
20. Public Holidays
21. Family Responsibility Leave
22. Accumulation of Hours
23. Annualised Leave Loading
24. Insurance of Tools
25. Quality of Life
26. Notification of Pending Change
27. Extended Hours
28. Consultative Committee
29. Dispute Settlement
30. State Standards
31. Notification of Employee Absence
32. Rotation of Duties
33. Project Completion
34. Composite Allowance
35. After Hours Recall
36. Project Continuity of Work
37. Performance Bonuses
38. Competitive Tendering
39. Membership on the Contract Tendering Committee
40. Training
41. Inhouse Training
42. Security of Tenure in Competitive Environment
43. Nexus to Award
44. Delayed Agreement
45. Future Agreements
46. Occupational Health & Safety
47. Signatories

3.—SCOPE

This Agreement shall apply to, and be binding upon, the Municipality of the Shire of Swan (the Employer), the registered organisations listed in Clause 4.—Parties to the Agreement (the Union) and employees of the Municipality who are, or eligible to be, members of the Union named who work from the Municipality's Depot in Great Northern Highway, Middle Swan.

4.—PARTIES TO THE AGREEMENT

The parties bound by this Agreement are:

1) The Employer:
   The Municipality of the Shire of Swan.
2) Unions:
   - Construction, Mining Energy, Timberyards, Sawmills and Woodworkers Union of Australia (WA)
   - The Western Australian Builders' Labourers, Painters and Plasters Union of Workers
   - Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia, (WA Branch), Plumbing Division
3) This agreement applies to approximately six employees.

5.—DATE OF OPERATION

5.1 This Agreement shall take effect from the beginning of the first pay period to commence on or after the date of registration in the Western Australian Industrial Relations Commission and remain in force for a period of two years.

5.2 It has been agreed that six months prior to its expiree discussions will take place between the parties to determine an appropriate course of action with respect to renewal of this Agreement.

6.—OBJECTIVES

6.1 The objective of this Agreement is to facilitate productivity improvements by the introduction of the following work practices.

6.2 The implementation and maintenance of a workplace culture to encourage co-operation between employees and management by:

a) To implement a process of work that guarantees quality services are carried out in a trades person like manner.

b) To provide better remuneration packages that require the qualities and multi skilling of the members of the Building Operations Business Unit.

c) Management and Building Operations staff will be committed to the establishment and continuation of a Total Quality Management Programme.

d) To develop a system of work that under pinned the Building Operations unit members as the preferred supplier of services to the stake holders of Swan

6.3 On the signing of this Agreement the parties are committed to continued productivity improvement and agree to regularly negotiate, in good faith, to determine methods by which standards may be improved while maintaining a safe working environment in relation to activities in the workshop.

7.—APPLICATION OF AWARD

7.1 This Agreement shall be read wholly in conjunction with the Building Trades Award No. 31 of 1966 as varied from time to time.

7.2 Where there is any inconsistency between this Agreement and the parent Award, this Agreement shall prevail to the extent of the consistency.

8.—CODE OF NEGOTIATING CONDUCT

At all times the negotiators will:

- Treat each other with dignity
- Respect the opinions and beliefs of those that subscribe to a different viewpoint
- Listen to what all members have to say
- Represent all views and not personal views
- Take into account the commercial realities that exist
- Not use scare tactics to influence a situation
- Work as a team with a measurable service to offer to the stakeholders
- Be honest in their dealings with each other
- Communicate all information in a timely manner
- Understand the sensitivity of the information that is given freely to negotiators
- Be prepared to renegotiate should the situation arise
- Bargain in good faith

9.—ENTERPRISE MODEL

9.1 **1st Year Increase 7% Payable on Certification and Payable from 1 Jan 98**

In recognition of the parties' agreement that long term productivity improvement is essential to achieve mutual objectives and continued improvements to wages and conditions of employment, the building operations team will embark on a programme of measurable performance improvement and innovation. The following service agreement will be implemented immediately with the Consultative Committee meeting every three months to review the criteria and vary the procedures where better methods of operation become practicable.

9.2 **Service Agreement**

Customer's Expectations	**Building Operations Commitments**
The maintenance team provides an immediate analysis of problem with feedback to the customer on order of priority	• Received correct information upfront to avoid additional travelling time for materials, etc • Use of ticksheet to establish all necessary info if possible. • Undertake to provide, where necessary, an instant response with the necessary resources. • Undertake work in accordance with OH&S principles. • Provide a teamwork approach that is multi-skilled, flexible and maintain high standards.

Customer's Expectations	Building Operations Commitments
Provide regular situation reports to customers.	• Carry out annual visits associated with budget preparation as required. • Programme at least 12 visits a year (no more than a month between visits) in conjunction with the supervisor. • Special needs identification and/or circumstance based, eg Gidgegannup Show; Lilac Hill Cricket, regular checking of pumps etc. • Monthly maintenance meetings.
Provide an informative Service/Work Order system	• Works tracking to support time and resources. • Customer can be informed on the extent of work carried out. • Make best use of resources and manpower. • Evaluate work request and prioritise. • Ask and check if additional work is required then program with supervisor.
Provide flexible working hours	• Split RDOs. • Working prior to the building or asset opening or after they have finished. • Necessary tasks completed within 60 minutes after work.
Known response times for requests	• Immediate—work actioned and completed as soon as possible. • Urgent—work completed within 1 working day. • Non urgent—work completed within 14 working days.
Reaction to a security breach	• If vacant—arrange immediate security.
Provide graffiti removal	• If occupied—make safe and arrange security by end of day. Response time— • If offensive—same day • Non offensive—1-2 days
To use the sections local knowledge	• Familiarity with services within and around the buildings. • Access to keys and security codes. • Knowledge of contact points and names.

9.3 **Second Year Increase 7% Depending on the Following Achievements**

The development of another two Key Performance Areas during the previous 12 months. The Negotiating Committee has a strong preference for these areas to be **Occupational Health and Safety and Improvements in Data Collection for Preventative Maintenance Programmes.** A further two areas will be identified for development during the second year of the enterprise agreement.

10.—PRIVATE WORKS CONTRACTS

During the life of this Agreement and on a trial only, a contract performance bonus for contracted private works will be investigated on a contract by contract basis with a view to sharing on an agreed portion of any profit amongst the employees as a whole.

Private works

For the purpose of this clause, private works shall be defined as the carrying out of tasks for a body other than Council, won in open marketplace tendering and not part of Council's core functions or programmed works and not including services, and repairs unless for another Local Government Authority.

Gain Sharing shall be distributed as follows—

- one third to Council
- one third to the Building Operations
- one third to the Unit Contingency Fund, specifically for plant replacement or to cover any future shortfall

11.—RESERVED MATTER

This Agreement has been entered knowing that the partners intend to be the preferred service provider. Should the partnership become aware of a real threat to the continuation of the Shire of Swan Building Operational Services section, the parties agree to return to the table and renegotiate any or all of the clauses that would facilitate the survival of the section. The renegotiated terms would only exist until such time as it was prudent to return to the original agreement.

12.—CODE OF WORK CONDUCT

This Code of Work Conduct has been developed to ensure that the highest ethical standards are practised by the Unit Members and as such complements the Shire of Swan's published Code of Conduct. These standards will be communicated to the stakeholders of the Shire of Swan so that the community has a measure of expectation and the Unit Members have a protection arising out of their ethical adherence to the Code.

12.1 **Behaviour of Unit Members**

- Treat all customers with dignity and respect
- At all times act in an honest and legal manner and carry out duties in line with community values.
- Unit members will not intimidate a customer, or demand a reward by inference or ask for a gift before carrying out any work. If doubt arises as to the appropriateness of the action or behaviour, consider how your family would view your action if it were reported in the newspapers.
- Maintain neat appearance and always be appropriately dressed.
- Interact with fellow workers in a courteous and co-operative manner.
- It is to be noted that a drink offered on completion and in appreciation of a task well done, is not considered a gift.

12.2 **Fair Treatment Of Plant And Environmental Factors**

- All plant will be treated with respect and serviced in accordance with predetermined schedules
- All faults will be reported immediately

12.3 **Non-compliance With Code Of Work Conduct**

In concert with Clause 29 Dispute Settlement, non-compliance with the Code of Work Conduct will be subject to a thorough investigation by the Chief Executive Officer's Office in accordance with Award and Statutory requirements. Should the circumstances warrant it and taking into account the principles of natural justice and equity, a Unit Member not working in an ethical framework or refusing to work within an ethical framework may be counselled in the first instance, redeployed or should the circumstances be of such a serious nature may have his or her services terminated.

13.—METHOD OF WORK

The parties agree that the following practices will be introduced and adhered to:

13.1 This Agreement provides for the forming of a semi-autonomous work unit which will be responsible for the day to day delivery of Building Operations Services within the Shire boundaries. The team will be fully responsible for all services and when circumstances out of the ordinary arise, team members will assist each member to complete his/her daily allocation and associated tasks. The team will also be accountable for covering work allocation during periods of short term illness (less than three days).

13.2 Annual leave rosters may be designed to ensure continuous and effective operation of the Building Operations areas are maintained.

13.3 Building Operations staff are committed to multi-skilling to ensure flexibility in the work place, provided that such multi-skilling does not de-skill and is within the ability of the employee to the level of training achieved, is safe and all occupational, health and safety requirements are adhered to.

13.4 Building Operations staff agree to complete urgent tasks at the end of shifts, if so required, provided such is within a reasonable time framework and that penalty rates in accordance with the Award will apply.

13.5 From time to time the use of contractors may be necessary to provide specialised skills and equipment not otherwise available.

13.6 (a) Building Operations staff agree that when a vacancy occurs management will review the position and replacement will not be automatic.

(b) If it is felt to be surplus to requirements, the position may be deleted from the establishment.

13.7 All staff are committed to the concept of "customer service" and this will be supported by recognised staff training programmes.

14.—ORDINARY HOURS

14.1 The employee is required to work a nine day fortnight Monday to Friday (76 hours per fortnight).

14.2 Ordinary hours shall consist of 8.5 hours worked as required between the hours of 6am—6pm. Where possible 18 hours notice will be given.

15.—JOB START

Employees covered by this agreement will be appropriately dressed and at their work station at the commencement of their shift, and if necessary, in their vehicle ready to leave the depot.

16.—JOB FINISH

Employees covered by this agreement will complete their working hours at the end of their shift and will wash up in their own time.

17.—MEAL BREAK

If required to enhance the operations, a thirty minute meal break will be taken at the discretion of the employee to suit the work being carried out and the employee's particular needs.

18.—ROSTERED DAYS OFF

18.1 In order that Council remains competitive and in the interests of serving ratepayers or in catering for the personal needs of the employee there may on occasions be the need to re-roster rostered days off. Any change to the roster would occur in consultation with the employee(s) concerned. Substituting a rostered day off will not attract penalty rates. However, employees who change rostered days off for personal reasons are to arrange their own replacements within their team in consultation with the supervisor, in the first instance, should this not be possible, then with the supervisor and if the matter is urgent, consent will not be unreasonably withheld. RDOs shall be taken to cause least inconvenience to the works programme. Accumulated rostered days off will be used in accordance with clause 22.

18.2 From time to time Council undertakes large projects. In consultation with the employees concerned, such projects will be planned so as to leave minimal inconvenience to the customers and ratepayers of the Shire of Swan and at this time rostered days off will be negotiated according to project needs and may be taken at a mutually convenient time.

In consultation with the employees and their supervisors and in the interests of Best Practice and Competitive Tendering the parties agree to continue the practice of RDOs being taken on a Friday or a Monday, so that there is always a presence and a capability to maintain all Trades services. However by mutual agreement other days may be taken.

18.3 Accumulated rostered days off will be used in accordance with clause 22.

19.—ANNUAL LEAVE

In consultation with the employee, annual leave will, as a general rule, be pre-scheduled annually to suit project requirements. Council requests (four) 4 weeks notice where possible of special circumstances that may necessitate a change to this arrangement. An annual roster may be drawn up in consultation with employee's to facilitate the needs of both parties.

20.—PUBLIC HOLIDAYS

Those employees rostered to work will be paid at the appropriate overtime rate.

Under normal circumstances there will be no work undertaken on Christmas Day, New Years Day or Good Friday.

All reasonable attempts will be made to ensure that there is a fair distribution of 'penalty time work' for all employees employed under this agreement without prejudice to the efficient operation of the system.

21.—FAMILY RESPONSIBILITY LEAVE

The Shire of Swan recognises that an employee has family responsibilities that may on occasion necessitate an absence from work. An employee may take up to five days of their sick leave, annual leave or time in lieu entitlements to tend to the needs of their family.

Where an employee claims more than one day for this purpose a medical certificate is required. For the purpose of performance bonus calculations an employee on family responsibility leave will not be penalised.

22.—ACCUMULATION OF HOURS

In keeping with clause 18, hours accumulated may be used by the employee in consultation with the Supervisor or may be attached to holiday periods at Easter, Christmas or in conjunction with public holidays. Further, in consultation with the employee, Council reserves the right to require its employees to reduce this accumulation of hours.

23.—ANNUALISED LEAVE LOADING

Leave loading will remain as per award conditions.

24.—INSURANCE OF TOOLS

24.1 A value of, up to, $2,500 insurance coverage shall be arranged by the employer for damage to, loss or theft of a trades persons tools and equipment.

24.2 The employee is responsible for notifying Council of the ongoing worth of his/her tools.

25.—QUALITY OF LIFE

25.1 **Special Family Leave**

The Shire of Swan recognises the contribution a stable home environment proves for each employee. In recognition of this contribution up to 38 hours per year special family leave may be deducted from the employees accumulated sick leave, but in special circumstances, additional accumulated leave to be negotiated by employee in order to tend to the needs of sick family members. For the purpose of this clause, family is defined as immediate family or individuals who are deemed to be by association immediate family.

25.2 **Maternity Leave**

25.2.1 Female employees are eligible for unpaid maternity leave after six months' continuous service. Maternity leave entitlement is set at a minimum of six weeks and a maximum of fifty two weeks.

25.2.2 An employee who is granted maternity leave has the right to return to her previous position, or if this no longer exists, to a comparable position if available.

25.2.3 The period of maternity leave is reduced by any period of paternity leave taken by the employee's spouse and except for a week at the time of the birth, may not be taken concurrently with paternity leave.

25.3 **Paternity Leave**

25.3.1 Male employees are eligible for unpaid paternity leave after six months' continuous service. Paternity leave will be available at the time of confinement of the employee's spouse in order to assist her and care for the family.

25.3.2 An additional unbroken period of unpaid paternity leave will be available in order to become the primary care giver of the new born child. Paternity leave ceases on the child's first birthday.

25.3.3 The total amount of maternity and paternity leave available to a family is 52 weeks.

25.3.4 Paternity leave is reduced by any period of maternity leave taken by the employee's spouse and except for the week at the time of birth, shall not be taken concurrently with her maternity leave.

25.4 **Adoption Leave**

25.4.1 Unpaid adoption leave is available to any employee, male or female, who is adopting a child under the age of 5 years.

25.4.2 Up to three weeks unpaid leave shall be available to adopting parents at the time of placement of a child. In the case of an overseas adoption, this includes leave to travel overseas to take custody of the child. This period of three weeks "short" adoption leave may be taken by both parents concurrently.

25.5 **Parental Leave**

Employees, after 12 months' continuous service with the Shire of Swan, will be eligible for Parental Leave, to be taken within twelve months following the birth or adoption of their child. These provisions are in substitution of any existing clauses covering Maternity or Paternity Leave provisions.

Parental Leave of up to five days on full pay shall be granted to an employee within a period of 12 months after the date of birth. This leave will be deducted from the employee's accumulated sick leave entitlements. Eligibility to take this leave is dependent on the employee providing the Human Resources Co-Ordinator with satisfactory evidence as to why the leave should be granted. The purpose of this leave is to allow the employee to attend medical appointments in respect of a sick child. This provision is not intended to represent a direct substitution of the Paternity Leave provisions.

25.6 **Compassionate Leave**

An employee, other than a casual employee, shall on the death of a close family member or an individual who may be deemed to be a member of the family, shall be entitled on notice, to leave up to and including the day of the funeral, without deduction of pay for a period not exceeding the number of hours worked by the employee in two ordinary working days.

25.7 **Special Leave**

The CEO may authorise special leave without pay where the Chief Executive Officer is satisfied the applicant has stated and substantiated good reason for such leave.

Period of leave without pay in excess of one month, shall not be counted as service for the purpose of calculating sick leave, annual leave, long service leave and other service based calculations.

25.8 **Phased in Retirement**

Provision will exist to accommodate an employee who seeks to reduce their hours of work to enable phasing-out of the workforce prior to their retirement, provided their request for reduced hours is both beneficial and acceptable to Council. These arrangements will be on the basis—

(a) that the hours not worked be treated as part-time leave without pay so as not to disadvantage the employee in terms of final payment of accrued leave entitlements or superannuation contributions.

(b) the employee maintain all superannuation deductions and other regular deductions.

Phased-in retirement guidelines should be developed and agreed to by all parties prior to the implementation of these provisions.

26.—NOTIFICATION OF PENDING CHANGE

Given recent State and Federal Government statements of the need for Local Government Authorities to implement tendering or competitive tendering contracts, the Shire of Swan seeks to secure long term employment for all employees by establishing, at some future date, a committee consisting of employer and employee representation to advise Council on matters that may impact on staff security.

27.—EXTENDED HOURS

Pre notice of a possible item for the next Enterprise Agreement to be negotiated in 1998. At some time in the future Council's needs may be such that extended operation work place hours may be necessary to meet the needs of both external and internal customers and guarantee permanency of employment. As the consultative committee will be working in partnership with management during the life of this agreement honest and open communication will occur so that all parties are aware of the necessary practices to remain competitive.

28.—CONSULTATIVE COMMITTEE

28.1 A Consultative Committee shall be established consisting of Manager Building Operational Services, and one other management member or their nominated representative and two elected employee members from the Building Operations area, one of whom is the authorised Union representative.

28.2 The employee representatives will be elected for two years, the role of the Consultative Committee will be to review the progress of the enterprise agreement with particular emphasis on the monitoring of increased productivity or any other issues that may be put before the Committee. The Committee will also be the first point of contact for activating the grievance and disputes settlements.

28.3 Where a vacancy occurs for an employee representative, an election shall be called and conducted at the direction of the consultative committee, subject to this agreement to fill the vacancy for the remainder of this agreement.

29.—DISPUTE SETTLEMENT

29.1 Any grievance, complaint, claim or dispute, or any matter which is likely to result in a dispute between management and the Building Operations employees, shall be settled in accordance with the procedures set out herein.

29.2 Where the matter is raised by an employee, or a group of employees, the following steps shall be observed—

29.2.1 The employee(s) concerned shall discuss the matter with the immediate supervisor, in the presence of the shop steward or other nominated party if required. If the matter cannot be resolved at this level the supervisor shall refer the matter to the appropriate Manager or his/her delegate.

29.2.2 The Manager Building Operational Services and one other relevant person and Consultative Committee as constituted in sub-clause 28.1 shall, if unable to resolve the matter raised within two working days of it being referred to them refer the matter to the Executive Manager Operational Services for his resolution, and the employee(s) shall be advised accordingly.

29.2.3 While the above procedure is being effected, the Union and its members will ensure that normal work continues.

29.2.4 While the above procedure is being effected, no action shall be taken by the employees or the employer. The above procedure shall be undertaken in three working days or less, unless the parties agree to a longer period.

If the matter has been referred to in accordance with the above and remains unresolved the employee(s) or their Shop Steward shall notify the Union Secretary (WA Branch) or their nominee so that they may have this opportunity of discussing the matter with management.

29.3 If a dispute should result in a disruption of work, then the Shire will organise its operations to ensure that the work will be cleared as quickly as practical with minimal costs to the Shire. In the first instance by the Shire's own staff and then, should there be no appropriately qualified staff available, short term contractors may be used to clear work considered essential to the servicing of the Shire's obligations and health and safety requirements.

If members of the Committee are involved in the dispute settlement procedure their work shall be undertaken by other qualified employees.

29.4 Should all attempts to resolve the matter fail, either parties may refer the matter to the West Australian Industrial Relations Commission for conciliation and if necessary arbitration.

30.—STATE STANDARDS

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 in regard to Hours of Work, Annual Leave with pay or Long Service Leave with pay.

31.—NOTIFICATION OF EMPLOYEE ABSENCE

Any employee who finds himself/herself absent from work at short notice must make reasonable attempts to contact their Supervisor by the second hour of their normal shift commencement.

Absence through illness must be supported with a medical certificate for occasions where absences occur for longer than two (2) working day (as per the award). Failure to supply supporting documentation will result in a loss of earnings for the total time the member was absent from the workplace.

32.—ROTATION OF DUTIES

In the preparation and development of semi autonomous work teams, all parties will, where applicable and after consultation with the employee agree to carry out any duties that are within the knowledge, skill base and ability of the employee.

33.—PROJECT COMPLETION

From time to time Council is faced with additional cost of returning to a job for a minimal amount of time because of knock off arrangements. In future employees who believe that the project can be completed with an additional hour of work, may after consultation with the supervisor elect to finish the project with self authorised overtime. On occasions when this does not suit all the members transport may be arranged for employees to return to the depot providing that occupational health and safety requirements are not diminished.

34.—COMPOSITE ALLOWANCE

With the exception of the tool allowance a composite allowance of fourteen dollars ($14.00) per week shall be paid on-lieu of all allowances, special rates and provisions contained within the award.

35.—AFTER HOURS RECALL

When an employee is recalled to work after leaving the job—

- All recalls shall be paid a minium of three (3) hours at overtime rates.
- Multiple recalls in any three (3) hour period will not be charged separately.
- Time reasonably spent in getting to and from work shall be counted as time worked.

36.—PROJECT CONTINUITY OF WORK

This clause excludes all regular maintenance work and is applicable to contracted project work involving Shire employed workers only. In the event that any crew or individual is required to work a full Saturday on a particular project that, for reasons of better work practices, is best completed on that day, shall be paid at the rate of ordinary time and that the following Monday shall be taken as day in lieu with Monday being paid at ordinary time.

Should Monday be the rostered day off for the work cycle, another day that is suitable to both parties shall be rostered off.

37.—PERFORMANCE BONUSES

Work groups which display co-operative and measurable good performances over four (4), six (6) month periods will be eligible for an individual performance bonus (assuming this agreement is for two years).

The Consultative Committee will be responsible for establishing criteria for the determination of 'co-operative and good performance' and will make recommendations to the Manager Building Operational Services at the completion of each six (6) month period. Elements to be taken into consideration will include, but not be exclusive to—

- Failure to apply safe working practices
- An ongoing reduction in absenteeism
- Application and adherence to Occupational Health and Safety Regulations
- Cost efficiency of service levels
- Developing a means of sustaining and improving customer service levels
- Environmental quality and productivity of work output
- Increasing flexibility of section
- Redesign of work to reduce waste and duplication
- Becoming more competitive and retaining a competitive edge
- Displaying mutual respect within and between all groups who work in or interact with the operational areas
- Team satisfaction and co-operation

The total bonus available for each year of the agreement will be $350 per person and may be divided and allocated to each period as the Committee feels appropriate. Should the need arise, the Committee may elect not to award a performance bonus to an employee should that employee not meet the criteria in any one period or should there be a repeat of a similar breach of safe working practices.

38.—COMPETITIVE TENDERING

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 effect the way in which services are delivered to the community.

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.

Building Operations Management 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.

39.—MEMBERSHIP ON THE CONTRACT TENDERING COMMITTEE

All parties at the Shire of Swan recognise the need to provide residents and service users with the most relevant and cost effective services available. Thus a Contract Tendering Committee may be set up to examine the purchase of goods and services through the competitive tendering process. The committee will consist of a flexible membership of not less than two employee representatives depending on the project at hand. For example, preventative maintenance, specialist trade services, cleaning contracts, etc.

The Workplace representatives will be required to have input into the appropriateness of the contract, the costing, the content of the contract and the final acceptance.

Where practicable, committee members will attend briefing sessions on contract tendering procedures and outcomes.

Management will continue to develop staff strategies and training programmes to ensure Council's own competitiveness in an open market place.

40.—TRAINING

When completed, the Shire of Swan's training policy will cover all employees of the Shire.

41.—INHOUSE TRAINING

The Shire recognises the need for the multi-skilling ability of the operational employees of the Building Operations. Inhouse training by the team members will be undertaken in times of need to suit individual requirements.

Whilst it is appreciated that all learning to the development of new skills employees will not be expected to become deskilled as a result of the training.

In low season time general training will be undertaken by all members. This training will be given by the appropriate team members in addition a record of all training undertaken will be kept on the personnel file and taken into account when allocating the group performance bonus.

42.—SECURITY OF TENURE IN COMPETITIVE ENVIRONMENT

It has always been a priority for Council to develop and maintain a multi-skilled workforce. In the event that Council is unable to provide a particular operational service that is effective and cost efficient in terms of participating in a competitive tendering market, the following redeployment procedures will occur.

Council will use its best endeavours to encourage tendering organisations to employ a percentage of the experienced Shire of Swan employees who have expertise in the particular area and who seek continued employment within their are of expertise.

Where this is not a workable option, and opportunities exist in other areas of the Shire's employment pool, the displaced members of the Building Operations section will be redeployed to another part of the Council's operation provided that the skills required are after training within the ability and qualifications of the employees.

The key elements of Council's Redeployment Program shall be—

- Career counselling

- Career development workshop
- Career development plan
- Full assessment against know opportunities
- Skill evaluation and selection of specific training requirements
- This programme may be run in-house or may be run by an external agency.

42.1 Redundancy

Should there be no practicable ability to redeploy the particular members of the Unit team concerned, Council shall in the first instance call for volunteers from within the team concerned to participate in a voluntary redundancy programme. In order to assist unit members in the decision making process, the Shire of Swan will provide the following services—

- A financial awareness seminar
- A counselling session with an employee counselling service or similar A small business seminar organisation
- A career management workshop

The voluntary redundancy package shall be as follows—

- Four weeks payment in lieu of notice
- Two weeks payment for each year of service or part year of service up to 26 weeks, providing a maximum package of 30 weeks payment.
- 50% of sick leave accruals at day of departure
- Pro rata long service leave

Should the voluntary programme fall short of the required numbers the Shire of Swan will enter into a forced redundancy programme.

The forced redundancy packaged will be as follows—

- Four weeks payment in lieu of notice
- Three weeks payment for each year of service or part year of service up to 26 weeks, providing a maximum package of 30 weeks payment
- 75% of sick leave accruals at day of departure
- Pro rata long service leave

In the event that Council services become uncompetitive and that particular service is contracted out, a member of the Building Operations section may elect to take up voluntary redundancy as the first option.

43.—NEXUS TO AWARD

Council has negotiated with its employees an Enterprise Agreement that when taken as a whole is in excess of Award conditions at the time of signing. Movements in the Award will not flow on to those covered by the Award until such times as employees suffer an overall disadvantage. Therefore, any movements in the Award conditions will not be viewed in isolation, but will be compared to the total package enjoyed by the employees. At the point of overall disadvantage the employee will benefit to the extent of the disadvantage.

44.—DELAYED AGREEMENT

If, after six months of the expiry of this Agreement no new agreement has been reached, and the partnership members are unlikely to reach common ground in the foreseeable future, then subsequent safety net increases that occur during the period the six months has elapsed and a new agreement has been enacted, will be passed on to all employees bound by this agreement. If an Agreement is then entered into, the Safety Net Increase will be discounted against future increase. Should no Agreement be reached or the parties agree to withdraw from the enterprise bargaining process, the enterprise rate of pay will become the base rate of pay and the redundancy provision shall also remain.

45.—FUTURE AGREEMENTS

An outcome of this partnership is that future preliminary discussions take place in a consultative environment with both partners developing possible clauses in cooperation and as one voice to be put to the Unit Members.

46.—OCCUPATIONAL HEALTH & SAFETY

The Western Australian Occupational Health, Safety and Welfare Act 1984 as amended from time to time shall apply without limitation.

47.—SIGNATORIES

Signed on behalf of the Shire of Swan this 30 day of July 1998.

signed

Mr E W T LUMSDEN

Chief Executive Officer

Signed on behalf of the Construction, Mining Energy, Timberyards, Sawmills and Woodworkers Union of Australia (WA) this 15th day of July 1998.

signed

_____ ***Common Seal***

Branch Secretary

Signed on behalf of The Western Australian Builders' Labourers, Painters and Plasters Union of Workers this 15th day of July 1998.

signed

_____ ***Common Seal***

Branch Secretary

Signed on behalf of Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia, (WA Branch), Plumbing Division this 15th day of July 1998

signed

_____

Branch Secretary

Shire of Swan Building Trades Enterprise Bargain Agreement Rates of Pay 25 May 1998
($ per fortnight)

Classification Level	Shire of Swan Current Rates			Shire of Swan EBA Year One				Shire of Swan EBA Year Two			
	Base Rate	Tool Allowance	Total	New Base Rate	Tool Allowance	Composite Allowance	Total	New Base Rate	Tool Allowance	Composite Allowance	Total
L5	464.33	18.66	482.99	496.83	18.66	14.00	529.49	531.60	18.66	14.00	564.26
L6 N/A											
L7	502.89	18.66	521.55	538.09	18.66	14.00	570.75	575.75	18.66	14.00	608.41
L8	523.63	18.66	542.28	560.28	18.66	14.00	592.94	599.49	18.66	14.00	632.15
NOTES	Above rates do not include allowances for special rates and conditions			• Base Rate Increased 7% • Composite Allowance Added							

TOTAL CORROSION CONTROL INDUSTRIAL AGREEMENT. No. AG 124 of 1998.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders Labourers, Painters & Plasterers Union of Workers & Other

and

Total Corrosion Control Pty Ltd.

No. AG 124 of 1998.

Total Corrosion Control Industrial Agreement.

COMMISSIONER S J KENNER.

14 September 1998.

Order.

HAVING heard Ms J Harrison as agent on behalf of the applicant and there being no appearance from the respondent and by consent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Total Corrosion Control Industrial Agreement as filed in the Commission on 23 July 1998 be and is hereby registered as an industrial agreement.

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

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders Labourers, Painters & Plasterers Union of Workers

and

Total Corrosion Control Pty Ltd.

AG No. 124 of 1998.

Total Corrosion Control Industrial Agreement

COMMISSIONER S J KENNER.

1 September 1998.

Minute of Proposed Order.

HAVING heard Ms J Harrison on behalf of the applicant and there being no appearance on behalf of the respondent and by consent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Total Corrosion Control Industrial Agreement as filed in the Commission on 23 July 1998 be and is hereby registered as an industrial agreement.

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

WAGE AGREEMENT

Schedule.

1.—TITLE

This Agreement will be known as the Total Corrosion Control 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. Productivity Initiatives
10. Wage Increase and Disability allowance
11. Site Agreements
12. Industry Standards
13. Clothing and Footwear
14. Training Allowance, Training Leave, Recognition of Prior Learning
15. Seniority
16. Disciplinary Procedure
17. Pyramid Sub-Contracting
18. Fares and Travelling
19. Drug and Alcohol, Safety and Rehabilitation Program
20. Income Protection
21. No Extra Claims

Appendix A—Wage Rates
Appendix B—Drug and Alcohol, Safety and Rehabilitation Program
Appendix C—Disciplinary Procedure
Appendix D—Consultative Processes
Appendix E—Classification Structure

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 Total Corrosion Control Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Unions, its officers and members, and any person eligible to be members of the Unions employed by the Company on work covered by the terms of the Industrial Spraypainting and Sandblasting Award A33/87 (the "Award") and the National Building Construction Industry Award. There are approximately 150 employees covered by this agreement. When employees covered by this agreement work away from the factory, the terms of the National Building Construction Industry Award shall apply.

5.—DURATION

This Agreement shall commence from the first pay period on or after the 1st of August 1997 and shall continue in effect until 31 October 1999.

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 42 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 Awards the higher rate shall apply.

9.—PRODUCTIVITY INITIATIVES

1. Consultative Process

The parties re-affirm their commitment to consultative processes as outlined in Appendix D and to put these committees in place within 4 weeks of this Agreement being registered in the Western Australian Industrial Relations Commission.

2. Classification Structure

The parties agree to commence negotiations to progress a classification structure using as a basis the structure contained in Appendix E—Classification Structure.

3. Wash up Time

Workers are to be reminded of Award clauses. This issue is to be monitored by the consultative committee on an on-going basis.

4. Utilisation of sub-contractors and labour hire

No more sub-contractors are to be employed by the Company. Existing sub-contractors are to be phased out and not replaced by sub-contractors on termination/resignation. The issue of sub-contractors and labour hire may be discussed by the consultative committee at a future date.

5. Smoko/Lunch break Flexibility

The Consultative Committee will agree on smoko/lunch break flexibility in line with Award prescriptions.

6. Staff to assist wages

Staff are to assist wages employees where practicable in the following areas—

a) Supervisory staff (salaried staff and leading hands) may use tools when carrying out inspections, testing equipment or instructing/training employees provided that this action does not attempt to replace the jobs of employees covered by this Agreement.

b) For weekend work, Supervisors may undertake a job for less than two hours duration. Any work covering more than two hours should be offered to at least 5 employees (by phone), before completion.

7. Union meeting on local issues

a) Meetings to report on in-hours matters may be held at times convenient to the Company and the employees with the aim of maintaining a continuous non-disruptive work pattern. Meal breaks have been agreed by the parties as the most convenient time.

b) Discussions with the Company will take place if either party wishes to change the time for a meeting.

8. Benchmarking

a) The Consultative Works Committee will develop a productivity and performance plan to identify and benchmark a number of performance indicators. The benchmarking process will use a "best practise" policy in order to create and environment, and a performance policy which will commit the parties to a simultaneous improvement in costs, quality and delivery.

b) The two main areas in which performance indicators will be identified are—

(i) Overall company performance measures applicable to the business.

(ii) Improvement measures specific to the various Company departments.

Examples of improvement measures include, but are not limited to—

a) Housekeeping standard in work areas and stores to be established and maintained.

b) Measurement and control of consumables.

c) Labour turnover.

d) Measurement and commitment to minimise the use of sick leave.

e) Measurement of overtime and reasons for overtime.

f) Down-time measurements.

g) Maintenance programme performance.

h) Pro-active safety programme

i) Work organisation procedures

j) Development of maintenance and production work procedures.

k) Alternative roster system.

l) Labour flexibility.

9. Labour Hire

Labour Hire may be used to supplement day labour in exceptional circumstances, for periods of up to 4 days of employment, unless otherwise agreed between the parties.

10. Overalls/Personal Protective Equipment, Toobox and Tools

The Consultative Committee shall discuss and agree on efficiencies in these areas, to be implemented throughout the life of this agreement.

11. Holiday Pay

Employees will reduce holiday entitlements to acceptable levels, as agreed by the Consultative Committee.

12. Further Productivity Initiatives

Throughout the life of this Agreement the parties agree to hold discussions on issues including, but not limited to—

- Shift work rates and patterns
- Fortnightly pays
- RDO accumulation
- Inclement Weather

Any agreement arising out of the above discussions, where appropriate will be implemented within the life of this agreement.

13. Payment for Travel Outside Radial Areas

Where employees are required to travel to and from a workplace which is located outside a 50 kilometre radius of Perth GPO, all time in excess of eight hours on any one day Monday to Friday spent travelling or travelling and working shall be paid at the prescribed penalty rates. Weekend travel outside the radial area will attract the appropriate penalty rates.

10.—WAGE INCREASE AND DISABILITY ALLOWANCE

This Agreement provides for increases in the hourly rate resulting in the wage rates in the Appendix A—Wage Rates. A disability allowance of $5 per day for each day worked, shall also be paid in lieu of Clause 9—Special Rates and Provisions of the Award.

11.—SITE AGREEMENTS

Where a site agreement applies to employees covered by this Agreement having rates and conditions in addition to this Agreement, then those additional rates and conditions shall apply to the extent of the inconsistency.

12.—INDUSTRY STANDARDS

Superannuation

The Company will increase its level of payment in line with relevant legislative requirements.

The Company will advise all employees subject to the Agreement of their rights to have payments made to a complying superannuation fund of their choice. The Company is bound by the employee's election. The aforementioned payment will then be made to that fund.

Until each employee nominates the fund of their choice the Company will make payments into the construction + Building Unions Superannuation Scheme (the "C+BUSS").

In the event that any employee chooses a fund other than the C+BUSS the Company will, within seven days of the employee advising the Company of the fund of their choice, advise the Union in writing of the employee's decision.

In the event that the employee and the Company reach an agreement pursuant to section 49C(2)(d) of the Act to change the complying superannuation fund or scheme the Company will, within seven days of the employee and the Company reaching such an agreement, advise the Union in writing of the agreement. The Company will not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by the employee.

13.—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 pairs of overalls to be replaced on a fair wear and tear basis.

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.

14.—TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING, TRAINING COMMITTEE

1. A Training Committee will be established to monitor the introduction of a skills enhancement programme applicable to work at the Company. Access to training shall be equitably distributed and monitored by the Training Committee.

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-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

16.—DISCIPLINARY PROCEDURES

The parties agree to adopt the procedures outlined in Appendix C.

17.—PYRAMID SUB-CONTRACTING

1. "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

2. Provided that where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

3. Further provided that when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

4. A bona fide sub-contractor is generally an employer of labour, save for a machine owner-operator.

5. Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

18.—FARES AND TRAVELLING

A travel payment shall be made in the form of a daily payment (on days worked) of $17.95 per day per employee.

19.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation program as outlines in Appendix B—Drug and Alcohol, Safety and Rehabilitation Program.

20.—INCOME PROTECTION

The Company agrees to enquire into the 24 hour sickness and accident cover. The terms of the policy will be agreed to between the Company and the Union, if the insurance cover is to proceed.

21.—NO EXTRA CLAIMS

The Union will make no further claims on the Company over conditions set out in this Agreement for the life of the Agreement.

Signed for and on behalf of—

The Unions:	BLPPU	(Signed) .....
		Date: 14/7/98
		(Signed) .....
		WITNESS
	CMETU	(Signed) .....
		Date: 14/7/98
		(Signed) .....
		WITNESS
The Company:	Total Corrosion Control Pty Ltd	(Signed) .....
		Date: 14/7/98
		TERRY IANNELLO .....
		PRINT NAME
		(Signed) .....
		WITNESS

VAN DEN BERG PAINTING INDUSTRIAL AGREEMENT.
No. AG 230 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

Wilhelmus Victor Marie Van Den Berg trading as Van Den Berg Painting Co

No. AG 230 of 1997.

Van Den Berg Painting Industrial Agreement.

COMMISSIONER P E SCOTT.

30 September 1998.

Order.

HAVING heard Mr J Maitland 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 Van Den Berg Painting Industrial Agreement in the terms of the following schedule be registered on the 9th day of September 1998.

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

WAGE AGREEMENT

Schedule.

1.—TITLE

This Agreement will be known as the Van Den Berg Painting 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. Site Allowance
12. Industry Standards
13. Clothing and Footwear
14. Training Allowance, Training Leave, Recognition of Prior Learning
15. Seniority
16. Sick Leave
17. Pyramid Sub-Contracting
18. Fares and Travelling
19. Drug and Alcohol, Safety and Rehabilitation Program
20. No Extra Claims

Appendix A—Wage Rates
Appendix B—Drug and Alcohol, Safety and Rehabilitation Program
Appendix C—Site Allowance

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builder's 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 Wilhelmus Victor Marie Van Den Berg trading as Van Den Berg Painting Co (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This agreement shall be binding upon the Company, the Union, its officers and member, and any person eligible to be members of the Unions employed by the Company on work where the total project value exceeds $1 million, covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978. There are approximately 6 tradesmen and 3 Apprentices covered by this Agreement.

5.—DURATION

This Agreement shall commence from the first pay period on or after the 1st of August 1997 and shall continue in effect until 31 October 1999.

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 Awards 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.—SITE ALLOWANCE

This Agreement provides for site allowances as per Appendix C—Site Allowance.

12.—INDUSTRY STANDARDS

1. Redundancy

It is a term of this Agreement that the Company will immediately increase its payments to $45 per week per employee into the Western Australian Construction Industry Redundancy Fund and then will increase this to $50 per week per employee on 1 August 1998.

2. Superannuation

The Company will immediately increase its payment to $60 per week per employee.

The Company will advise all employees subject to the Agreement of their Right to have payments made to a complying superannuation fund of their choice. The Company is bound by the employee's election. The aforementioned payment will then be made to that fund.

Until each employee nominates the fund of their choice the Company will make payments into the Construction + Building Unions Superannuation Scheme (the "C+BUSS").

In the event that any employee chooses a fund other than the C+BUSS the Company will, within seven days of the employee advising the Company of the fund of their choice, advise the Union in writing of the employee's decision.

In the event that the employee and the Company reach an agreement pursuant to section 49C(2)(d) of the Act to change the complying superannuation fund or scheme the Company will, within seven days of the employee and the Company reaching such an agreement, advise the Union in writing of the agreement. The employer will not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by the employee.

3. Apprentice Rates

The Company agrees to maintain a ratio of no more than four tradespeople to one apprentice employed.

13.—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.

14.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

1. A training allowance of $12.00 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-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

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.—PYRAMID SUB-CONTRACTING

1. "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

2. Provided that where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

3. Further provided that when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

4. A bona fide sub-contractor is generally an employer of labour, save for a machine owner operator.

5. Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

18.—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.

19.—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.

20. This wage agreement commences for commercial projects above a contract value of one million dollars. Under one million dollars the federal awards shall apply.

21.—NO EXTRA CLAIMS

The Union will make no further claims on the Company over conditions set out in this Agreement for the life of the Agreement. However the Union reserves the right to raise the unforseen matters. The Company agrees to insure the employees for sickness and accident cover. The terms of the policy will be agreed to between the Company and the Union.

Signed for and on behalf of—

The Unions:	BLPPU	Signed *Common Seal* Date: 8/9/97 Signed WITNESS
	CMETU	Signed *Common Seal* Date: 8/9/97 Signed WITNESS
The Company		Signed. Date: 18/8/97 W Van Den Berg PRINT NAME Signed WITNESS

APPENDIX A—WAGE RATES

	1 August 1997 Hourly Rate $	1 February 1998 Hourly Rate $	1 August 1998 Hourly Rate $	1 February 1999 Hourly Rate $	1 August 1999 Hourly Rate $
Labourer Group 1	15.56	16.01	16.47	16.92	17.15
Labourer Group 2	15.03	15.47	15.90	16.34	16.56
Labourer Group 3	14.63	15.05	15.48	15.90	16.12
Plasterer, Fixer	16.17	16.64	17.11	17.58	17.82
Painter, Glazier	15.81	16.27	16.73	17.19	17.42
Signwriter	16.15	16.62	17.09	17.56	17.80
Carpenter	16.27	16.75	17.22	17.70	17.93
Bricklayer	16.11	16.58	17.05	17.52	17.75
Refractory Bricklayer	18.50	19.04	19.58	20.12	20.38
Stonemason	16.27	16.75	17.22	17.70	17.93
Rooftiler	15.99	16.45	16.92	17.38	17.62
Marker/Setter Out	16.75	17.24	17.72	18.21	18.46
Special Class T	16.96	17.46	17.95	18.45	18.69

APPRENTICE RATES

	1 August 1997 Hourly Rate $	1 February 1998 Hourly Rate $	1 August 1998 Hourly Rate $	1 February 1999 Hourly Rate $	1 August 1999 Hourly Rate $
Plasterer, Fixer					
Yr 1	6.79	6.99	7.18	7.38	7.48
Yr 2 (1/3)	8.90	9.16	9.42	9.68	9.81
Yr 3 (2/3)	12.13	12.49	12.84	13.19	13.37
Yr 4 (3/3/)	14.23	14.65	15.06	15.48	15.69
Painter, Glazier					
Yr 1 (.5/3/5)	6.64	6.84	7.03	7.22	7.32
Yr 2 (1/3), 1.5/3.5)	8.70	8.95	9.20	9.45	9.58
Yr 3 (2/3), 2.5/3.5)	11.86	12.20	12.55	12.89	13.06
Yr 4 (3/3), 3.5/3.5)	13.92	14.32	14.73	15.13	15.33
Signwriter					
Yr 1 (.5/3/5)	6.79	6.99	7.18	7.38	7.48
Yr 2 (1/3, 1.5/3.5)	8.88	9.14	9.40	9.65	9.78
Yr 3 (2/3, 2.5/3.5)	12.11	12.47	12.82	13.17	13.35
Yr 4 (3/3, 3.5/3.5)	14.21	14.63	15.04	15.46	15.66
Carpenter					
Yr 1	6.84	7.04	7.24	7.44	7.54
Yr 2 (1/3)	8.95	9.21	9.47	9.73	9.86
Yr 3 (2/3)	12.21	12.56	12.92	13.27	13.45
Yr 4 (3/3)	14.32	14.73	15.15	15.57	15.78
Bricklayer					
Yr 1	6.77	6.96	7.16	7.36	7.46
Yr 2 (1/3)	8.86	9.12	9.37	9.63	9.76
Yr 3 (2/3)	12.08	12.43	12.79	13.14	13.31
Yr 4 (3/3)	14.17	14.59	15.00	15.41	15.62
Stonemason					
Yr 1	6.84	7.04	7.24	7.44	7.54
Yr 2 (1/3)	8.95	9.21	9.47	9.73	9.86
Yr 3 (2/3)	12.21	12.56	12.92	13.27	13.45
Yr 4 (3/3)	14.32	14.73	15.15	15.57	15.78
Rooftiler					
6 months	9.12	9.38	9.65	9.91	10.04
2nd 6 months	10.02	10.31	10.61	10.90	11.04
Yr 2	11.71	12.05	12.39	12.73	12.90
Yr 3	13.74	14.14	14.54	14.94	15.14

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.

APPENDIX C—SITE ALLOWANCE

1. This agreement is between the parties to this agreement and shall apply to construction work undertaken by principal contractors who are engaged in the commercial/industrial sector of the building industry in the state of Western Australia within a 50km radius of the Perth General Post Office.

2. This agreement provides for a site allowance to be paid to employees engaged on particular building projects, and for such site allowance to be paid in addition to the wage rates and allowances prescribed by the award as well as any industrial or certified agreements made in conjunction with the award which does not prescribe a site allowance.

3. The site allowance payable under this agreement is to be paid at a flat rate per hour for all hours worked to compensate for all special factors/disabilities on the project and in lieu of all award special rates, with the exception of rates relating to the lifting of heavy blocks, cleaning down brickwork and the use of explosive powered tools which will be payable to an employee when he/she encounters that particular disability.

4. Site Allowance Formula

At the commencement of a project the particular site allowance to apply shall be determined in accordance with the following formula—

4.1 Projects Located Within Perth C.B.D. (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.80
Above	$2.1m to $4.4m	$2.15
Over	$4.4m	$2.75

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.60
Above	$2.1m to $4.4m	$1.80
Over	$4.4m	$2.35

4.2 Projects Located Within West Perth (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.60
Above	$2.1m to $4.4m	$1.80
Over	$4.4m	$2.35

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.50
Above	$ 2.1m to $4.4m	$1.70
Over	$4.4m	$1.95

The site allowance on projects which are a combination of new and renovation work shall be governed by the majority of work involved. For example, where the majority of work is new work, then the site allowance appropriate to new work shall be paid for all employees on the project.

4.3 Projects within 50 km radius of Perth G.P.O. but not including the C.B.D. or West Perth (as defined)

Project Contractual Value		Site Allowance
Up to	$1m	NIL
Above	$1m to $2.1m	$1.20
Above	$2.1m to 5.8m	$1.50
Above	$5.8m to $11.6m	$1.75
Above	$11.6m to $23.6m	$1.95
Above	$23.6m to $58.6m	$2.25
Over	$58.6m	$2.45

"C.B.D."—Central Business District shall mean the area bounded by the Swan River South, Swan River East to Nile Street running into Wittenoom Street, Hill Street to Royal Street, Royal Street to Lord Street, Lord Street to Newcastle Street, along Newcastle Street to the Freeway, the Freeway South to the Perth-Fremantle railway line, along the Perth-Fremantle railway line to Dyer Street, Dyer Street through to Havelock Street, Havelock Street to Kings Park Road, Kings Park Road to Fraser Avenue, Fraser Avenue projected through to the Swan River.

"West Perth"—shall mean the area contained within the boundaries formed by Thomas Street, Kings Park Road, Havelock Street, Dyer Street and the Perth-Fremantle railway line back to Thomas Street.

Boundary roads: If a road borders between two regions in which site allowances are to be paid as per this agreement, the parties confirm that one side of such a boundary road will be deemed to fall in one region and the other side of the boundary road will be deemed to fall in the other region. For example, the eastern side of Havelock Street will be in the "CBD" and the western side of Havelock Street shall be in "West Perth".

"Project Contractual Value"—shall be deemed to mean the value of all tendered work which falls under the scope of the principal contractor's contract.

5. The site/project allowance and project contractual value detailed in this agreement shall be adjusted on 1 October each year by the total C.P.I. movements for Perth during the preceding four quarters ending 30 June and accordingly, the site allowance amounts shall be adjusted up or down to the nearest five cents.

6. Project contractual values shall be subject to review at any renewal of this agreement, but in any event shall not be adjusted by a percentage less than the total CPI movements for Perth during the preceding four quarters ending 30 June. Such adjustment being to the nearest $10,000.

7. The agreed site allowance once set pursuant to this agreement shall be recorded in a site agreement to which the applicable principal contractor and the Union will be signatories. The level of allowance once nominated at the commencement of the project will continue without change until completion of the project.

8. It is acknowledged that on certain projects a site agreement may be entered into between the principal contactor and the building trades group of unions for that project that may include matters regularly addressed within the industry, such as, but not limited to, the following—

- Disputes Procedures
- Occupational Health and Safety Procedures
- Demarcation Procedures
- First Aid Provisions and On-Site Amenities

and the unions will not unreasonably refuse to continue to discuss such matters if raised by the principal contractor.

9. This agreement does not apply to resource development projects or civil and engineering projects.

10. Where a dispute arises as to the application of the terms of this agreement, if the issue cannot be resolved in discussions between the parties, it is agreed that the matter will be referred to the appropriate industrial tribunal for resolution without recourse to industrial action.

11. It is a term of this agreement that all site allowance agreements entered into prior to this date will be honoured by all parties and will continue to apply for the life of the particular project.

12. Where because of a condition of contract the principal contractor is required not to allow for a site allowance, before final application of this agreement, discussions will be held between the parties with a view to resolving any problems that may arise as a result of this situation.

13. This agreement shall only apply to building contracts entered into on or after 1 October, 1995.

WEST AUSTRALIAN NEWSPAPERS CLERKS (ENTERPRISE BARGAINING) AGREEMENT 1998.

No. AG 107 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

West Australian Newspapers Limited

and

Australian Municipal, Administrative, Clerical and Services Union of Employees, WA Clerical and Administrative Branch.

No. AG 107 of 1998.

West Australian Newspapers Clerks (Enterprise Bargaining) Agreement 1998.

4 September 1998.

Order.

HAVING heard Ms J Hadida on behalf of the applicant and Mr R Dhue on behalf of the respondent now therefore, I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order —

1. THAT the agreement to be known as the "West Australian Newspapers Clerks (Enterprise Bargaining) Agreement 1998" reflected in the schedule to this order shall be and is registered with effect on and from the 7th day of August 1998.
2. THAT the West Australian Newspapers Clerks (Enterprise Bargaining) Agreement 1998 shall replace the West Australian Newspapers Clerks (Enterprise Bargaining) Agreement 1996, No. AG 286 of 1996 with effect on and from the 7th day of August 1998.

(Sgd.) S. A. CAWLEY,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the "West Australian Newspapers Clerks (Enterprise Bargaining) Agreement 1998" and replaces the West Australian Newspapers Clerks (Enterprise Bargaining) Agreement 1996, No. AG 286 of 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope
4. Parties Bound
5. Number of Employees Covered
6. Date and Operation of Agreement
7. Relationship to Parent Awards/Agreements
8. Measures to Increase Productivity, Efficiency and Flexibility
9. Wage Increases
10. Casual Copy Takers
11. Move to Herdsman
12. Avoidance of Industrial Disputes
Schedule A—Wage Rates

3.—SCOPE

The West Australian Newspapers Clerks (Enterprise Bargaining) Agreement 1998 ("the Agreement") shall apply at establishments of West Australian Newspapers Limited in

respect of all employees who are engaged in any of the occupations, industries or callings specified in the Clerks' (Wholesale & Retail Establishments) Award No. 38 of 1947 and/or the Clerks' (West Australian) Special Casual Employees Agreement No. 15 of 1989.

4.—PARTIES BOUND

The parties bound by this Agreement are—

(1) West Australian Newspapers Limited, 50 Hasler Road, Osborne Park ("the Company");

(2) Australian Municipal Administrative Clerical and Services Union of Employees, West Australian Clerical and Administrative Branch, 102 East Parade, East Perth.

5.—NUMBER OF EMPLOYEES COVERED

Approximately 180 employees are covered by this Agreement.

6.—DATE AND OPERATION OF AGREEMENT

(1) This Agreement shall operate from 1 June 1998 and shall remain in force for a period of 3 years until 31 May 2001.

(2) Discussions between the Company and the employees will commence not later than one (1) month before the expiry date of the Agreement.

(3) This Agreement shall not be cancelled or varied during its term unless agreed by the parties.

7.—RELATIONSHIP TO PARENT AWARDS/ AGREEMENTS

(1) This Agreement shall be read and interpreted in conjunction with—

(a) The Clerks' (Wholesale & Retail Establishments) Award No. 38 of 1947,

(b) The Clerks' (West Australian) Special Casual Employees Agreement AG 15 of 1989,

(c) The West Australian Newspapers Clerks (Enterprise Bargaining) Agreement 1994 and/or

(d) The West Australian Newspapers Clerks (Enterprise Bargaining) Agreement No. AG 286 of 1996.

(2) Where there is any inconsistency, this Agreement shall prevail to the extent of any inconsistency.

8.—MEASURES TO INCREASE PRODUCTIVITY, EFFICIENCY AND FLEXIBILITY

(1) A Consultative Committee has been established in the form of a Single Bargaining Unit.

(2) There is a recognition by the parties that in order for the employer to remain competitive it must maintain an ability to respond quickly and positively to the demands of the market and the requirements of its customers.

(3) As part of the ongoing commitment to providing a flexible workforce the parties have agreed to address work place change and improvement in relation to the Call Centre through the work group/team. Clerks employed in areas outside the Call Centre shall maintain, and where feasible improve the current levels of flexibility in relation to work practices.

(4) Furthermore there is a clear recognition by all parties that the increases provided for by this Agreement are predicated on the basis that the parties will continue to address opportunities to become more competitive and to respond to challenges quickly and efficiently as they occur.

(5) In accordance with subclause (l) of Clause 14.—Contract of Service of the Clerks' (Wholesale & Retail Establishments) Award No. 38 of 1947, the Company may direct an employee to carry out such duties within their level of skill, competence and training. There is no scope for intransigence or inflexibility in the future.

9.—WAGE INCREASES

(1) In recognition of the Agreement and the potential to increase productivity and efficiency, the parties have agreed to the following wage increases (refer Schedule A – Wage Rates of this Agreement) to be phased in over a three year period as follows—

(a) 4.0% from the first full pay period on or after 1 June 1998,

(b) 4.0% from the first full pay period on or after 1 June 1999, and

(c) 4.0% from the first full pay period on or after 1 June 2000.

(2) These wage increases have been agreed to not on the basis of one single Issue but rather reflect real and demonstrable changes in both attitude and the way in which work is performed which facilitate the introduction of new products and the reorganisation of the production of existing products. These changes are aimed at facilitating a fuller and more productive utilisation of Company resources into the future.

(3) The wage increases referred to in this Agreement shall not be absorbed into any over-award payment.

(4) There shall be no claims for further increases in wages for the life of this Agreement except for increases expressly provided for in this Agreement or as a result of State Wage Case decisions.

10.—CASUAL COPYTAKERS

The parties agree that there shall be no limit to the number of casual copy takers employed.

11.—MOVE TO HERDSMAN

The Company commits to on-going discussions on all issues relating to the move to Herdsman.

12.—AVOIDANCE OF DISPUTES

(1) In the event of any proposed change in employment conditions or terms of this Agreement, or in the event of any dispute arising, the parties will consult together to reach a settlement.

(2) The principle of conciliation and direct negotiation shall be adopted for the purpose of prevention and settlement of any industrial dispute that may arise.

(3) The parties shall take an early and active part in discussions and negotiations aimed at preventing or settling disputes in accordance with the agreed procedure set out hereunder.

(4) Procedure for Settlement of Disputes

Any dispute shall be resolved in the following sequence—

(a) The employee and the employee's supervisor shall confer, clearly identify the facts, and where possible resolve the issue.

(b) If not resolved, the employee, the Union representative, the supervisor and the Departmental Manager shall confer and, where possible, resolve the issue.

(c) If not resolved, the Union shall confer with the Human Resources Manager on the matter and, where possible, resolve the issue.

(d) If the matter is not settled, either party may submit the matter to the Western Australian Industrial Relations Commission for resolution.

(e) The terms of any agreed settlement should be jointly recorded.

(5) Until the matter is resolved in accordance with the above procedure, work shall continue normally. While the above procedure is being followed no party shall be prejudiced as to the final settlement by the continuation of work in accordance with the clause.

(6) All parties to the award, the Company, its officials, the Union and their members, will take all possible action to settle any dispute within seven (7) days of notification of the dispute to the Human Resources Manager.

SCHEDULE A—WAGE RATES

GRADE 1	1/06/98	1/06/99	1/06/00
1st Year of Service			
15 YEARS (40%)	193.40	201.10	209.20
16 YEARS (50%)	241.70	251.40	261.40
17 YEARS (60%)	290.10	301.70	313.70
18 YEARS (70%)	338.40	352.00	366.00
19 YEARS (80%)	386.80	402.20	418.30
20 YEARS (90%)	435.10	452.50	470.60
21 YEARS & OVER (100%)	483.50	502.80	522.90

GRADE 1	1/06/98	1/06/99	1/06/00
2nd Year of Service			
15 YEARS (40%)	200.90	208-90	217.30
16 YEARS (50%)	251.10	261.10	271.60
17 YEARS (60%)	301.30	313.40	325.90
18 YEARS (70%)	351.50	365.60	380.20
19 YEARS (80%)	401.80	417.80	434.60
20 YEARS (90%)	452.00	470.10	488.90
21 YEARS & OVER (100%)	502.20	522.30	543.20
3rd Year of Service			
15 YEARS (40%)	207.10	215.30	224.00
16 YEARS (50%)	258.90	269.20	280.00
17 YEARS (60%)	310.60	323.10	336.00
18 YEARS (70%)	362.40	376.90	392.00
19 YEARS (80%)	414.10	430.70	447.90
20 YEARS (90%)	465.90	484.60	503.90
21 YEARS & OVER (100%)	517.70	538.40	560.00
GRADE 2			
1st Year of Service			
15 YEARS (40%)	212.80	221.40	230.20
16 YEARS (50%)	266.00	276.70	287.70
17 YEARS (60%)	319.30	332.00	345.30
18 YEARS (70%)	372.40	387.30	402.80
19 YEARS (80%)	425.70	442.70	460.40
20 YEARS (90%)	478.90	498.10	517.90
21 YEARS & OVER (100%)	532.10	553.40	575.50
2nd Year of Service			
15 YEARS (40%)	214.90	223.50	232.50
16 YEARS (50%)	268.60	279.40	290.60
17 YEARS (60%)	322.40	335.30	348@70
18 YEARS (70%)	376.10	391.20	406.80
19 YEARS (80%)	429.80	447.00	465.00
20 YEARS (90%)	483.60	502.90	523.00
21 YEARS & OVER (100%)	537.30	558.80	581.20
3rd Year of Service			
15 YEARS (40%)	218.20	226.90	236.00
16 YEARS (50%)	272.70	283.60	294.90
17 YEARS (60%)	327.20	340.30	353.90
18 YEARS (70%)	381.80	397.00	412.90
19 YEARS (80%)	436.30	453.80	471.90
20 YEARS (90%)	490.90	510.50	530.90
21 YEARS & OVER (100%)	545.40	567.20	589.90
GRADE 3			
1st Year of Service			
15 YEARS (40%)	222.20	231.00	240.30
16 YEARS (50%)	277.70	288.80	300.30
17 YEARS (60%)	333.20	346.60	360.40
18 YEARS (70%)	388.80	404.30	420.50
19 YEARS (80%)	444.30	462.10	480.60
20 YEARS (90%)	499.90	519.80	540.60
21 YEARS & OVER (100%)	555.40	577.60	600.70
2nd Year of Service			
15 YEARS (40%)	224.80	233.80	243.20
16 YEARS (50%)	281.00	292.20	303.90
17 YEARS (60%)	337.20	350.70	364.70
18 YEARS (70%)	393.40	409.10	425.50
19 YEARS (80%)	449.60	467.60	486.30
20 YEARS (90%)	505.80	526.00	547.10
21 YEARS & OVER (100%)	562.00	584.50	607.90

WEST COAST BUILDING SERVICES PTY LTD INDUSTRIAL AGREEMENT.

AG 136 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders Labourers, Painters & Plasterers Union of Workers & Other

and

West Coast Building Services Pty Ltd.

AG 136 of 1998.

West Coast Building Services Pty Ltd Industrial Agreement.

14 September 1998.

COMMISSIONER S J KENNER.

Order.

HAVING heard Ms J Harrison as agent on behalf of the Applicant and there being no appearance from the Respondent and by consent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the West Coast Building Services Pty Ltd Industrial Agreement as filed in the Commission on 4 August 1998 be and is hereby registered as an industrial agreement.

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

WAGE AGREEMENT

Schedule.

1.—TITLE

This Agreement will be known as the West Coast Building Services Pty Ltd Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship with Awards
9. Enterprise Agreement
10. Wage Increase
11. Site Allowance
12. Industry Standards
13. Clothing and Footwear
14. Training Allowance, Training Leave, Recognition of Prior Learning
15. Seniority
16. Sick Leave
17. Pyramid Sub-Contracting
18. Fares and Travelling
19. Drug and Alcohol, Safety and Rehabilitation Program
20. Income Protection
21. No Extra Claims

Appendix A—Wage Rates
Appendix B—Drug and Alcohol, Safety and Rehabilitation Program
Appendix C—Site Allowance

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 West Coast Building Services Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Unions, its officers and members, and any person eligible to

be members 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 one (1) 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 October 1999.

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 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 Awards 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 and allowances resulting in the wage rates in the Appendix A—Wage Rates.

11.—SITE ALLOWANCE

This Agreement provides for site allowances as per Appendix C—Site Allowance.

12.—INDUSTRY STANDARDS

1. Redundancy

It is a term of this Agreement that the Company will immediately increase its payments to $50 per week per employee.

2. Superannuation

The Company will immediately increase its level of payment to $60 per week per employee.

The Company will advise all employees subject to the Agreement of their right to have payments made to a complying superannuation fund or scheme of their choice. The Company is bound by the employee's election. The aforementioned payment will then be made to that fund.

Until each employee nominates the fund of their choice the Company will make payments into the Construction + Building Unions Superannuation Scheme (the "C+BUSS").

In the event that any employee chooses a fund other than the C+BUSS the Company will, within seven days of the employee advising the Company of the fund of their choice, advise the Union in writing of the employee's decision.

In the event that the employee and the Company reach an agreement pursuant to section 49C(2)(d) of the Act to change the complying superannuation fund or scheme the Company will, within seven days of the employee and the Company reaching such an agreement, advise the Union in writing of the agreement. The Company shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by the employee.

3. Apprentice Rates

The Company agrees to maintain a ratio of no more than four tradespeople to one apprentice employed.

13.—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.

14.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

1. A training allowance of $12.00 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-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

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.—PYRAMID SUB-CONTRACTING

1. "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

2. Provided that where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

3. Further provided that when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

4. A bona fide sub-contractor is generally an employer of labour, save for a machine owner-operator.

5. Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

18.—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.

19.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation program as outlines in Appendix B—Drug and Alcohol, Safety and Rehabilitation Program.

20.—INCOME PROTECTION

The Company agrees to insure employees covered by this Agreement for injury and sickness. The scheme is to be negotiated through the ACTU Insurance Broking Pty Limited (ACN. 069 795 875).

21.—NO EXTRA CLAIMS

The Union will make no further claims on the Company over conditions set out in this Agreement for the life of the Agreement.

Signed for and on behalf of—

The Unions:	BLPPU	.....Signed.....
		Date: 28/7/98
		.....Signed.....
		Witness
	CMETU	.....Signed.....
		Dated 28/7/98
		.....Signed.....
		Witness
The Company:		.....Signed.....
West Coast Building Services Pty Ltd		Dated 27/7/94
ACN 079720540	*Common Seal*	
		JOHN BEATTIE
		Print Name
		.....Signed.....
		Witness

APPENDIX A—WAGE RATES

	Date of Signing Hourly Rate $	1 February 1999 Hourly Rate $	1 August 1999 Hourly Rate $
Labourer Group 1	16.47	16.92	17.15
Labourer Group 2	15.90	16.34	16.56
Labourer Group 3	15.48	15.90	16.12
Plaster, Fixer	17.11	17.58	17.82
Painter, Glazier	16.73	17.19	17.42
Signwriter	17.09	17.56	17.80
Carpenter	17.22	17.70	17.93
Bricklayer	17.05	17.52	17.75
Refractory Bricklayer	19.58	20.12	20.38
Stonemason	17.22	17.70	17.93
Rooftiler	16.92	17.38	17.62
Marker/Setter Out	17.72	18.21	18.46
Special Class T	17.95	18.45	18.69

APPRENTICE RATES

	Date of Signing Hourly Rate $	1 February 1999 Hourly Rate $	1 August 1999 Hourly Rate $
Plasterer, Fixer			
Year 1	7.18	7.38	7.48
Year 2 (1/3)	9.42	9.68	9.81
Year 3 (2/3)	12.84	13.19	13.37
Year 4 (3/3)	15.06	15.48	15.69
Painter. Glazier			
Year 1 (.5/3/5)	7.03	7.22	7.32
Year 2 (1/3), (1.5/3.5)	9.20	9.45	9.58
Year 3 (2/3), (2.5/3.5)	12.55	12.89	13.06
Year 4 (3/3), (3.5/3.5)	14.73	15.13	15.33
Signwriter			
Year 1 (.5/3.5)	7.18	7.38	7.48
Year 2 (1/3, 1.5/3.5)	9.40	9.65	9.78
Year 3 (2/3. 2.5/3.5)	12.82	13.17	13.35
Year 4 (3/3, 3/5/3.5)	15.04	15.46	15.66
Carpenter			
Year 1	7.24	7.44	7.54
Year 2 (1/3)	9.47	9.73	9.86
Year 3 (2/3)	12.92	13.27	13.45
Year 4 (3/3)	15.15	15.57	15.78
Bricklayer			
Year 1	7.16	7.36	7.46
Year 2 (1/3)	9.37	9.63	9.76
Year 3 (2/3)	12.79	13.14	13.31
Year 4 (3/3)	15.00	15.41	15.62
Stonemason			
Year 1	7.24	7.44	7.54
Year 2 (1/3)	9.47	9.73	9.86
Year 3 (2/3)	12.92	13.27	13.45
Year 4 (3/3)	15.15	15.57	15.78
Rooftiler			
6 months	9.65	9.91	10.04
2nd 6 months	10.61	10.90	11.04
Year 2	12.39	12.73	12.90
Year 3	14.54	14.94	15.14

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.

APPENDIX C—SITE ALLOWANCE

1. This agreement is between the parties to this agreement and shall apply to construction work undertaken by principal contractors who are engaged in the commercial/industrial sector of the building industry in the state of Western Australia within a 50km radius of the Perth General Post Office.

2. This agreement provides for a site allowance to be paid to employees engaged on particular building projects, and for such site allowance to be paid in addition to the wage rates and allowances prescribed by the award as well as any industrial or certified agreements made in conjunction with the award which does not prescribe a site allowance.

3. The site allowance payable under this agreement is to be paid at a flat rate per hour for all hours worked to compensate for all special factors/disabilities on the project and in lieu of all award special rates, with the exception of rates relating to the lifting of heavy blocks, cleaning down brickwork and the use of explosive powered tools which will be payable to an employee when he/she encounters that particular disability.

4. Site Allowance Formula

At the commencement of a project the particular site allowance to apply shall be determined in accordance with the following formula—

4.1 Projects Located Within Perth C.B.D. (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.80
Above	$2.1m to $4.4m	$2.15
Over	$4.4m	$2.75

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.60
Above	$2.1m to $4.4m	$1.80
Over	$4.4m	$2.35

4.2 Projects Located Within West Perth (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.60
Above	$2.1m to $4.4m	$1.80
Over	$4.4m	$2.35

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.50
Above	$ 2.1m to $4.4m	$1.70
Over	$4.4m	$1.95

The site allowance on projects which are a combination of new and renovation work shall be governed by the majority of work involved. For example, where the majority of work is new work, then the site allowance appropriate to new work shall be paid for all employees on the project.

4.3 Projects within 50 km radius of Perth G.P.O. but not including the C.B.D. or West Perth (as defined)

Project Contractual Value		Site Allowance
Up to	$1m	NIL
Above	$1m to $2.1m	$1.20
Above	$2.1m to 5.8m	$1.50
Above	$5.8m to $11.6m	$1.75
Above	$11.6m to $23.6m	$1.95
Above	$23.6m to $58.6m	$2.25
Over	$58.6m	$2.45

"C.B.D."—Central Business District shall mean the area bounded by the Swan River South, Swan River East to Nile Street running into Wittenoom Street, Hill Street to Royal Street, Royal Street to Lord Street, Lord Street to Newcastle Street, along Newcastle Street to the Freeway, the Freeway South to the Perth-Fremantle railway line, along the Perth-Fremantle railway line to Dyer Street, Dyer Street through to Havelock Street, Havelock Street to Kings Park Road, Kings Park Road to Fraser Avenue, Fraser Avenue projected through to the Swan River.

"West Perth"—shall mean the area contained within the boundaries formed by Thomas Street, Kings Park Road, Havelock Street, Dyer Street and the Perth-Fremantle railway line back to Thomas Street.

Boundary roads: If a road borders between two regions in which site allowances are to be paid as per this agreement, the parties confirm that one side of such a boundary road will be deemed to fall in one region and the other side of the boundary road will be deemed to fall in the other region. For example, the eastern side of Havelock Street will be in the "CBD" and the western side of Havelock Street shall be in "West Perth".

"Project Contractual Value"—shall be deemed to mean the value of all tendered work which falls under the scope of the principal contractor's contract.

5. The site/project allowance and project contractual value detailed in this agreement shall be adjusted on 1 October each year by the total C.P.I. movements for Perth during the preceding four quarters ending 30 June and accordingly, the site allowance amounts shall be adjusted up or down to the nearest five cents.

6. Project contractual values shall be subject to review at any renewal of this agreement, but in any event shall not be adjusted by a percentage less than the total CPI movements for Perth during the preceding four quarters ending 30 June. Such adjustment being to the nearest $10,000.

7. The agreed site allowance once set pursuant to this agreement shall be recorded in a site agreement to which the applicable principal contractor and the Union will be signatories. The level of allowance once nominated at the commencement of the project will continue without change until completion of the project.

8. It is acknowledged that on certain projects a site agreement may be entered into between the principal contactor and the building trades group of unions for that project that may include matters regularly addressed within the industry, such as, but not limited to, the following—

- Disputes Procedures
- Occupational Health and Safety Procedures
- Demarcation Procedures
- First Aid Provisions and On-Site Amenities

and the unions will not unreasonably refuse to continue to discuss such matters if raised by the principal contractor.

9. This agreement does not apply to resource development projects or civil and engineering projects.

10. Where a dispute arises as to the application of the terms of this agreement, if the issue cannot be resolved in discussions between the parties, it is agreed that the matter will be referred to the appropriate industrial tribunal for resolution without recourse to industrial action.

11. It is a term of this agreement that all site allowance agreements entered into prior to this date will be honoured by all parties and will continue to apply for the life of the particular project.

12. Where because of a condition of contract the principal contractor is required not to allow for a site allowance, before final application of this agreement, discussions will be held between the parties with a view to resolving any problems that may arise as a result of this situation.

13. This agreement shall only apply to building contracts entered into on or after 1 October, 1995.

WESTERN AUSTRALIAN SPECIALITY ALLOYS PTY LTD FOUNDRY ENTERPRISE BARGAINING AGREEMENT 1998.

AG 134 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Australian Speciality Alloys Pty Ltd

and

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

AG 134 of 1998.

Western Australian Speciality Alloys Pty Ltd
Foundry Enterprise Bargaining Agreement 1998.

14 September 1998.

COMMISSIONER S J KENNER.

Order.

HAVING heard Ms A Young 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—

(1) THAT the Western Australian Speciality Alloys Pty Ltd Foundry Enterprise Bargaining Agreement 1998 as filed in the Commission on 29 July 1998 be and is hereby registered as an industrial agreement.

(2) THAT the Western Australian Speciality Alloys Pty Ltd Foundry Enterprise Bargaining Agreement 1995 No AG 175 of 1995 be and is hereby cancelled

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

1—TITLE

This Agreement shall be known as the Western Australian Specialty Alloys Pty Ltd Foundry Enterprise Bargaining Agreement 1998 and shall replace the Western Australian Specialty Alloys Pty Ltd Foundry Enterprise Bargaining Agreement 1995 No. AG 175 of 1995.

2—ARRANGEMENT

1. Title
2. Arrangement
3. Intention
4. Area and Parties Bound
5. Date and Period of Operation
6. Relation to Parent Award
7. Contract of Service
8. Hours of Work
9. Meals
10. Overtime
11. Shift Work
12. Payment of Wages
13. Public Holidays
14. Annual Leave
15. Sick Leave
16. Long Service Leave
17. Bereavement Leave
18. Parental Leave
19. Wages
20. Special Rates
21. Attendance Incentive Payment
22. Introduction of Change
22A. Redundancy
23. Avoidance of Industrial Disputes
24. Training
25. Apprentices
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30. Employee Counselling Procedure
31. Board of Reference
32. No Extra Claims
33. Signatories
Schedule A—Classifications
Schedule B—12 Hour Roster

3—INTENTION

It is the objective of the parties to make to Western Australian Specialty Alloys Pty Ltd Foundry a highly competitive international manufacturer, and a model industrial site excelling in safety, productivity, quality, flexibility, communication and commitment.

Our intention is to create an environment which will encourage and support a highly skilled and committed work force where participation and development of employees will be a priority for the betterment of the individual and the business.

Work will be organised to maximise the flexibility of the work force and enable employees to fully utilise their skills and capabilities. There will be no artificial barriers preventing employees from performing tasks in which they have been trained and are competent.

4—AREA AND PARTIES BOUND

This Agreement shall apply at the premises located at 58 Vulcan Road, Canning Vale, Western Australia, and be binding on—

(1) Western Australian Specialty Alloys Pty Ltd ("the Company")

(2) All employees in which number 33 of Western Australian Specialty Alloys Pty Ltd ("the Company") in the occupations contained herein and as defined in Schedule A.

(3) 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 WA 6016 (the union).

(4) The parties to this Agreement shall be bound by the terms of the Agreement for its duration and will oppose subsequent application by any other party to be joined to this Agreement.

5—DATE AND PERIOD OF OPERATION

This Agreement will operate on and from 6th February 1998 to the pay period ending on or after 5th February 2001.

6—RELATION TO PARENT AWARD

This Agreement replaces fully the Metal Trades (General) Award 1966 No.13 of 1965 as it applies to Western Australian Specialty Alloys Pty Ltd.

7—CONTRACT OF SERVICE

(1) Notification on Engagement

On the first day of engagement an employee shall be notified by the Company or by the Company's representative—

(a) whether the duration of the employment is expected to exceed one month: and

(b) if hired as a casual employee.

(2) Probation

For all weekly hired employees whose duration of employment is expected to exceed one month there shall be a probationary period of between 3 to 6 months. The exact length of the probationary period shall be at the discretion of management.

(3) A contract of service may be terminated in accordance with the provisions of this clause. Provided that this clause shall not affect the Company's right to dismiss an employee without notice for conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, and an employee so dismissed shall be paid for the time worked up to the time of dismissal only.

(4) Notice of Termination

(a) The contract of service may be terminated on any day by one party giving to the other party the period of notice required by paragraph (b) hereof or compensation instead of notice.

(b) The required period of notice is first worked out using this table—

Employee's period of continuous service with the employer	Period of Notice
Not more than 1 year	At least 1 week
More than 1 year, but not more than 3 Years	At least 2 weeks
More than 3 years, but not more than 5 Years	At least 3 weeks
More than 5 years	At least 4 weeks

The period of notice is increased by one week if the employee is over 45 years old and has completed at least 2 years continuous service with the employer

(c) The amount of compensation instead of notice must equal or exceed the total of all amounts that, if the employee's employment had continued until the end of the required period of notice, the employer would have become liable to pay to the employee because of the employment continuing during that period.

(d) The total must be worked out on the basis of—

(i) the employee's ordinary hours of work (even if they are not standard hours); and

(ii) the amounts payable to the employee in respect of those hours, including (for example) allowances, loadings and penalties; and

(iii) any other amounts payable under the employee's contract of employment.

(e) If an employee fails to give the required notice, or having given or been given the required notice, leaves before the end of the notice period, the employee forfeits the entitlement to any monies owing to the employee under this Agreement except to the extent those monies exceed the amount of compensation instead of notice that would apply for an equivalent period of notice.

(f) Notwithstanding (e) above, and in the event of an employee terminating his/her employment with the company, nothing in this agreement shall prevent a lesser period of notice being given in accordance with subclause (4)(b) above, subject to mutual agreement between the parties.

(g) Should the provisions of subclause (f) above be used, the employee shall not suffer any loss of entitlements normally due to that employee at the time of termination.

(5) Casual Employees

(a) (i) The period of notice of termination in the case of a casual employee shall be one hour.

(ii) If the required notice of termination is not given one hour's wage shall be paid by the Company or forfeited by the employee.

(b) An employee shall for the purpose of this Agreement be deemed to be a casual employee—

(i) if the expected duration of the employment is less that one month, or

(ii) if the notification referred to in subclause (1) of this clause is not given and the employee is dismissed through no fault of the employee within one month of commencing employment.

(6) Absence from Duty

The Company shall be under no obligation to pay for any time not worked upon which the employee is required to present for duty, except when such absence is due to illness and comes within the provisions of Clause 15.—Sick Leave of this Agreement or such absence is on account of holidays to which the employee is entitled under the provisions of this Agreement.

(7) Standing Down of Employees

(a) (i) The Company is entitled to deduct payment for any day or part of a day on which an employee (including an apprentice) cannot be usefully employed because of industrial action by the union party to this Agreement, or by any other association or union.

(ii) 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 hour's pay and further, where any employee commences work he/she shall be provided with four hours' employment or be paid for four hours' work.

(b) The provisions of paragraph (a) of this subclause also apply where the employee cannot be usefully employed through any cause which the Company could not reasonably have prevented but only if, and to the extent that, the Company and the union or unions concerned so agree or, in the event of disagreement, a Board of Reference so determines.

(c) Where the stoppage of work has resulted from a breakdown of the Company's machinery a Board of Reference, in determining a dispute under paragraph (b) of this subclause, shall have regard for the duration of the stoppage and the endeavours made by the Company to repair the breakdown.

(8) Employees shall perform all duties for which they are competent to perform.

8—HOURS OF WORK

(1) Ordinary hours of work and arrangement will be determined by agreement with the employees taking due account of the needs of the business, provided that an average of 38 ordinary hours per week will be worked.

(2) Day Work—Ordinary hours of work shall be worked between hours of 6 am to 6 pm Monday to Friday inclusive.

(3) In the event of a disagreement the matter shall be determined by a Board of Reference.

(4) Cribs will be taken in accordance with the current practice and consistent with sub clause (1) taking due account of the needs of the business at a given time.

9—MEALS

An employee required to work more than two hours' non-rostered overtime without notification the day before is entitled to be paid a meal allowance of $6.50 or supplied with a meal and be granted a meal break of 10 minutes to be taken at the most convenient time for work in progress. If overtime extends beyond a further four hours, a second meal allowance of $4.40 shall be paid and another meal break given.

10—OVERTIME

1 (a) Subject to the provisions of this subclause, all work done beyond the agreed number of ordinary working hours or rostered shift hours on any day Monday to Friday inclusive shall be paid for at the rate of time and one half for the first two hours and double time thereafter provided that overtime shall not start until the employee has worked the agreed number of ordinary hours or rostered shift hours for that day.

For the purposes of this subclause, ordinary hours shall mean the hours of work fixed with Company after consultation and agreement with employees in accordance with Clause 8.—Hours of Work.

(b) Saturday—Before noon the first 2 hours at time and one half and thereafter double time.

(c) Sunday—Double time.

(d) Public Holidays—Double time and a half.

(e) 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.

(2) The provisions of this subclause apply to all employees.

(a) Time off in lieu of payment for overtime may be agreed to between the employee and the Company.

(b) (i) When overtime work is necessary it shall, wherever reasonably practicable, be so arranged that an employee has at least ten consecutive hours off duty between the work of successive days.

(ii) An employee (other than a casual employee) who works so much overtime between the termination of the employee's ordinary work on one day and the commencement of the employee's ordinary work on the next day that the employee has not had at least ten consecutive hours off duty between those times shall, subject to this paragraph, be released after completion of such overtime until the employee has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(iii) If, on the instructions of the Company, such an employee resumes or continues work without having had such ten consecutive hours off duty, the employee shall be paid at double rates until released from duty and shall then be entitled to be absent for such period of ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(iv) Where an employee (other than a casual employee) is called into work on a Sunday or holiday prescribed under this Agreement which is not an ordinary working day, the employee shall, wherever reasonably practicable, be given ten consecutive hours off duty before the employee's usual starting time on the next day. If this is not practicable, then the provisions of subparagraphs (ii) and (iii) of this paragraph shall apply to this subparagraph.

(v) The provisions of this subparagraph shall apply in the case of shift employees who rotate from one shift to another, as if eight hours were substituted for ten hours when overtime is worked—

(aa) for the purpose of changing shift rosters; or

(bb) where a shift employee does not report for duty; or

(cc) where a shift is worked by arrangement between the employees themselves.

(vi) 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 of such recalls.

(c) When an employee is recalled to work after leaving the job—

(i) the employee shall be paid for at least three hours at overtime rates;

(ii) time reasonably spent in getting to and from work shall be counted as time worked.

(d) (i) The Company may require any employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirement.

The assignment of overtime by the Company to an employee shall be based on specific work requirements and the practice of "one in, all in" overtime shall not apply.

(ii) Neither the union nor employees covered by this Agreement, 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.

(3) The provisions of this clause 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 Agreement.

11—SHIFT WORK

(1) Definitions—

For purposes of this clause (except for 12 hour roster)—

"Afternoon Shift" means any shift finishing between 6.01 pm and at or before midnight.

"Night Shift" means any shift finishing subsequent to midnight and at or before 8.00 am.

"Rostered Shift" means any shift of which the employee concerned has had at least forty-eight hours notice.

(2) Employees working shift work will be paid a shift allowance of 15% for ordinary hours worked on afternoon shift and 20% for ordinary hours worked on night shift.(Monday to Friday inclusive)

(3) (a) All work performed on a rostered shift when the major portion of such shift falls on a Saturday, Sunday or a Holiday, shall be paid as follows—

Saturday—at the rate of time and one half

Sunday—at the rate of time and three quarters

Holiday—at the rate of double time.

(b) These rates shall be paid in lieu of the shift allowances prescribed in sub clause (2) of this clause.

(4) Where a shift commences at or after 11.00pm on any day, the whole of that shift shall be deemed, for the purposes of this Agreement, to have been worked on the following day.

(5) Shifts worked in accordance with agreed 12 hour roster (see attached schedule "B") shall mean—

" Day shift " means any shift commencing on or after 5 am and concluding 12 hours thereafter.

" Night shift" means any shift commencing on or after 5 pm and concluding 12 hours thereafter.

" Rostered shift " means any shift of which the employee concerned has had at least forty-eight hours notice.

(6) (a) Employees working a continuous 12 hour roster will be paid a shift allowance of 10% for shifts worked on Rostered Day Shifts—and 20% for shifts worked on Rostered Night Shift (Monday to Friday) inclusive.

(b) For a continuous 12 hour rostered shift worked on a Saturday a shift allowance of time and a half shall be paid for hours worked.

(c) For a continuous 12 hour rostered shift worked on a Sunday a shift allowance of time and three quarters shall be paid for hours worked.

(d) For a continuous 12 hour rostered shift worked on a Public Holiday a shift allowance of double time shall be paid for hours worked.

7 Meal breaks—

(a) On shifts other than continuous 12 hour shifts a half hour paid meal break shall be allowed at agreed time.

(b) On continuous shifts of 12 hours paid meal breaks of one hour shall be allowed at agreed time or times.

(c) Cribs will be taken in accordance with present practice.

8 Special Shift Conditions-

(a) A continuous shift employee who is not required to work on a holiday which falls on the employees rostered day off shall be allowed a days leave with pay to be added to annual leave or taken at some other time if the employee so agrees.

(b) One weeks notice of change of shifts shall occur unless a lesser period is agreed between the employee and employer

12—PAYMENT OF WAGES

Wages will be paid fortnightly by electronic transfer into a bank account nominated by the employee.

13—PUBLIC HOLIDAYS

New Years Day, Australia Day, Good Friday, Easter Monday, Labour Day, Anzac Day, Queen's Birthday, Christmas Day, Boxing Day and Foundation Day or the holidays, if any, substituted by proclamation.

14—ANNUAL LEAVE

(1) Employees are entitled to four weeks' annual leave with ordinary pay for each completed year of service.

(2) Annual leave entitlement accrues on 1 January each year and pro-rata annual leave applies during the calendar year of joining or terminating from the company unless the employee is dismissed before a qualifying period for misconduct.

(3) If, after one month's continuous service in any qualifying twelve month period an employee lawfully leaves the employment or the employment is terminated by the Company through no fault of the employee, the employee shall be

paid 2.923 hours' pay at the rate of wage prescribed by paragraph (b) of subclause (3) of Clause 23.—Holidays and Annual Leave of the Metal Trades (General) Award, divided by thirty-eight, in respect of each completed week of continuous service.

(4) The Company may require or allow employees to take annual leave in periods and at times convenient to the Company.

(5) In addition to the payment prescribed in subclauses (1) and (2) hereof, an employee shall receive a loading calculated on the rate of wage prescribed by that paragraph. This shall be as follows—

(a) Day Employees—An employee who would have worked on day work had the employee not been on leave—a loading of 17.5 percent.

(b) Shift Employees—An employee who would have worked on shift work had the employee not been on leave—a loading of 17.5 percent.

(6) If any holiday provided for in this Agreement 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.

(7) Notwithstanding sub clause (3) of this clause 1 weeks additional annual leave inclusive of 17.5 % leave loading shall be granted to continuous shift workers i.e. 7 day, 24 hour roster.

(8) The provisions of this clause shall not apply to casual employees.

15—SICK LEAVE

(1) (a) An employee who is unable to attend or remain at the place of employment during the ordinary hours of work by reason of personal ill health or injury shall be entitled to payment at ordinary rates during such absences in accordance with the provisions in this clause.

Provided that an employee shall not be entitled to claim payment for personal ill health or injury nor will the employee's sick leave entitlement be reduced if such ill health or injury occurs on the working day the employee is to take off duty in accordance with working arrangements determined in accordance with Clause 8.—Hours of Work of this Agreement.

(b) Entitlement to payment shall accrue at the rate of one-sixth of a week for each completed month of service with the Company.

(c) If in the first or successive years of service with the Company an employee is absent on the ground of personal ill health or injury for a period longer that the employee's entitlement to paid sick leave, payment may be adjusted at the end of that year of service, or at the time of the employee's services terminate, if before the end of that year of service, to the extent that the employee has become entitled to further sick leave during that year of service.

(2) The unused portions of the entitlement to paid sick leave in any one year shall accumulate from year to year and subject to this clause may be claimed by the employee if the absence by reason of personal ill health or injury exceeds the period for which entitlement has accrued during the year at the time of the absence. Provided that an employee shall not be entitled to claim payment for any period exceeding ten weeks in any one year of service.

(3) To be entitled to payment in accordance with this clause the employee shall as soon as reasonably practicable advise the Company of his/her inability to attend for work, the nature of the illness or injury and the estimated duration of the absence. Provided that such advice, other than in extraordinary circumstances, shall be given to the Company within 24 hours of the commencement of the absence.

(4) The provisions of this clause do not apply to an employee who fails to produce a certificate from a medical practitioner dated at the time of the absence or who fails to supply such proof of the illness or injury as the Company may reasonably require provided that the employee shall not be required to produce a certificate from a medical practitioner with respect to absences of two days or less or unless after two such absences in any year of service the Company requests in writing that the next and subsequent absences in that year, if any, shall be accompanied by such certificate.

(5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to an employee who suffers personal ill health or injury during the time when the employee is absent on annual leave and an employee may apply for and the Company 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 the place of residence or a hospital as a result of the employees' personal ill health or injury for a period of seven consecutive days or more and the employee produces a certificate from a registered medical practitioner that the employee was so confined. Provided that the provisions of this paragraph do not relieve the employee of the obligation to advise the Company in accordance with subclause (3) of this clause if the employee is unable to attend for work on the working day next following the employee's 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 the employee 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 Company 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 Company and the employee or, failing agreement, shall be added to the employee's next period of annual leave or, if termination occurs before then, be paid for in accordance with the provisions of Clause 14—Annual Leave.

(e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in Clause 14—Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.

(6) The provisions of this clause with respect to payment do not apply to employees who are entitled to payment under the Workers' Compensation Act nor to employees whose injury or illness is the result of the employee's own misconduct.

(7) The provisions of this clause do not apply to casual employees.

16—LONG SERVICE LEAVE

(1) The Long Service Leave Provisions set out in Volume 75 of the Western Australian Industrial Gazette at pages 1 to 4 inclusive are hereby incorporated in and form part of this Agreement save that entitlement to long service leave shall accrue after 10 years' continuous service.

(2) An employee shall be entitled to pro-rata long service leave after seven years' continuous service.

17—BEREAVEMENT ENTITLEMENT

(1) An employee, other than a casual employee, shall on the death within Australia of a wife, husband, father, mother, brother, sister, child or stepchild be entitled on notice to leave 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 an employee in two ordinary working days. Proof of such death shall be furnished by the employee to the satisfaction of the Company.

(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 any shift roster, or on long service leave, annual leave, sick leave, workers' compensation, leave without pay or on a public holiday.

(3) For the purposes of this clause the pay of an employee employed on shift work shall be deemed to include any usual shift allowance.

18—PARENTAL LEAVE

Subject to the terms of this clause employees are entitled to unpaid maternity, paternity or adoptive leave in connection with the birth or adoption of a child.

(1) Employees eligible for parental leave must have at least 12 months continuous service with the Company immediately

preceding the date upon which the leave is taken and have given the Company at least 10 weeks' written notice of his/her intention to take the leave.

(2) Employees shall be entitled to an unbroken period of parental leave of not more than 52 weeks or less than 12 weeks in duration.

This entitlement shall be reduced by any period of parental leave taken by the employee's spouse in relation to the same child.

(3) At the time the leave is requested the employee must produce—

(a) a medical certificate from a registered medical practitioners stating the expected date of confinement, or

(b) a statement from an adoption agency or another appropriate body confirming the presumed date of placement of the child.

(4) In the case of employees who have given notice of their intention to take maternity leave—

(a) They are to commence the leave 6 weeks before the expected date of birth unless in respect of any period closer to the expected date of birth, a medical practitioner has certified that the employee is fit to continue working.

(b) They shall, in the opinion of a registered medical practitioner or if deemed practicable by the Company, be transferred to a safe job until leave is taken.

(5) Absence on parental leave shall not break an employee's continuity of service but shall not be taken into account in calculating periods of service.

(6) An employee, upon returning to work after parental leave, shall be entitled to the position which he/she held immediately before proceeding on leave, or if this no longer exists, to a comparable position, if available.

Employees transferred to a safe job immediately before taking maternity leave shall be entitled to the position she held immediately before the transfer.

19—WAGES

(1) Subject to successful accreditation at a given level the following salary classification structure will apply—

LEVEL (Refer Schedule A)	CLASSIFICATION	TOTAL RATE $		
		6/2/98	6/2/99	6/2/00
3 (C8)	Mould and Furnace Process Controller (III)	636.07	651.50	666.95
4 (C9)	Mould and Furnace Process Controller (II)	607.98	622.74	637.50
5 (C10)	Mould and Furnace Process Controller (I)			
5 (C10)	Foundry Production Tradesperson	579.91	593.98	608.06
6 (C11)	Mould and Furnace Process Operator	537.25	550.30	563.34
7 (C12)	Mould and Furnace Process Assistant (II)	509.18	521.53	533.90
8 (C13)	Mould and Furnace Process Assistant (I)	478.81	490.43	502.06

(2) In addition to the above rates an employee, whilst employed on foundry work, shall be paid a Disability Allowance of $.2631 cents per hour worked to compensate for all disabilities associated with foundry work.

(3) The components of the Total Rate may be re-arranged during the life of the agreement to maintain relativity with the rates in the Metal Trades (General) Award, 1966, No. 13 of 1965.

(4) Tool Allowance

(a) Where the Company 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 Company shall pay a tool allowance of—

(i) $10.00 per week to such tradesperson.

(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 Company shall provide for the use of trades persons 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 Company if lost through the employee's negligence.

(5) Casual employees shall be paid in addition to the ordinary base rate a loading of 20% for each ordinary hour worked.

(6) (a) In addition to the wages payable in subclause (I) above a Productivity Bonus scheme as agreed between the parties shall apply.

(b) The terms and conditions of the Productivity Bonus Scheme shall be in accordance with the Memorandum issued to all shift personnel dated 1 July 1998, Subject; Productivity Measure for EBA Re-negotiation.

20—SPECIAL RATES

First Aid Allowance—A payment of $7.00 per week shall be paid to a person designated by the company and required to perform to the duties of first aid officer.

21—ATTENDANCE INCENTIVE PAYMENT

(1) An employee may become eligible for an additional payment on the anniversary of commencement date depending on the number of absences taken during the course of one calendar year.

(2) The additional payment shall be as follows—

0 absences	76 hours ordinary pay
1 absence	60.8 hours ordinary pay
2 absences	38 hours ordinary pay
3 absences	15.2 hours ordinary pay
4 absences	0 hours ordinary pay

(3) "Absence" for the purpose of this clause shall be deemed to mean absent from work whilst receiving paid sick leave and any other absence not provided for in this agreement.

22—INTRODUCTION OF CHANGE

(1) Company's Duty to Notify—

(a) Where the Company 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 Company 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 Company's work force or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the need for retaining or transfer of employees to other work or locations and the restructuring of jobs. Provided that where the Agreement makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have "significant effects".

(2) Company'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 the Company shall not be required to disclose confidential information the disclosure of which would be inimical to the Company's interests.

22A—REDUNDANCY

(1) An employee shall be deemed redundant in circumstances where the company has made a definite decision that it 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 termination of the employee results.

(2) Severance Pay

(a) Redundancy shall attract the following amount of severance pay in addition to the notice period provided in Clause 7.—Contract of Service.

Period of Continuous Service	Severance Pay
Less than 1 year	Nil
1 year but less than 2 years	4 weeks
2 years but less than 3 years	6 weeks
3 years but less than 4 years	7 weeks
4 years but less than 5 years	8 weeks
5 years but less than 6 years	9 weeks
6 years but less than 7 years	11 weeks
7 years and over	13 weeks

"Weeks Pay" means the ordinary weekly rate of wage for the employee concerned.

Provided that the severance payments shall not exceed the amount which the employee would have earned if employment with the Company had proceeded to the employee's normal retirement date.

Should the Australian Industrial Relations Commission hand down a decision, variation, change or alteration to the General Termination, Change and Redundancy provisions that are superior in part or whole to the provisions of this agreement, then those superior provisions in part or whole shall be incorporated into this agreement.

(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 this Agreement or on account of leave lawfully granted by the Company; or

(iii) any absence with reasonable cause, proof whereof shall be upon the employee;

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 this Agreement, shall not count as time worked.

(3) Alternative Employment

The Company, in a particular redundancy case, may make application to the Western Australian Industrial Relations Commission to have the general severance pay prescription varied if the Company obtains acceptable alternative employment for an employee.

(4) Superannuation Benefits

(a) Subject to further order of the Western Australian Industrial Relations Commission, where an employee who is terminated receives a benefit from a superannuation scheme, the employee shall only receive under subclause (2) of this clause the difference between the severance pay specified in that subclause and the amount of 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 (2) 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 a Company in accordance with an award, agreement or order made or registered under the Industrial Relation Act, 1979 shall not be taken into account unless the Western Australian Industrial Relations Commission so orders in a particular case.

(5) 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 that 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.

(6) Employees Exempted

This clause shall not apply to employees—

(a) where employment is terminated as a consequence of conduct that justifies instant dismissal including malingering, inefficiency or neglect of duty .

(b) engaged for a specific period of time (less than 6 months if engaged after 16 Nov 1994)

(c) an employee engaged under a contract or employment for a specified time.

(d) an employee serving a period or qualifying period of employment, if the duration of the period the maximum duration or the period, as the case requires—

(i) is determined in advance; and

(ii) is reasonable having regard to the nature and circumstances of the employment.

(e) a casual employee engaged for a short period.

(7) Incapacity to Pay

The Company, in a particular redundancy case, may make application to the Western Australian Industrial Relations Commission to have the general severance pay prescription varied on the basis of the Company's incapacity to pay.

23—AVOIDANCE OF INDUSTRIAL DISPUTES

The parties to this Agreement will seek at all times to promote good industrial relations. This will be based upon goodwill, consultation and discussion. In the event of a question, difficulty or dispute arising out of the operation of this agreement affecting one or more employees, the following procedure shall be followed—

(1) Whenever possible issues in dispute will be resolved between the employees immediately concerned.

(2) When required the site employee representative and appropriate Company representative will assist the employees to resolve the dispute.

(3) Should issues remain unresolved a representative of the union and the Company Operations Manager will then assist the employees to resolve the problem. The emphasis shall be placed on a negotiated settlement prior to invoking the provisions of subclause (4) of this clause.

(4) If the matter still cannot be resolved the matter may be referred to the Western Australian Industrial Relations Commission.

(5) At all times work will continue and consideration of the needs of the business will remain a priority.

24—TRAINING

(1) All employees shall assist in the process of skills transfer with in-house training.

(2) All non-trades employees shall perform any tasks they are directed to which are within the scope of their skill, competence and training.

(3) All employees shall perform any tasks they are directed to which are incidental or peripheral to their main tasks.

(4) Employees shall only be required to perform work which they can or, where necessary, have been trained to perform safely and competently

(5) The ongoing and future training needs of the Company shall be discussed via the consultative process. Matters for discussion shall include but not be limited to—

(a) Payment of wages

(b) Travel

(c) Books and materials

25—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) trades persons and shall not be taken in excess of that ratio unless—

(1) the union or unions concerned so agree; or

(2) the Western Australian Industrial Relations Commission so determines.

26—INSPECTION OF RECORDS

(1) The Company will maintain time and wages records consistent with the terms of the Labour Relations Legislation Amendment Act 1997 and Section 23(3)(c)(iii) of the Industrial Relations Act.

27—REPRESENTATIVE INTERVIEWING EMPLOYEES

(1) For the purpose of interviewing employees on legitimate union business a duly accredited union representative shall have the right to enter the Company's premises during the midday meal break on the following conditions—

(a) that he/she produces his/her authority to the gatekeeper or such other person as may be appointed by the Company;

(b) that he/she interviews employees at places where they are taking their meal or at such other place as is mutually agreed; and

(c) that if the Company alleges that the representative is unduly interfering with his/her work or is creating dissatisfaction amongst his/her employees or is offensive in his/her methods or is committing a breach of any of the previous conditions, the Company may refuse the right of entry but the representative shall have the right to bring such refusal before a member of the Western Australian Industrial Relations Commission.

Provided that where certain employees are working under a system of shift work which precludes a representative from interviewing them during the midday meal break the representative shall have the right to enter the Company's premises for the purpose of interviewing such employees at such time and under such conditions as to notice as may be mutually arranged by the representative and the Company, or failing agreement at such times and under such conditions as a member of the Western Australian Industrial Relations Commission may decide.

(2) In the case of a disagreement existing or anticipated concerning any of the provisions of this Agreement, an accredited representative of the Union, on notifying the Company or the Company's representative, shall be permitted to enter the business premises of the Company to view the work the subject of any disagreement but shall not interfere in any way with the carrying out of such work.

28—POSTING OF AGREEMENT AND NOTICES

The Company shall keep a copy of this Agreement in a convenient place in the workshop and the Company shall also provide a notice board for the posting of notices.

29—USE OF CONTACT/CASUAL LABOUR

(1) The Company may utilise Contract/Casual Labour in the following situations—

(a) to overcome peak workloads;

(b) to cover absenteeism, ie employees absent on Workers Compensation, Sick Leave, Annual Leave, Long Service Leave, etc;

(c) to enable training; and

(d) to cover specialist tasks where skills and/or equipment are unavailable.

30—EMPLOYEE COUNSELLING PROCEDURE

(1) All existing and new employees shall be made aware of their rights and obligations under the Company Employee Counselling Procedure dated 3 July 1998 as agreed between parties.

(2) Each employee shall receive a copy of the Employee Counselling Procedure dated 3 July 1998.

31—BOARD OF REFERENCE

(1) There shall be a Board of Reference consisting of a chairperson and an equal number of the Company's and employee's representatives who shall be appointed pursuant to section 48 of the Industrial Relations Act 1979 and Regulation 25 of the Industrial Relations Commission Regulations 1985.

(2) The Board of Reference may allow, approve, fix, determine, or deal with—

(a) any matter or thing that, under this Agreement, may require to be allowed, approved, fixed, determined or dealt with by a Board of Reference; and

(b) any matter or thing arising under or out of the provisions of an award, not involving the interpretation of any such provision, which the Western Australian Industrial Relations Commission may at any time, by order, authorise a Board of Reference to allow, approve, fix, determine or deal with, in the manner and subject to the conditions specified in the award or order, as the case may be.

32—NO EXTRA CLAIMS

There will be no extra claims in relation to wages and conditions, including any increases arising from State Wage Case Decisions, for the duration of this agreement.

33—SIGNATORIES

The Company understands it rights and obligations under this Agreement and has freely entered into it and wishes to have this Agreement registered.

.....Signed.....

22/7/98

Signature on behalf of Western Australian

Specialty Alloys Pty Ltd ACN 053910188

.....Signed.....

21/7/98

The common seal of Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch

401-403 Oxford Street, Mt Hawthorn 6106

Telephone 9242 3999

SCHEDULE A

CLASSIFICATIONS

(a) Leave Reserved

Parties bound by this Agreement may seek leave to amend the following classification structures by agreement between the relevant parties during the life of this agreement.

(b) (1) LEVEL 8—MOULD AND FURNACE PROCESS ASSISTANT (I)

A Mould and Furnace Process Assistant is an employee undertaking training which may include information on the enterprise conditions of employment, introduction to supervisors and fellow employees, training and career path opportunity and quality control/assurance.

The duties performed at this level are essentially related to their training to perform at Mould and Furnace Process Assistant (II). These include—

(a) General labouring and cleaning associated with the production process.

(b) Exercises minimal judgement.

(c) Working under direct supervision either individually or in a team environment.

(d) Undertaking structured training so as to enable the employee to work as a Mould and Furnace Process Assistant (II).

Indicative of the Tasks

Repetitive work on automatic, semi-automatic, and single purpose machines or equipment.

- Assembles components using basic written, spoken and/or diagrammatic instructions in an assembly environment.
- Basic butt and machine welding, or cutting scrap with oxy-acetylene blow pipe.

- Uses selected hand tools.
- Cleans boilers, moulds and melting equipment.
- Maintains simple records.
- Uses hand trolleys and pallet trucks.

(2) LEVEL 7—MOULD AND FURNACE PROCESS ASSISTANT (II)

A Mould and Furnace Process Assistant (II) has completed up to six months structured training at the level of Mould and Furnace Process Assistant (I), or recruited with prior Foundry work experience at this level and has completed eight modules towards an Engineering Production Certificate so as to enable the employee to perform work within the scope of this level.

At this level an employee performs work above and beyond the skills of an employee at Level 8, and to the level of training—

(a) Works under routine supervision either individually or in a team environment.

(b) Understands and assists in the undertaking of production processes.

(c) Is capable of recognising basic quality deviations and faults.

(d) Understands and utilises basic statistical process and control procedures.

Indicative of the tasks which an employee at this level may perform are the following—

- Repetitive work on automatic, semi-automatic and single purpose machines or equipment, eg material feeders, weighting systems, mould conditioning machine, shot blast machine, grinding.
- Assembles components using basic written, spoken and/or diagrammatic instructions in an assembly environment.
- Uses selected hand tools.
- Cleaning of moulds and equipment.
- Maintains simple records, eg log control.
- Uses hand trolleys, pallet trucks and crane operation to transport and load materials, move pallets.
- Assist with charge preparation, assembly of preheated moulds, and loading of refractory lined launder/tundish.
- Lifting and stripping of ingots.
- Pallets products for shipping.

(3) LEVEL 6—MOULD AND FURNACE PROCESS OPERATOR

A Mould and Furnace Process Operator performs work above and beyond the skills of a Mould and Furnace Process Assistant (II), as the result of training or work experience and has completed sixteen modules towards an Engineering Production Certificate and to the level of the employee's training.

At this level an employee performs work above and beyond the skills of an employee at Level 8, and to the level of training—

(a) Works from complex instructions and procedures.

(b) Assists in the provision of on-the-job training.

(c) Co-ordinates work in a team environment or works individually under general supervision.

(d) Is responsible for assuring the quality of the employee's own work.

Indicative of the tasks which an employee may perform are the following—

- Able to read and understand the operation of measuring instruments, for example pre-heating of moulds, temperature checks, alignment of moulds, load launder, tundish.
- Machine setting, loading and operation of mould and furnaces.
- Uses selected hand tools.
- Where required licensed operation of all appropriate materials handling equipment: including cranes, fork trucks and pneumatically assisted devices for use for moulds.
- Intermediate keyboard skills.
- Assist with the refractory lining process.
- Operation of furnace controls and mould conditioning equipment.
- Inspection of moulds.

(4) LEVEL 5—MOULD AND FURNACE PROCESS CONTROLLER (I)

A Mould and Furnace Process Controller (I) is a foundry tradesperson who holds a relevant Trade Certificate or applies skills acquired through the successful completion of 24 modules towards an Engineering Production Certificate in production functions.

A Mould and Furnace Process Controller (I) works above and beyond a Mould and Furnace Process Operator and to the level of that employee's training—

(a) Exercises basic trade knowledge and skills in various tasks including preventative and cyclic maintenance schedules as it relates to the mould and furnace process.

(b) Understands and applies quality control techniques.

(c) Exercises discretion within the scope of this grade.

(d) Performs work under limited supervision.

(e) Performs work which, while primarily involving the skills of the employee's trade, is incidental or peripheral to the primary tasks and facilitates the completion of the whole task.

(f) Operates all lifting equipment incidental to the employee's task.

(g) Able to inspect products and/or materials for conformity with operational standards.

(h) Keyboard operations at a higher level than a Mould and Furnace Process Operator.

Indicative of the tasks which an employee at this level may perform are as follows—

- Responsible for maintaining Vacuum Induction Melting and or Vacuum Arc production equipment and related sub systems.
- Assisting with charge make up preparations and charging of furnaces.
- Responsible for refractory maintenance including furnace and melting equipment linings.
- Building maintenance associated with employee's trade skills.
- Oversees removal of old refractory linings.

(5) LEVEL 5—FOUNDRY PRODUCTION TRADESPERSON.

A foundry Production Tradesperson holds a relevant trade Certificate or Tradespersons Rights Certificate or has demonstrated appropriate Trade skills.

To the level of that employee's training a Foundry Production Trades person—

(a) Is able to maintain equipment used to perform his/her production duties.

(b) Understands and applies quality control techniques.

(c) Exercises discretion within the scope of this grade.

(d) Performs work under limited supervision

(e) Performs work which, while primarily involving the skills of the employees trade, is incidental or peripheral to the primary tasks and facilities the completion of the whole task.

(f) Operates all lifting equipment incidental to the employee's task.

(g) able to inspect products and/or materials for conformity with operations standards.

Indicative of the tasks which an employee at this level may perform are as follows—

- Exercise basic trade knowledge in various tasks including minor preventative and cyclic maintenance schedules on equipment used by persons in their production duties.
- Welding including gouging, oxy and electric.

- Machinery operation including drilling machines, grinders etc.
- Basic keyboard operation.
- Assists with the production process.
- Able to work with limited supervision.
- Understands and applies quality control techniques.

(6) LEVEL 4—MOULD AND FURNACE PROCESS CONTROLLER (II)

A Mould and Furnace Process Controller (II) is a foundry tradesperson who works above and beyond a Mould and Furnace Process Controller (I). The employee should have completed appropriate on-the-job training, relevant post-trade training and/or three appropriate modules in addition to the training requirements of a Mould and Furnace Process Controller (I), and to the level of the employee's training—

(a) Exercises discretion within the scope of this grade.

(b) Works under limited supervision.

(c) Understands and implements quality control techniques.

(d) Provides trade guidance and assistance as part of a work team.

Indicative of the tasks which an employee of this level may perform are as follows—

- Responsible for the charge preparation, charging, melting, dross removal, refining, tracking the process through process control, charting, sampling, adding late additions including making charge calculations related to achieving final aim chemistry, temperature equilibration and pouring of ingots.
- Assists in the provision of on-the-job training.

(7) LEVEL 3—MOULD AND FURNACE PROCESS CONTROLLER (III)

A Mould and Furnace Process Controller (III) is a foundry tradesperson who works above and beyond a Mould and Furnace Process Controller (II) as the result of appropriate on-the-job training, other relevant post-trade training and/or has completed six appropriate modules in addition to the training requirements of a Mould and Furnace Process Controller (II), and to the level of the employee's training—

(a) Provides trade guidance and assistance as part of a work team.

(b) Assists in the provision of training in conjunction with supervisors and trainers.

(c) Understands and applies quality control techniques.

(d) Works under limited supervision either individually or in a team environment.

The following tasks are indicative of what an employee at this level may perform subject to the employee having the appropriate Trade and Post Trade Training to enable the particular tasks to be performed—

- Exercises high precision trade skills using various material and/or specialised techniques.
- Performs operations on a CAD/CAM terminal in the performance of routine modifications to NC/CNC programmes.
- Installs, repairs and maintains, tests, modifies, commissions and/or fault finds on complex machinery and equipment which utilises hydraulic and/or pneumatic principles, and in the course of such work is required to read and understand hydraulic and pneumatic circuitry which controls fluid power systems.
- Installs, repairs and maintains, tests, modifies, commissions and/or fault finds on complex electronically controlled machinery or equipment utilising integrated circuitry.
- Work on complex or intricate circuitry which includes reading and interpreting schematic diagrams, examining, diagnosing and modifying systems comprising inter-connected circuits.

SCHEDULE "B"

12 Hour Roster

		A	B	C	D
	Monday	D	X	N	X
	Tuesday	D	X	N	X
	Wednesday	X	D	X	N
Week 1	Thursday	X	D	X	N
	Friday	N	X	D	X
	Saturday	N	X	D	X
	Sunday	N	X	D	X
	Monday	X	N	X	D
	Tuesday	X	N	X	D
	Wednesday	D	X	N	X
Week 2	Thursday	D	X	N	X
	Friday	X	D	X	N
	Saturday	X	D	X	N
	Sunday	X	D	X	N
	Monday	N	X	D	X
	Tuesday	N	X	D	X
	Wednesday	X	N	X	D
Week 3	Thursday	X	N	X	D
	Friday	D	X	N	X
	Saturday	D	X	N	X
	Sunday	D	X	N	X
	Monday	X	D	X	N
	Tuesday	X	D	X	N
	Wednesday	N	X	D	X
Week 4	Thursday	N	X	D	X
	Friday	X	N	X	D
	Saturday	X	N	X	D
	Sunday	X	N	X	D
	DAYS	7	7	7	7
	NIGHTS	7	7	7	7
	DAYS OFF	14	14	14	14
	TOTAL	28	28	28	28

WESTRAIL FREIGHT SERVICES DEPOT AND YARD AGREEMENT 1998.

No. AG 159 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Australian Government Railways Commission

and

Australian Railways Union of Workers, West Australian Branch & Others.

No. AG 159 of 1998.

COMMISSIONER A.R. BEECH.

9 September 1998.

Reasons for Decision.

On the 11th August 1998 the Western Australian Government Railways Commission (Westrail) applied to register an industrial agreement between it and the Australian Railways Union of Workers, West Australian Branch (ARU) pursuant to s.41 of the *Industrial Relations Act, 1979*. The agreement is to apply to new classifications of Operational Maintainer and Team Leader which will come into being upon the registration of the agreement, and to Tradespersons. The ARU consents to the application. However, the application is opposed by the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch (CEPU) and the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch (AFMEPKIU). These unions were named in the application as respondents to it and also were served with a

copy of the application. Those unions therefore are parties to this application and had a right to be heard: s.29B.

The opportunity for third parties to object to the Commission registering an agreement under s.41 is, as the CEPU and AFMEPKIU concede, quite limited. Subject to the Commission requiring the parties to effect such variations as the Commission considers necessary or desirable for the purpose of giving clear expression to the true intention of the parties, and that the agreement conforms with other requirements of the Act, such as s.41A, s.49A or s.49AB, the Commission shall register the agreement. The use of the word "shall" is a mandatory requirement qualified only by the threshold requirement that the agreement be for an industrial matter, be between an employer and a registered organisation and be for the purposes of s.41 and not for an extraneous or unlawful purpose (*Burswood Resort (Management) Ltd v. ALHMWU and Another* (1996) 76 WAIG 4417) (IAC). The agreement must not be obtained by misrepresentation or fraud because it may well not be an agreement for the purposes of s.41 of the Act (*ALHMWU v. Burswood Resort (Management) Ltd and Another* (1996) 76 WAIG 1281 at 1285) (FB). Therefore, provided the agreement before the Commission meets the requirements of the Act and cannot be said to be for an extraneous or unlawful purpose or obtained by misrepresentation or fraud, the Commission is obliged to register it. The Commission's role is essentially an administrative one. It does not exercise its discretion pursuant to s.26 of the Act.

In opposing the application, the CEPU and AFMEPKIU argue that the ARU has not acted in accordance with its rules. They say the agreement is not a bona fide agreement in the sense that it is not a genuine agreement reached by the ARU on behalf of all its members. It was submitted that the agreement is one that will worsen the conditions of employment of tradespersons covered by it and that the tradespersons who are members of the CEPU and AFMEPKIU have twice voted unanimously to reject the agreement. Furthermore, although the ARU has one member who is a tradesperson, it was submitted that that tradesperson similarly objected to the agreement. It was submitted therefore, that the ARU had acted contrary to its rules and that it is seeking to register a document that is inconsistent with its own rules that the union should maintain good working conditions for its members.

It was argued that the ARU has a fiduciary relationship with its members and that the ARU is in breach of that duty.

There are two reasons in my view why these objections are unable to be made out. Firstly, the ARU is an organisation registered under the *Industrial Relations Act, 1979*. Although, it consists of employees who are members of the union, its status as a registered union means that it is a principal and not merely an agent of its members (*Burswood Resort (Management) Ltd v. FLAIEU and Another* (1991) 71 WAIG 2869 at 2870). As such, the decision by the ARU to sign the agreement is a decision made by the union's governing body in accordance with its registered rules. In making that decision, the governing body would be expected to take into account the wishes of the members of the union who would be covered by the agreement. If a majority of those employees voted to accept the agreement ordinarily one would expect the union to decide to sign the agreement. But the decision to sign the agreement is the decision of the union, not of the members, because it is the union which is the party to the agreement.

That is what has happened here. The Commission has been informed by Mr Wells, and that information is not challenged, that a majority of the ARU's membership voted to accept the agreement. The ARU therefore decided that it would sign the agreement. It had every right to do so, as the CEPU and the AFMEPKIU concede.

The second reason is the difficulty facing the CEPU and the AFMEPKIU in their allegation that the agreement is not bona fide because the ARU has one tradesperson member who either has not been provided with an opportunity to vote on the agreement or is opposed to the agreement (as to which I have no direct evidence at all). That is a matter for that member to take up with his union. It is a matter which may be brought to the Commission under s.66 of the Act. Indeed, I was informed that an application had been made urgently to the Commission under s.66 (Application No. 1603 of 1998) in relation to this subject but that application was subsequently discontinued because it was not competently made.

It has previously been held that the Commission should be slow to prevent an award variation proceeding before the Commission when there is some alleged irregularity in the union party's decision making process (see re: *FLAIEU*, above). In my view, it should be similarly slow to refuse an application to register an industrial agreement simply because there is some irregularity alleged in the union's decision making process, and where that alleged irregularity is able to be dealt with under a section of the Act dedicated to such allegations. I therefore do not accept the objection raised by the CEPU and the AFMEPKIU on these grounds.

The objection is also pursued on the basis that the ARU misrepresented its stance to the tradespersons regarding the ARU's coverage. The constitutional rule of the ARU is as follows—

"3. ELIGIBILITY

> Any person employed in the W.A. Government Railway Services, who is an employee within the meaning of the Industrial Relations Act 1979 (W.A.), as amended or replaced from time to time, and is not under fourteen years of age, may be admitted as a member provided he is not eligible to become a member of the West Australian Locomotive Engine Drivers', Firemen's and Cleaner's Union of Workers, and provided he is properly proposed by one and seconded by another financial member, and the majority of the members present vote in his favour at any regular meeting of the Union and membership to date from the date the entrance fee is paid. No person shall be a member of this Union, except in the capacity of an honorary member, who is not a employee within the meaning of the Industrial Relations Act 1979 (W.A.) as amended or replaced from time to time. Except as hereinafter provided, any member who ceases to be a W.A. Government Railway employee shall no longer be a member. The State President, State Vice-President, State Junior Vice-President, State Secretary, Assistant State Secretary and State Organiser shall be members of the Union."

By virtue of its constitutional rule, therefore, the ARU is able to enrol as a member any employee of Westrail other than an employee eligible to belong to the West Australian Locomotive Engine Drivers', Firemen's and Cleaners' Union of Workers. It is therefore able to enrol tradespersons.

The evidence before the Commission is that the genesis of this agreement is in an industrial dispute that came before the Commission in Application C 184 of 1997 and which resulted in an Order on the 18th June 1997 against the ARU (and only the ARU) that the industrial action cease and that the ARU and Westrail meet for the purposes of resolving an industrial agreement. Negotiations then commenced between the ARU and Westrail.

However, as the negotiations between the ARU and Westrail continued, the tradespersons, who are, with the one exception already referred to, members of the CEPU or the AFMEPKIU, involved those unions as well. The Commission was informed that the practice followed in these negotiations was for a progress report to be made by management to meetings of the employees who would be covered by the eventual agreement, and the meeting would then divide into non-trades and trade groups. The two separate groups would then discuss their response to the negotiations and vote accordingly. The format therefore was that the ARU was seen as responding to Westrail on behalf of the non-trades employees. The CEPU and the AFMEPKIU were seen as responding on behalf of the trades employees. It is apparent to me from a reading of the correspondence which has been placed before the Commission that Westrail also treated the responses accordingly. In the end, the CEPU and the AFMEPKIU did not agree with the final document which had been endorsed by the Cabinet Sub Committee on Labour Relations. Westrail felt that it was not able to negotiate further on the document without incurring delays. On that basis, the ARU signed the document.

The problem which arises for the CEPU and the AFMEPKIU is that if the agreement between Westrail and the ARU is registered, it will extend to and bind all employees who are employed in any calling mentioned in the agreement: s.41(4)(a)(i) of the Act. The agreement contains a calling of

tradespersons. Therefore, the agreement extends to tradespersons and binds them.

This has two practical effects. The first is that the tradespersons who, together, voted unanimously to reject the agreement are nevertheless going to be bound by it despite their objection. I have no doubt that the tradespersons did not participate in this process on that understanding. Secondly, the CEPU and the AFMEPKIU will no longer be parties to the instrument which sets out the terms and conditions of employment of their members. This is because the agreement will supersede the Railway Employee's Award to which those unions, and the ARU are party. Although the tradespersons may continue to belong to the CEPU or the AFMEPKIU, and those two unions may still represent those tradespersons, those unions are limited in that they cannot enforce the agreement against Westrail should it be alleged that Westrail has breached the agreement, nor are they able to take any other action which could otherwise be taken by a union which is a party to the agreement. In these circumstances, if the Commission was to decide this application on its merits it would endeavour to assist Westrail, the AFMEPKIU and the CEPU to overcome that situation. However, when the Commission is asked to register an agreement under s.41, that opportunity does not arise.

In the above circumstances, it cannot be said that the agreement between the ARU and Westrail was obtained by misrepresentation. Although the CEPU and the AFMEPKIU may have thought that the ARU would not sign the agreement with tradespersons in it, there is no evidence that there was an agreement between the ARU, the CEPU and the AFMEPKIU to that effect. The issue was not raised between the unions at the time. The ARU's position was that it would sign the agreement on behalf of its members. It did not hide its position in the negotiations. I even accept that at one stage, Mr Wells stated that if he, Mr Wells, was a tradesperson he wouldn't vote for the agreement. However, that is not evidence that the agreement between the ARU and Westrail was obtained by misrepresentation. The position as between the ARU and Westrail contains no suggestion of misrepresentation. The classifications within the agreement fall within the ARU's constitutional coverage. Further, and importantly, its membership covers both trades and non-trades classification, albeit on the basis of only one member who is a tradesperson. It was entitled to sign the agreement on behalf of its membership. While I recognise the issue that arises between the CEPU and the AFMEPKIU on the one hand and the ARU on the other, that does not amount to ARU obtaining the agreement with Westrail by misrepresentation.

Nor can it be said that the agreement should be set aside as having been obtained by Westrail exerting an undue influence over the ARU. Certainly, the ARU does not allege that it was the subject of undue influence in the signing of the agreement. In that circumstance, a third party can hardly be heard to allege that the ARU was subject to undue influence and that the agreement ought not be registered for that reason. Indeed, I am prepared to accept the evidence from the ARU that the pressure upon it to sign the agreement came from its members. I am therefore unable to reach the conclusion that the agreement between the ARU and Westrail was obtained by undue influence. Nor can it be said that the inclusion of tradespersons in the agreement does not reflect the true intention of the parties. I am satisfied by my close questioning of Mr Wells that the ARU's true intention was to sign the agreement in the form which is now before the Commission.

For those reasons, the objections are not made out. The Commission is obliged to register the agreement. It will therefore be registered.

Order Accordingly.

Appearances: Mr D. Johnston on behalf of the applicant.

Mr R. Wells on behalf of the Australian Railways Union of Workers, West 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, WA Branch and the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Australian Government Railways Commission

and

Australian Railways Union of Workers, West Australian Branch and Others.

No. AG 159 of 1998.

Westrail Freight Services Depot and Yard Agreement 1998.

9 September 1998.

Order.

HAVING heard Mr D. Johnston on behalf of the applicant, Mr R. Wells on behalf of the Australian Railways Union of Workers, West Australian Branch and Mr C. Young on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch and 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 Westrail Freight Services Depot and Yard Agreement 1998 as filed in the Commission on the 11th day of August 1998 and as amended by the parties on the 9th day of September 1998 be registered on and from the 6th day of September 1998.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the Westrail Freight Services Depot and Yard Agreement 1998.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties Bound
4. Application
5. Term of Agreement
6. Number of Employees Bound by this Agreement
7. Objectives
8. Contract of Employment
9. Hours of Duty
10. Additional Hours
11. Saturday/Sunday Working
12. Classifications, Rates of Pay and Allowances
13. Payment of Remuneration
14. Payment for Additional Responsibilities
15. District Allowance
16. Away From Home Allowance
17. Perth Metropolitan Area Travel Allowance
18. Annual Leave
19. Public Holidays
20. Long Service Leave
21. Sick Leave
22. Family Leave
23. Union Leave
24. Other Leave
25. Absence From Duty
26. Stand Down
27. Training
28. Uniforms/Protective Clothing
29. Health and Fitness
30. Information Acquired During Employment
31. Disputes Settlement Procedure
32. Transitional Provisions
33. Signatories to the Agreement

Appendix A—Classification Criteria
Appendix B—Basic Accommodation Standards

3.—PARTIES BOUND

This agreement shall be binding on the Western Australian Government Railways Commission and the Australian Railways Union of Workers, West Australian Branch.

4.—APPLICATION

This Agreement shall apply to employees of the Western Australian Government Railways Commission (the employer) employed in the classifications set out in clause 12 of this agreement and in respect of those employees shall replace any award, or registered industrial agreement which might otherwise apply and when this agreement ceases to operate the relevant award will apply.

5.—TERM OF AGREEMENT

This agreement shall operate for a period of 24 months from 6 September 1998.

6.—NUMBER OF EMPLOYEES BOUND BY THIS AGREEMENT

The estimated number of employees bound by this agreement is 159.

7.—OBJECTIVES

The parties recognise that the employer, as a major provider of freight services, is required to operate in an increasingly competitive market. Thus the objectives are to ensure—

(1) Freight Services are provided in the most effective and efficient manner;

(2) A quality service is provided to customers which is flexible and responsive to changing circumstances with the goal of retaining and increasing our market share;

(3) That the relationship between the employer and the employees is one of mutual respect which recognises the rights and needs of the employer and employees;

(4) That employees are provided with secure and satisfying employment underpinned by appropriate accredited training and development.

8.—CONTRACT OF EMPLOYMENT

(1) Except as provided in subclause (2) of this clause, an employee's appointment will be subject to a probationary period of three months from the date of appointment.

(a) Subject to satisfactory performance an employee's appointment will be confirmed at the conclusion of the probationary period. However, if during the period of probation an employee demonstrates satisfactory performance the employee's appointment may be confirmed prior to the three month period.

(b) During the probationary period, if the employee's performance is not satisfactory, the employer may terminate the contract of employment by giving one week's notice, or payment in lieu for each day short of one week's notice.

(2) An employee who immediately prior to appointment to a position set out in clause 12 was employed by the employer will be subject to a three month probationary period effective from the completion of the training as defined for the relevant classification in Appendix A—Classification Criteria. If the employee fails to complete the training or, if during the probationary period the employee's performance is not satisfactory, the employee will revert to the employee's former classification.

(3) Except as provided in paragraph (1)(b) of this clause, the contract of employment may be terminated by—

(a) the employee, by giving four weeks' notice in writing, or forfeiting four weeks' pay in lieu of such notice; or

(b) the employer, by giving four weeks' notice in writing, or paying four weeks' pay in lieu of such notice, provided that where the employee is aged over 45 years and has more than two years' continuous service the period of notice shall be five weeks;

provided that where mutually agreed a shorter period of notice may be given without payment or forfeiture of pay in lieu.

(4) Notwithstanding the foregoing provisions of this clause, in the case of conduct which contravenes the employer's rules or regulations, or misconduct, which at law would justify summary dismissal, the contract of employment may be terminated without notice.

9.—HOURS OF DUTY

(1) The ordinary hours of duty shall be 80 hours per fortnight which will be arranged in shifts over the two week roster cycle.

(a) Subject to clause 26 the employer will guarantee each employee 80 hours work for each two week cycle.

(b) In preparing the rosters at each depot the employer shall, as far as the operations allow, maximise each employee's time off including providing consecutive days off and reasonable time off on weekends.

(c) Any proposal to change the shift arrangements or length of the roster cycle will be as agreed between the employees at the relevant depot and the employer. Provided that where all reasonable measures have resulted in agreement not being reached then the employer shall determine the roster arrangements.

(d) Where the roster cycle is more than two weeks then the number of hours and shifts referred to in this clause will be varied in proportion to the change.

(2) Ordinary hours may be worked on any day of the week Sunday to Saturday inclusive.

(3) The maximum number of hours that may be rostered in a two week cycle will be 104 hours after which the employee may decline to work any further additional hours.

(a) If an employee chooses to work more than the 104 hours then this may occur.

(b) The 104 hours will comprise of ordinary hours, rostered additional shifts and unrostered additional shifts but does not include additional hours worked at the beginning or the end of a shift.

(4) Length of shift

(a) Up to 12 ordinary hours may be rostered in any one shift; and

(b) No rostered shift shall be less than eight hours.

(5) An employee will be entitled to a minimum of a ten hour break between any two rostered shifts, subject to the following provisions—

(a) When an employee is required to work without having received the minimum time off the employee, subject to the overriding provision in paragraph (b) of this subclause, will be paid as if that employee had worked continuously from the time of commencing work on the previous shift until the time of ceasing work on the shift which was commenced with less than the minimum time off.

(b) The provisions of paragraph (a) of this subclause will not apply if the employee is required to work and the actual time off work is short of the minimum time off by one hour or less, in which case the employee will be paid 1.7 times the ordinary rate of pay for the time difference between the actual time the employee had off work and the minimum time off work.

(6) Meal breaks

(a) An employee will be entitled to take a paid meal break of a nominal length of 20 minutes between the third and fifth hour of any shift which exceeds five hours.

(b) The timing of the meal break will be such as to cause the minimum of disruption to operations.

(c) Any employee required to work beyond ten hours will be entitled to take a second meal break of a nominal length of ten minutes between the eighth and tenth hours of the shift.

(7) Maximum number of shifts—

(a) The maximum number of ordinary shifts for a two week roster cycle will be ten.

(b) The maximum number of additional shifts for a two week roster cycle will be two.

(c) An employee shall not be required to work for a minimum of 36 hours after the employee has worked ten consecutive shifts or four consecutive shifts where the length of the four shifts are 12 hours or more.

(8) Except in an emergency, an employee shall not be required to work more than 12 hours continuously and under no circumstances shall an employee be required to work more than 16 continuous hours. An emergency is defined as an unforeseen event, including but not limited to; derailments, mechanical failure, acts of nature which will have a significant effect on train operations and/or employee or public safety.

10.—ADDITIONAL HOURS

(1) An employee may be required to work additional hours immediately before or immediately after the employee's rostered ordinary hours.

(2) An employee may be required to work additional shifts in addition to the ordinary rostered shifts and a minimum of three hours shall be paid for such additional shifts.

(3) An employee required to work additional hours in circumstances specified in subclauses (1) and (2) of this clause will be paid 1.7 times the ordinary rate for all such time worked.

(4) In the event that an employee is required to work an additional shift as specified in subclause (2) and the shift is cancelled within two hours of its starting time the employee will be compensated by payment of two ordinary hours' pay. The two hours will not count towards the guaranteed hours for the roster cycle.

(5) Except where the requirement for specific skills or knowledge makes it desirable to require a particular employee to work an additional shift, the employer shall, in the first instance, call for volunteers to undertake the work and in the event that no employees come forward then the employer shall allocate the work in a reasonable and equitable manner.

11.—SATURDAY/SUNDAY WORKING

Where an employee is required to work ordinary hours on a Saturday or Sunday the employee will be paid 1.7 times the ordinary rate for all such time worked on those days.

12.—CLASSIFICATIONS, RATES OF PAY AND ALLOWANCES

(1) An employee's ordinary rate of pay will be made up of the following components—

(a) Aggregated Base Rate; and

(b) Aggregate Shift Work Allowance (if applicable);

as detailed in subclauses (2) and (3) of this clause.

(2) The aggregated base rates of pay to apply to each classification are as follows—

CLASSIFICATION	LEVEL	Rate per fortnight from date of agreement	Rate per fortnight 12 months after date of agreement
Operational Maintainer	Trainee	942.70	971.00
	Level 1	1065.50	1097.50
	Level 2	1111.60	1144.90
	Level 3	1160.00	1194.80
	Level 4	1208.30	1244.50
Tradesperson	Level 1	1152.40	1187.00
	Level 2	1203.20	1239.30
	Level 3	1253.90	1291.50
	Level 4	1304.70	1343.80
Team Leader (Trades)		1332.30	1372.30
Team Leader	Level 1	1313.30	1352.70
	Level 2	1504.50	1549.60

(a) The Tradesperson and Team Leader (Trades) rates detailed in the table at subclause (2) of this clause include a component for the provision, maintenance and insurance of tools.

(b) All rates detailed in the table at subclause (2) of this clause include a component in recognition of the conditions associated with the examination, servicing, maintenance and repair of locomotives and/or rollingstock.

(3) An all purpose aggregated shift work allowance will be paid as per the table in paragraph (b) of this subclause to compensate for the requirement to work regular shift work.

(a) The allowance will be paid to employees who are required to regularly work ordinary hours between 1800 and 0600 hours. The allowance will be paid to the applicable employees while at work or on paid leave.

(b) Table of Aggregated Shift Work Allowances:

DEPOT	ROLE	Rate per fortnight
Avon Yard	Team Leader	80.00
	Tradesperson	43.00
	Operational Maintainer	34.00
Forrestfield	Team Leader	59.00
	Operational Maintainer (On Signal Cabin and Train Despatching Duties)	65.00
	Operational Maintainer (Other)	94.00
Kwinana	Team Leader	59.00
	Operational Maintainer	38.00
Narngulu	Team Leader	108.00
	Operational Maintainer	14.00
Picton Junction	Tradesperson	58.00
	Operational Maintainer	64.00
West Kalgoorlie	Team Leader	59.00
	Tradesperson	77.00
	Operational Maintainer	64.00

(c) The rates detailed in the table at paragraph (b) of this subclause relate directly to the proposed rosters at the respective depot at the commencement of this agreement. Where during the course of this agreement the roster at any of these depots is permanently changed resulting in a variation of the aggregated shift work amounts by a factor of plus or minus 5% or more the parties shall undertake a review of the rates. Any such review shall apply the conditions and rate for the Occasional Shift Work Allowance as detailed in subclause (4) of this clause for any future calculations.

(4) Occasional Shift Work Allowance

(a) Should an employee be required to carry out shift work and is not paid the applicable aggregated shift work allowance as detailed in the table at paragraph (3)(b) of this clause an amount of $2.26 per hour will be paid for all ordinary hours worked between 1800 and 0600 hours.

(b) For the purpose of paragraph (a) of this subclause, part hours will be paid as follows—

(i) for any part of an hour worked less than 30 minutes the allowance will not be paid; and

(ii) any part of an hour between 30 and 59 minutes will be paid as an hour.

(5) Appointment to levels within the classification structure detailed in subclause (2) of this clause will be subject to the employee meeting the criteria for each classification as provided for in Appendix A—Classification Criteria.

13.—PAYMENT OF REMUNERATION

(1) All remuneration shall be paid fortnightly.

(2) All remuneration shall be paid into accounts, nominated by the employee, with a bank, building society or credit union.

14.—PAYMENT FOR ADDITIONAL RESPONSIBILITIES

An employee who is required to undertake on a temporary basis the substantial responsibilities of a position within this agreement which attracts a higher rate of pay than the employee's normal rate of pay shall be paid the rate of pay for the position from the commencement of the first shift provided that the employee undertakes the position's substantial responsibilities from the commencement of the first shift and that the responsibilities of the position are not shared with other employees.

15.—DISTRICT ALLOWANCE

(1) A district allowance of $6.90 for each completed fortnight will be paid to employees whose home station is Kalgoorlie.

(a) Employees who have a dependent living with them will be paid double the allowance.

(b) Employees temporarily working at Kalgoorlie in excess of a week shall also receive the allowance.

(2) District allowance will not be paid where an employee is absent on leave without pay for a week or more.

(3) For the purpose of this clause a "dependent" is—

(a) a spouse or defacto spouse; or

(b) where there is no spouse, children or any other relative who relies on the employee for their main support;

who does not receive a district or location allowance of any kind.

16.— AWAY FROM HOME ALLOWANCE

(1) When an employee is required by the employer to carry out work at a location which does not reasonably allow the employee to return to the home station on any such day and where employer accommodation or substitute accommodation, which may include hotel/motel accommodation, is not provided by the employer, the employee will be entitled to an allowance as follows to cover accommodation, meals and incidental expenses—

(a) for hotel/motel occupied—

(i) Perth Suburban Area	$148.20 per day
(ii) South of 26 latitude	$124.05 per day

(b) For other than hotel/motel occupied $53.15 per day.

(c) Where an employee—

(i) is required to be away from the employee's home depot for part of a day; and

(ii) cannot reasonably be expected to have a meal at home or lodging prior to departure or after return; and

(iii) provides certification that each meal for which an allowance is claimed was actually purchased;

an allowance calculated, from the daily rate provided in the table above, will apply as follows—

Breakfast	10% of the rate
Lunch	15% of the rate
Dinner	25% of the rate
Bed	50% of the rate.

(2) Employees will normally find their own Hotel/Motel and be entitled to allowances in subclause (1) of this clause, however, there may be occasions, for example, when a large group are required to be accommodated at the same time in which case the employer may utilise subclause (3) or (4) of this clause but this will be the exception to the rule and will be discussed beforehand with the employees concerned.

(3) Where employer accommodation or substitute accommodation, which may include hotel/motel accommodation, is provided and meals are also provided by the employer the employee will be entitled to an allowance of $8.65 to cover incidental expenses.

(4) Where employer accommodation or substitute accommodation, which may include hotel/motel accommodation with self cooking facilities, is provided and meals are not provided by the employer the employees, using employer accommodation, who are—

(a) booked off; and

(b) temporarily lodging away from their home depot; or

(c) on temporary transfer;

will be entitled to an allowance of $31.00 for each 24 hours or part thereof.

(5) Employer accommodation means any building, including a van or caravan, used to supplement the building accommodation, which is provided with beds, clean bedding, refrigerator, cooking utensils and kitchen facilities etc. at a standard as detailed in Appendix B as reasonably applicable to the type of accommodation being utilised. Caravans may be located on the employer's property or in a public facility.

(6) Where the employer proposes using accommodation other than barracks or motel, then the employer will discuss the proposed arrangements with the union prior to the use of such accommodation.

(7) The allowance in subclause (4) of this clause will be calculated from the time of booking on to the time of booking off at the home depot.

17.—PERTH METROPOLITAN AREA TRAVEL ALLOWANCE

(1) Employees in the Perth metropolitan area required to commence shift at metropolitan depots other than their home depot will be paid an allowance of $1.00 per kilometre for the extra distance they are required to travel exceeding that from their usual place of residence to their home depot in recognition of the cost and time taken for the extra distance travelled.

(2) In rostering employees to commence work at a location other than the employee's home depot the employer may take account of the relative costs which might be incurred under this clause.

18.—ANNUAL LEAVE

(1) Employees whose ordinary hours are regularly rostered over any of the 7 days of the week or throughout the 24 hours of the day will be entitled to 200 hours paid leave per year for each completed year of service.

(2) Other employees will be entitled to 160 hours paid leave per year for each year of service.

(3) Annual leave will accrue weekly on a pro rata basis.

(4) By agreement between the employer and the employee leave may be—

(a) taken in one or more parts; and

(b) allowed to accumulate for two years.

(5) Every year before June 1 the employer shall post a roster at each depot showing the planned dates for clearance of annual leave by employees. These rosters shall provide for employees to share equitably the opportunity for clearance of leave at particular seasons and periods of demand.

(6) Unless agreed otherwise between the employer and the employee—

(a) at least 4 weeks' notice of the requirement to take annual leave will be given;

(b) if, due to unforeseen operational requirements, leave is not taken as rostered then the employee will be notified within 4 weeks of such cancellation and with at least 4 weeks notice of when the leave is to be rerostered and such leave will not again be cancelled.

(7) Annual leave shall be paid at the employee's rate of pay as set out in clause 12 and, on request, leave of two weeks or more, may be paid in advance of that leave being taken.

(8) For the purpose of debiting annual leave a day's leave shall be deemed to be eight hours and a week's leave shall be deemed to be 40 hours.

(9) Where a public holiday falls within an employee's period of annual leave such day shall be paid as a public holiday.

(10) Employees resuming from annual leave will work the next rostered shift as shown on their roster on the day following the completion of the leave.

19.—PUBLIC HOLIDAYS

(1) "Public Holidays" means any of the following days which are proclaimed to be public holidays in the State of Western Australia—

- New Year's Day
- Australia Day
- Labour Day
- Good Friday
- Easter Monday
- Anzac Day
- Foundation Day
- Celebration Day
- Christmas Day
- Boxing Day

(2) When any of the days mentioned above falls on a Saturday or a Sunday, the holiday will not be observed on the Saturday or Sunday but the holiday will be observed on the following Monday and the Saturday or the Sunday as the case may be will be an ordinary working day. When Boxing Day falls on a Sunday or Monday, the public holiday will not be observed on the Sunday or Monday but will be observed on the following Tuesday and the Sunday will be an ordinary working day.

(3) Where a public holiday falls on a day in which an employee is not rostered to work, the employee will be paid eight hours pay at the ordinary rate in clause 12.

(4) An employee rostered to work but not required to work on a day solely because it is a public holiday will be paid at the employee's ordinary rate of pay for the time that the employee would have worked on the day had it not been a holiday.

(5) Where an employee is required to work on a public holiday all rostered time worked on that day will be paid at the ordinary rate of pay in clause 12 plus an additional eight hours' pay at the ordinary rate of pay in clause 12.

20.—LONG SERVICE LEAVE

(1) After each ten years' continuous service with the employer the employee shall be entitled to 13 weeks long service leave. Long service leave shall be taken in one period, unless otherwise agreed between the employer and the employee.

(2) For the purpose of this clause service as an employee includes any period during which the employee is absent on paid leave but does not include any period exceeding two continuous weeks during which the employee is absent on leave without pay including parental leave.

(3) Long service leave shall be taken within three years of the leave becoming due.

(4) An employee shall be given at least three months notice before being booked off on long service leave except where otherwise agreed between the employee and employer.

(5) Long service leave shall be paid at the employee's rate of pay as prescribed in clause 12.

(6) An employee will be entitled to pro rata long service leave only if employment is terminated—

(a) by the employer for other than disciplinary reasons;

(b) due to the retirement of the employee on the grounds of ill health;

(c) due to the death of the employee, in which case the payment would be made to the employees estate.

(7) Continuity of service shall not be broken by the absence of the employee on any form of approved leave or by the standing down of an employee under the terms of this agreement.

21.—SICK LEAVE

(1) In the event of an employee being sick the employee may be paid up to 80 hours sick leave for each completed year of service for ordinary time lost from duty as a result of such sickness.

(2) The employer may request a medical certificate for—

(a) all future sicknesses after the employee has taken two (2) separate absences without a certificate due to sickness in any one year;

(b) absences for sickness for more than two days.

(3) Paid sick leave will be debited in accordance with the rostered hours the employee would have worked had the employee not been absent.

(4) Sick Leave shall be paid at the employee's rate of pay as set out in clause 12.

(5) Notwithstanding the provisions of subclause (2) of this clause, the employer may require an employee to provide reasonable proof of the authenticity of any absence claimed to result from sickness. Proof may be required regardless of whether or not the employee claims payment for the absence.

(6) Where an employee is unable to work additional hours due to sickness, no sick leave will be payable for such hours.

(7) Where an employee is sick during a period of annual or long service leave and produces at the time, or as soon as practicable thereafter, evidence to the satisfaction of the employer that as a result of the sickness the employee was unfit for work and confined to the employee's place of residence or hospital for a period of at least seven consecutive days in relation to annual leave and 14 consecutive days for long service leave, the employer shall—

(a) grant sick leave for the period of confinement; and

(b) reinstate the equivalent amount of annual or long service leave;

provided the employee has sufficient accrued sick leave to cover the period of confinement.

22.—FAMILY LEAVE

(1) An employee may be granted up to five days paid leave per year to care for a sick family member.

(2) Leave granted shall be debited from accrued sick leave.

(3) Family leave is not to be taken where another person is available to care for the sick family member.

(4) The employer may require reasonable proof, which may include a medical certificate, of the sickness of the family member.

23.—UNION LEAVE

(1) Employees who are accredited representatives of the union may be allowed reasonable unpaid leave to attend to union business.

(2) The employer shall be notified of any request for such leave in sufficient time to allow appropriate arrangements to be made.

(3) Leave shall not be granted where the absence of the employee on union business will disrupt services or involve additional cost for the employer.

24.—OTHER LEAVE

Employees are entitled to bereavement leave, parental leave, study leave, military leave, emergency services leave, and leave to attend for jury service, in accordance with the employer's policies as amended from time to time.

25.—ABSENCE FROM DUTY

(1) Any employee who is absent from duty shall, as soon as possible, advise the supervisor, and where possible, in sufficient time to permit arrangements to be made for the performance of the employee's duties. At the same time the employee shall advise the supervisor of the anticipated duration of the absence.

(2) Any employee absent from duty shall notify the supervisor of any change to the anticipated date on which the employee will be able to resume duty in sufficient time to enable the necessary arrangements to be made.

26.—STAND DOWN

(1) Where the employer, for any cause outside of the employer's control, or, through industrial action, whether or not on the part of the employee, is unable to provide useful work for an employee in a normal work period, the employer shall be entitled not to pay the employee in respect of any such period; provided that the employee may elect to have such a period paid as annual leave where there is an adequate outstanding entitlement to such leave.

(2) Any period for which the employee is not paid under the provisions of subclause (1) of this clause will count as service for the accrual of leave to which the employee would otherwise be entitled under this agreement, provided that the employee resumes work as required at the end of such period.

(3) An employee stood down is not entitled to payment for any public holiday occurring during the period of stand down.

27.—TRAINING

(1) The employer may establish a joint employer/employee committee to assess training requirements to enable employees to carry out their role in a professional manner.

(2) Wherever possible the employer will ensure that the training is competency based and nationally recognised training with clearly defined programs and agreed performance standards.

(3) Training may be delivered on or off the job.

(4) Each employee must be prepared to undertake whatever training is necessary and to qualify to carry out the employee's role to the required standard.

28.—UNIFORMS/PROTECTIVE CLOTHING

(1) Each employee will maintain, wear and use as required, uniforms as issued, as a consequence of an Industrial Order, at the commencement of this agreement.

(2) Notwithstanding subclause (1) of this clause uniform style and colour may be changed after consultation with employees.

(3) The employer will provide protective clothing and equipment in accordance with the *Occupational Safety and Health Act, 1984* requirements and each employee will maintain, wear and use such clothing and equipment as required by that Act.

29.—HEALTH AND FITNESS

(1) To ensure that an employee is medically fit to carry out the duties in a satisfactory and safe manner the employee will, if required, undergo a medical examination with the employer's Occupational Physician.

(2) The employer will pay the costs of any medical examination conducted by the employer's Occupational Physician. However, the employee is responsible for any costs associated with any treatment of a condition identified by the employer's Occupational Physician.

(3) In the event that an employee is unable to meet the medical standard for a classification set out in clause 12 which necessitates the employee being transferred from the employee's appointed position the employer shall—

(a) take reasonable measures to secure suitable alternative employment for that employee; and

(b) should such alternative employment be with the employer and the rate of pay for the new position is less than that paid to the employee under clause 12 then the employee's former rate shall be maintained for a period of 6 months.

30.—INFORMATION ACQUIRED DURING EMPLOYMENT

(1) Except as expressly authorised by the employer and required by the employee's duties, an employee shall not directly or indirectly reveal to any third party any confidential dealings, finances, transactions, or affairs of the employer or any of its clients which may come to the employee's knowledge during the course of employment.

(2) The obligation imposed under subclause (1) of this clause shall continue to apply after the termination of employment without limits in time.

(3) All records, documents and other papers, together with any copies or extracts thereof, made or acquired by an employee in the course of employment shall remain the property of the employer and must be returned to the employer on demand or otherwise no later than upon termination of employment.

(4) Any changes, innovations and ideas initiated by an employee during the course of employment with the employer shall belong to the employer and the employee shall do all such things as are necessary to completely vest ownership of such matters in the employer.

31.—DISPUTES SETTLEMENT PROCEDURE

(1) The objective of this procedure is to avoid and settle disputes between the parties to this agreement and between employees and the employer by direct consultation and negotiation so as to avoid disruption of customer services.

(2) Where an issue comes to an employee's notice the employee shall raise the matter with the employer as soon as reasonably possible and discussions shall take place between the employee and the local manager within three clear days of the issue being raised with a view to resolving the matter at the local level. Both the manager and the employee may involve other relevant persons in the discussions.

(3) Where the issue is not resolved, or a way to resolve the issue is not agreed, after the three clear days, the issue may be referred to senior management of the employer and the state branch of the union. Employer and union representatives will attempt to resolve the issue within a further four days.

(4) Where an issue is first raised with the employer by the union the parties will attempt to resolve the issue within fourteen clear days of the issue being raised.

(5) While the parties are endeavouring to resolve the issue in accordance with this procedure the provision of services to customers will be maintained and the employer and employees will continue to work in accordance with normal practice. No action taken by either party to maintain services while this procedure is being complied with will be deemed to prejudice the position of either party in respect of the dispute.

(6) Where, having complied with this procedure, the parties are unable to resolve the issue in dispute either party may seek the assistance of the W.A. Industrial Relations Commission.

32.—TRANSITIONAL PROVISIONS

Filling of Positions

(1) All positions, with the exception of the Tradesperson classifications, will be advertised within each depot and appointments will be made on merit, from the applicants that apply for the respective vacancies.

(2) All Tradesperson positions will be filled by each Tradesperson moving from their substantive Award Level to the Levels contained in Clause 12 on a point to point basis as set out in the table in paragraph (b) of this subclause.

(a) Each Tradesperson will be advised in writing of their new Level, their applicable rate of pay and the effective date of the change.

(b) Point to point movement for Tradesperson classifications—

Railway Employees Award (Clause 44)	Depot and Yards Agreement (Clause 12)
Level 4	Level 1
Level 5	Level 2
Level 6	Level 3

Annual Leave

(3) Annual leave entitlements accrued up to the date of appointment under this agreement shall be transferred, after conversion of the leave from a 38 hour week basis to a 40 hour week basis, subject to the requirements of subclause (4) and (5) of this clause.

(4) An employee may transfer annual leave entitlements accrued up to the date of appointment under this agreement up to a maximum of 400 hours.

(a) Any annual leave entitlement accrued up to the date of appointment under this agreement which is not transferred under the provisions of subclause (3) of this clause, shall be commuted to cash payment.

(b) The rate of pay for the cash payment shall be the rate for the designated position occupied by the employee immediately prior to appointment under this agreement. Provided that where an employee immediately prior appointment under this agreement is in receipt of a rate of pay in excess of the employee's designated rate and has been so for a period of 3 months continuous with that time, the rate of pay for the designated position shall be deemed to be the rate which was paid for the majority of the 3 month period.

Days in Lieu

(6) Any days in lieu of public holidays and accrued credit days shall be commuted to cash payment at the rate of pay defined in paragraph (5)(b) of this clause.

Long Service Leave

(2) Long service leave entitlements accrued up to the date of appointment under this agreement shall be treated according to the following formula—

$$\frac{\text{Long Service Leave entitlement (weeks)} \times \text{Rate of Pay A}}{\text{Rate of Pay B}}$$

where

(a) Rate of Pay A is the weekly rate of pay for the designated position occupied by the employee immediately prior to appointment under this agreement. Provided that where an employee immediately prior to appointment under this agreement is in receipt of a rate of pay in excess of the employee's designated rate and has been so for a period of 12 months continuous with that time, the rate of pay for the designated position shall be deemed to be the rate which was paid for the majority of the 12 month period; and

(b) Rate of Pay B is one half of the fortnightly rate of pay expressed in clause 12 of this agreement.

(8) An employee may transfer long service leave entitlements accrued up to the date of appointment under this agreement up to an equivalent of 13 weeks after the application of the formula in subclause (7) of this clause.

(9) Any long service leave entitlement accrued up to the date of appointment under this agreement which is not transferred under the provisions of subclause (8) of this clause, shall be commuted to cash payment at the rate of pay defined in paragraph (7)(a) of this clause.

(10) Any long service leave entitlement transferred in accordance with subclause (8) of this clause shall be taken within three years of the date of appointment.

(11) Where at the date of appointment under this agreement, an employee has commenced a seven year qualifying period for accrual of long service leave such qualifying period shall be adjusted on the following basis—

$$\frac{\text{Number of months completed in 7 year qualifying period} \times 120}{84}$$

Sick Leave

(12)

(a) Sick leave entitlements accrued up to the date of appointment under this agreement shall be transferred on an hour for hour basis.

(b) Any half pay sick leave which is accrued up to date of appointment under this agreement shall be converted to equivalent full pay sick leave and added to the employee's accrued sick leave entitlement.

Electrician's Licence Allowance

(13) Any Electrical Tradesperson in receipt of the weekly Electrician's Licence Allowance at the commencement of this agreement will receive a single payment of $2000 in lieu of the continued weekly payment of the Licence Allowance.

33.—SIGNATORIES TO THE AGREEMENT

The Common Seal of the Western Australian Government Railways Commission was hereunto affixed in the presence of

G.W. JAMES, A/Commissioner

D. CLARKE, Secretary

Date 10/08/1998

Signed for and on behalf of the Australian Railways Union of Workers, West Australian Branch by

R. C. WELLS, State Secretary

Date 21/7/1998

APPENDIX A - CLASSIFICATION CRITERIA

- **The following is a summary of indicative functions and criteria for appointment and/or progression for the classifications covered by the Freight Services Division Depot and Yard Agreement.**
- **This Classification Criteria is to be read as it would apply to a new employee commencing without any of the required competencies.**
- **The Trainee, Level 1 and Level 2 Operational Maintainer classifications are stages of a total training program with the objective of all employees reaching the Operational Maintainer Level 3 classification. Accordingly progression from Trainee to Level 3 will be by way of assessment of competencerelative to the criteria for the applicable level.**

CLASSIFICATION	LEVEL	INDICATIVE FUNCTIONS	CRITERIA
Minimum entry level requirements for the Trainee Operational Maintainer classification are:- • Meet Westrail's Literacy and Numeracy competency standards (Literacy Level 3 and Numeracy Level 2). • Conform to Westrail's Medical, Vision and Hearing Standards and physical mobility requirements. • Mechanical Aptitude. • Valid 'A' class drivers licence ('B' class desirable).			
Operational Maintainer	Trainee	• Training and probationary role.	• Westrail induction training including Overview of; Westrail, employment conditions, EEO & Code of Ethics, services available and yard familiarisation. • Training in; Work Safety, Basic Workplace First Aid Level 1, Communications Fundamentals, Basic Safeworking, Computer Fundamentals, Wellness and Personal Well Being, Electrification & Safety Awareness, Dangerous Goods, Radio Procedures, Shunting & Marshalling of Trains and Mobile Plant & Equipment. • Valid 'B' Class drivers licence. • Followed by 3 months application in the workplace.
	Level 1	Depending on progress of training and as part of the 'on job' application the following range of tasks may be undertaken:- • Wagon fault identification, repair and maintenance, • Shunting, • Yard Duties, • Assist with operation of the store, • Computer Operations, • Operation of fixed and mobile plant.	• Successful completion of Trainee Operational Maintainer training, plus • Wagon Maintenance Course - Wagon repair and maintenance Modules. • Applicable Computer Systems Training. • Full Safeworking 1994. • Followed by 3 months application in the workplace.

APPENDIX A - CLASSIFICATION CRITERIA			
CLASSIFICATION	**LEVEL**	**INDICATIVE FUNCTIONS**	**CRITERIA**
Operational Maintainer	Level 2	• As per Level 1, plus • Train examination.	• Successful completion of Operational Maintainer - Level 1 training, plus • Wagon Maintenance Course - Train Examination Module. • Followed by 3 months application in the workplace.
	Level 3	Depending on the depot, shift and role being undertaken the following tasks may be undertaken (as prescribed in the applicable Job Description Form):- • Wagon fault identification, repair and maintenance, Train Examination and Shunting, • Operation of the store, attend to the trade waste treatment plant and wagon fault identification, repair and maintenance, • Carry out on job instruction. Plus, any other tasks from Level 1 and 2.	• As per Operational Maintainer - Level 1 and 2, plus • Locomotive Operator Qualification - Restricted Movement. • OS&H Supervisor training as applicable.
	Level 4	• Wagon fault identification, repair and maintenance, Train Examination and Shunting, • Operation of a Signal Cabin. • Carry out on job instruction, Plus, any other tasks from Level 1 and 2.	• As per Operational Maintainer - Level 1, 2 & 3, plus • Certificate of Competency for applicable Signal Cabin.

APPENDIX A - CLASSIFICATION CRITERIA			
CLASSIFICATION	**LEVEL**	**INDICATIVE FUNCTIONS**	**CRITERIA**
Tradesperson	Level 1	• Locomotive, wagon, plant and infrastructure maintenance and repair (as an entry level Tradesperson), • Train Examination, • Operation of fixed and mobile plant, • Carry out on job instruction.	• Applicable Trade Certificate or formal equivalent. • Wagon Maintenance Course. • For Tradesperson (Electrical) must have a valid 'A' grade Electrical Workers Licence. • Locomotive Mechanical course. • Locomotive Electrical course. • Locomotive Brake Course. • Locomotive Operator Qualification - Restricted movement. • Valid 'A' class drivers licence ('B' class desirable). • Training in Mobile plant and equipment. • Applicable Computer System Training. • Basic Workplace First Aid Level 1. • Dangerous Goods Awareness. • Followed by 12 months application in the workplace.
	Level 2	• As per Tradesperson Level 1 (as a rail industry experienced Tradesperson).	• Progression from Level 1 to Level 2 will be after 12 months satisfactory on job experience and having passed all Level 1 Courses.
	Level 3	• As per Tradesperson Level 2, plus • Shunting, • Basic level of Cross Trade Skilling.	• As per Tradesperson - Level 2, plus • Basic Safeworking. • Shunting training. • Work specific Cross Trade Skill courses. • Possession and application of rail industry specific technical modules.
	Level 4	• As per Tradesperson Level 3, plus • Application of relevant rail industry specialist trade skills.	• As per Tradesperson - Level 3, plus • Possession and application of relevant Post Trade Certificate or formal equivalent.

APPENDIX A - CLASSIFICATION CRITERIA

CLASSIFICATION	LEVEL	INDICATIVE FUNCTIONS	CRITERIA
Team Leader (Trade)		• As per Tradesperson Level 3, plus • Team guidance and direction, • Work scheduling and allocation.	• As per Tradesperson - Level 3, plus • Train the Trainer Course. • OS&H Supervisory training. • First Line Supervisory training.
Team Leader	Level 1	Depending on the depot, shift and role being undertaken the following tasks may be undertaken (as prescribed in the applicable Job Description Form):- • Direct and supervise day to day operations, • Depot administrative requirements, • Ensure effective safeworking and safety practices are carried out, • Ensure RAMS requirements are met, • Examination and inspection of rollingstock including brake testing as part of a train or as single vehicles, • Identify faults, repair, service and maintain wagons as part of a train or as single vehicles and carry out modification to wagons, • Trip servicing of locomotives, • Undertake shunting and marshalling of wagons and trains as required, • Operate fixed and mobile plant, • Co-ordinate the maintenance and servicing of rollingstock, • Crew adjustments and roster alterations, • Carry out on job instruction, Operate and maintain the daily Store function.	• Valid 'A' class drivers licence ('B' class desirable). • Shunting and Marshalling of trains. • Full Safeworking 1994. • Radio Procedures. • Mobile Plant & Equipment training. • Wagon Maintenance Course - Train Examination Module. • Wagon Maintenance Course - Wagon repair and maintenance Modules. • Introduction to Computers. • RAMS Training Course. • MINCOM Training. • Crew Rostering System Training. • On Job Instruction. • OS&H Supervisor Training. • Basic First Aid. • Dangerous Goods Awareness. • First Line Supervisory training.
	Level 2	As per Team Leader Level 1, but at a higher level of responsibility and with a greater range of the functions being undertaken as prescribed in the applicable Job Description Form.	• As per Team Leader Level 1.

APPENDIX B—BASIC ACCOMMODATION STANDARDS

(1) Caravans, when in use, will be located in fully serviced caravan parks or where available suitable employer caravan parks.

(2) The ability to obtain supplies will be provided by the employer where sufficient on site facilities do not exist.

(3) Provision of air-conditioning and heating to ensure a temperature range of 18—24 degrees Celsius can be obtained.

(4) Provision of a two door fridge/freezer.

(5) Provision of inner spring mattress (only if such requested).

(6) Provision of a microwave oven.

(7) All caravans are to be able to be locked securely.

(8) Provision for a weekly linen change.

(9) Provision of a cushioned arm chair.

(10) The accommodation is to be provided in a clean and hygienic condition to each new occupant. The responsibility for keeping the accommodation clean while occupied rests with the occupant.

(11) Adequate bedding and cooking utensils to be provided.

(12) Adequate domestic cleaning equipment to be provided.

(13) Provision of 3 foot wide beds.

(14) Provision of Chef Diplomate or equivalent stoves.

(15) Provision of a sink large enough for domestic crockery.

(16) Provision in one person caravans of a T.V. antenna outlet and a settee.

(17) Provision of an internal/external boot locker to all caravans.

(18) Provision of security screen doors and windows to all caravans.

AWARDS/AGREEMENTS— Variation of—

ABORIGINAL MEDICAL SERVICE EMPLOYEES' AWARD.
No. A 26 of 1987.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Federated Miscellaneous Workers' Union of Australia, W.A. Branch

and

Broome Regional Aboriginal Medical Centre and Others.

No. 1371 of 1992.

22 September 1998.

Order.

HAVING heard Ms J. Freeman on behalf of the Applicant and Mr P. Robertson on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Aboriginal Medical Service Employees' Award as varied, be further varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 1 July 1998.

(Sgd.) C. B. PARKS,
[L.S.] Commissioner.

Schedule.

1. Clause 23—District Allowance: delete this clause and insert in lieu thereof—

23.—DISTRICT ALLOWANCE

(1) For the purposes of this clause the following terms shall have the following meaning—

"Dependent" in relation to an employee means—

(a) a spouse; or

(b) where there is no spouse, a child or any other relative resident within the State who relies on the employee for their main support;

who does not receive a district or location allowance of any kind.

"Partial Dependent" in relation to an employee means—

(a) a spouse; or

(b) where there is no spouse, a child or any other relative resident within the State who relies on the employee for their main support;

who receives a district or location allowance of any kind less than that applicable to an employee without dependants under any award, agreement or other provision regulating the employment of the partial dependant.

"Spouse" means an employee's spouse including de facto spouse.

"De facto Spouse" means a person of the opposite sex to the employee who lives with the employee as the husband or wife of the employee on a bona fide domestic basis, although not legally married to that person.

(2) For the purpose of this clause, the boundaries of the various districts shall be as described hereunder—

District—

1. The area within a line commencing on coast; thence east along latitude 28 to a point north of Tallering Peak; thence due south to Tallering Peak; thence southeast to Mt Gibson and Burracoppin; thence to a point southeast at the junction of latitude 32 and longitude 119; thence south along longitude 119 to coast.
2. That area within a line commencing on the south coast at longitude 119 then east along the coast to longitude 123; then north along longitude 123 to a point on latitude 30; thence west along latitude 30 to the boundary of No. 1 District.
3. The area within a line commencing on coast at latitude 26; thence along latitude 26 to longitude 123; thence south along longitude 123 to the boundary of No. 2 District.
4. The area within a line commencing on the coast at latitude 24; thence east to the South Australian border; thence south to the coast; thence along the coast to longitude 123; thence north to the intersection of latitude 26; thence west along latitude 26 to the coast.
5. That area of the State situated between the latitude 24 and a line running east from Carnot Bay to the Northern Territory border.
6. That area of the State north of a line running east from Carnot Bay to the Northern Territory border.

(3) An employee shall be paid a district allowance at the standard rate prescribed in Column II of subclause (6) of this clause, for the district in which the employee's headquarters is located. Provided that where the employee's headquarters is situated in a town or place specified in Column III of subclause (6), the employee shall be paid a district allowance at the rate appropriate to that town or place as prescribed in Column IV of subclause (6).

(4) An employee who has a dependant shall be paid double the district allowance prescribed by subclause (3) of this clause for, the district, town or place in which the employee's headquarters is located.

(5) Where an employee has a partial dependant the total district allowance payable to the employee shall be the district allowance prescribed by subclause (3) of this clause plus an allowance equivalent to the difference between the rate of district or location allowance the partial dependant would receive if he or she was employed in a full time capacity under the Award, Agreement or other provision regulating the employment of the partial dependant.

(6) The weekly rate of District Allowance payable to employees pursuant to subclause (3) of this clause shall be as follows—

Column I	Column II	Column III	Column IV
District	Standard Rate Standard Rate	Exceptions to	Rate
	$ per week	Town or Place	$ per week
6	56.15	Nil	Nil
5	45.90	Fitszroy Crossing Halls Creek Turner River Camp Nullagine	61.75

Column I	Column II	Column III	Column IV
District	Standard Rate Standard Rate	Exceptions to	Rate
	$ per week	Town or Place	$ per week
		Liveringa (Camballin) Marble Bar Wittenoom	57.50
		Karratha	54.15
		Port Hedland	50.25
4	23.10	Warburton Mission	62.30
		Carnarvon	21.75
3	14.60	Meekatharra Mount Magnet Wiluna Laverton Leonora Cue	23.10
2	10.35	Kalgoorlie Boulder	3.45
		Ravensthorpe Norseman Salmon Gums Marvel Loch Esperance	13.80
1	Nil	Nil	Nil

(Note: In accordance with subclause (4) of this clause employees with dependants shall be entitled to double the rate of district allowance shown).

The allowances prescribed in this subclause shall operate from the beginning of the first pay period commencing on or after July 1, 1998.

(7) When an employee is on approved annual recreation leave, the employee shall for the period of such leave, be paid the district allowance to which the employee would ordinarily be entitled.

(8) When an employee is on long service leave or other approved leave with pay (other than annual recreational leave), the employee shall only be paid district allowance for the period of such leave if the employee, dependants or partial dependants remain in the district in which the employee's headquarters is situated.

(9) When an employee leaves his or her district on duty, payment of any district allowance to which the employee would ordinarily be entitled shall cease after the expiration of two weeks unless the employee's dependant/s or partial dependant/s remain in the district or as otherwise approved by the employer.

(10) Except as provided in subclause (9) of this clause, a district allowance shall be paid to any employee ordinarily entitled thereto in addition to reimbursement of any travelling transfer or relieving expenses or camping allowance.

(11) Where an employee whose headquarters is located in a district in respect of which no allowance is prescribed in subclause (6) of this clause, is required to travel or temporarily reside for any period in excess of one month in any district or districts in respect of which such allowance is so payable, the employee shall be paid for the whole of such period a district allowance at the appropriate rate pursuant to subclauses (3), (4) or (5) of this clause, for the district in which the employee spends the greater period of time.

(12) When an employee is provided with free board and lodging by the employer or a public Authority the allowance shall be reduced to two-thirds of the allowance the employee would ordinarily be entitled to under this clause.

(13) An employee who is employed on a part-time basis shall be entitled to district allowance on a pro-rate basis. The allowance shall be determined by calculating the hours worked by the employee as a proportion of the full-time hours prescribed by the Award under which the employee is employed. That proportion of the appropriate district allowance shall be payable to the employee.

(14) The rates expressed in subclause (6) of this clause shall be adjusted every twelve (12) months ending on December 31 in accordance with the official "Consumer Price Index" for Perth as published by the Australian Bureau of Statistics.

The adjustment of rates shall be effective from the beginning of the first pay period to commence on or after the first day of January each year.

AMBULANCE SERVICE COMMUNICATION CENTRE EMPLOYEES' AWARD 1991.
No. A4 of 1991.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

St John Ambulance Australia.

No. 1098 of 1998.

Ambulance Service Communication Centre Employees' Award 1991.
No. A4 of 1991.

CHIEF COMMISSIONER W.S. COLEMAN.

25 September 1998.

Order.

HAVING heard Mr B. Cusack on behalf of the Applicant and Mr D.P. Swingler 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 Ambulance Service Communication Centre Employees' Award 1991 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 10th day of September 1998.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 1B.—Minimum Adult Award Wage: Delete this clause and insert in lieu thereof the following—

1B.—MINIMUM ADULT AWARD WAGE

(1) No adult employee shall be paid less than the Minimum Adult Award Wage unless otherwise provided by this clause.

(2) The Minimum Adult Award Wage for full time adult employees is $373.40 per week.

(3) The Minimum Adult Award Wage of $373.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions to June, 1998, including the increase in Matter No. 757 of 1998.

(4) Unless otherwise provided in this clause adults employed as casual or part time employees shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.

(5) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision to the Minimum Adult Award Wage of $373.40 per week.

(6) (a) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on traineeships or Jobskills placements, or to other categories of employees who by prescription are paid less than the minimum award rate.

(b) Liberty to apply is reserved in relation to any special categories of employees not included

here or otherwise in relation to the application of the Minimum Adult Award Wage.

(7) Subject to this clause the Minimum Adult Award Wage shall —

(a) apply to all work in ordinary hours.

(b) apply to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave and for all other purposes of this award.

(8) Minimum Adult Award Wage

The rates of pay in this award include the minimum weekly wage for adult employees payable under the June 1998 State Wage Case Decision. Any increase arising from the insertion of the adult minimum wage will be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset the adult minimum wage.

2. Clause 2.—Arrangement: Delete 2A.—State Wage Principles—June 1991 from this clause.

3. Clause 2A.—State Wage Principles—June 1991: Delete this clause.

4. Clause 9.—Rates of Pay: Delete this clause and insert in lieu thereof the following—

9.—WAGES

The minimum rates of weekly wages payable for officers covered by this Award shall be as follows—

			Base Rate	Arbitrated Safety Net Adjustments	Minimum
(1)	(a)	Communications Officer:	$	$	$
		1st year of employment	427.00	48.00	475.00
		2nd year of employment	439.00	48.00	487.00
		3rd year of employment	452.00	48.00	500.00
		4th year of employment	466.00	48.00	514.00
		5th year of employment	476.00	48.00	524.00
		6th year of employment, and thereafter	491.00	48.00	539.00
	(b)	Senior Communications Officer—			
		1st year of employment in this rank	508.00	48.00	556.00
		2nd year of employment in this rank	522.00	46.00	568.00
		3rd year of employment in this rank and thereafter	536.00	46.00	582.00

(c) The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. This first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreement, are not to be used to offset arbitrated safety net adjustments.

(d) The rates of pay in this award include the arbitrated safety net adjustment of $10.00 per week under General order No. 970 of 1997 in the State Wage Decision October 1997. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement. Increases made under State Wage Case Principles prior to November 1997, except those resulting from enterprise agreements, are not to be used to offset this arbitrated safety net adjustment of $10.00 per week.

(e) The rates of pay in this award include the arbitrated safety net adjustment payable under the June 1998 State Wage Case Decision. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees whose wages and conditions are regulated by this award and which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases 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) Where casual officers are employed, they shall be paid at the rates prescribed in paragraph (a) of subclause (1) of this clause, as applicable to first year of employment, plus 20%. Any casual officer shall only be employed for periods of less than two weeks duration.

AMBULANCE SERVICE EMPLOYEES' AWARD, 1969.
No. 50 of 1968.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

St John Ambulance Australia.

No. 1099 of 1998.

Ambulance Service Employees' Award, 1969.

CHIEF COMMISSIONER W.S. COLEMAN.

25 September 1998.

Order.

HAVING heard Mr B. Cusack on behalf of the Applicant and Mr D.P. Swingler 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 Ambulance Service Employees' Award, 1969 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 10th day of September 1998.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 1B.—Minimum Adult Award Wage: Delete this clause and insert in lieu thereof the following—

1B.—MINIMUM ADULT AWARD WAGE

(1) No adult employee shall be paid less than the Minimum Adult Award Wage unless otherwise provided by this clause.

(2) The Minimum Adult Award Wage for full time adult employees is $373.40 per week.

(3) The Minimum Adult Award Wage of $373.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions to June, 1998, including the increase in Matter No. 757 of 1998.

(4) Unless otherwise provided in this clause adults employed as casual or part time employees shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.

(5) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision to the Minimum Adult Award Wage of $373.40 per week.

(6) (a) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on traineeships or Jobskills placements, or to other categories of employees who by prescription are paid less than the minimum award rate.

(b) Liberty to apply is reserved in relation to any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.

(7) Subject to this clause the Minimum Adult Award Wage shall —

(a) apply to all work in ordinary hours.

(b) apply to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave and for all other purposes of this award.

(8) Minimum Adult Award Wage

The rates of pay in this award include the minimum weekly wage for adult employees payable under the June 1998 State Wage Case Decision. Any increase arising from the insertion of the adult minimum wage will be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset the adult minimum wage.

2. Clause 2.—Arrangement: Delete 2A.—State Wage Principles—June 1991 from this clause.

3. Clause 2A.—State Wage Principles—June 1991: Delete this clause.

4. Clause 9.—Rates of Pay: Delete this clause and insert in lieu thereof the following—

9.—RATES OF PAY

The minimum rate of weekly wages payable to officers covered by this award shall be as follows—

(1) (a) Ambulance Officer Grade I (Transport)

	$	ASNA	TOTAL
1st year	426.90	48.00	474.90
2nd year	432.00	48.00	480.00
3rd year and thereafter	436.50	48.00	484.50

(b) Ambulance Officer Grade I

1st year	426.90	48.00	474.90
2nd year	432.00	48.00	480.00
3rd year and thereafter	436.50	48.00	484.50

(c) Ambulance Officer Grade II

1st year	464.10	48.00	512.10
2nd year	469.10	48.00	517.10
3rd year and thereafter	473.70	48.00	521.70

(d) Ambulance Officer Grade III 491.20 48.00 539.20

(e) Ambulance Officer Grade III with Certificate Allowance 535.60 46.00 581.60

(f) Where appointed as such the following shall apply—

Station Officers

Grade I	547.40	46.00	593.40
Grade II	559.10	46.00	605.10

(g) The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. This first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreement, are not to be used to offset arbitrated safety net adjustments.

(h) The rates of pay in this award include the arbitrated safety net adjustment of $10.00 per week under General order No. 970 of 1997 in the State Wage Decision October 1997. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement. Increases made under State Wage Case Principles prior to November 1997, except those resulting from enterprise agreements, are not to be used to offset this arbitrated safety net adjustment of $10.00 per week.

(2) In addition to the weekly rates prescribed in subclause (1) of this clause the following amounts shall be paid for weekend penalties and shift loadings in accordance with Clause 33.—Appendix of this award.

	$
(a) Ambulance Officer Grade I	
1st year	151.53
2nd year	153.16
3rd year and thereafter	154.59
(b) Ambulance Officer Grade II	
1st year	163.40
2nd year	165.00
3rd year and thereafter	166.46
(c) Ambulance Officer Grade III	172.05
(d) Ambulance Officer Grade III with Certificate Allowance	185.58
(e) Station Officers	
Grade I	189.34
Grade II	193.08

(3) In addition to the weekly rates prescribed in subclause (1) and (2) of this clause the following amounts shall be paid for regularly worked overtime being an average of two hours over an eight week cycle of shifts worked by those Officers employed to work the hours

prescribed in paragraph (a) of subclause (1) and (2) of Clause 7.—Hours of Duty of this award.

		$
(a)	Ambulance Officer Grade I	
	1st year	12.50
	2nd year	12.63
	3rd year and thereafter	12.75
(b)	Ambulance Officer Grade II	
	1st year	13.48
	2nd year	13.61
	3rd year and thereafter	13.73
(c)	Ambulance Officer Grade III	14.19
(d)	Ambulance Officer Grade III with Certificate Allowance	15.31
(e)	Station Officers	
	Grade I	15.62
	Grade II	15.92

(4) An Ambulance Officer who has been fully employed for one year or more shall be credited with his/her years of service on promotion to a higher grade.

(5) To become entitled to the rates prescribed in subclauses (1), (2) and (3) of this clause the Officers shall at all times wear a uniform approved by the Association and shall hold an appropriate motor vehicle driver's licence.

All training programmes and examination schedules agreed by the Union and the Association for promotional and proficiency purposes shall be under the jurisdiction and administration of the Association.

(6) (a) To be entitled to the certificate allowances as prescribed in paragraph (d) of subclauses (1), (2) and (3) of this clause an Officer will be required—

(i) to have passed the Grade III requirements of the West Australian Ambulance Training Centre, hold the rank of Grade III and to have completed five years' service; or

(ii) to hold the rank of Grade III and to have passed the TAFE authorised Certificate in Emergency Care.

(b) The Certificate in Emergency Care will not be used as a pre-requisite for promotion to the rank of Station Officer for those officers employed prior to January 1984.

(7) Ambulance officers who have been trained to give medication by intra-muscular injections or test blood sugar levels or perform intravenous cannulation shall be paid a flat allowance of $15.00 per week provided that it shall be paid on Annual Leave, Long Service Leave and Sick Leave.

ARTWORKERS AWARD.
No. A 30 of 1987.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Town of Narrogin and Another.

No. 1175 of 1998.

Artworkers Award.
No. A 30 of 1987.

COMMISSIONER P E SCOTT.

2 October 1998.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondents and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Artworkers Award be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 31st day of July 1998.

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

Schedule.

1. Clause 1B.—Minimum Adult Award Wage: Delete this clause and insert the following in lieu thereof—

(1) The rates of pay in this award include the minimum weekly wage for adult employees payable under the June 1998 State Wage Case Decision. Any increase arising from the insertion of the adult minimum wage will be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements are not to be used to offset the adult minimum wage.

(2) The Minimum Adult Award Wage for full time adult employees is $373.40 per week payable from the beginning of the first pay period commencing on or after 31ST July 1998.

(3) The Minimum Adult Award Wage of $373.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions to June 1998, including the $14.00, $12.00 and $10.00 per week arbitrated safety net adjustments from Matter No. 747 of 1998.

(4) Unless otherwise provided in this clause adults employed as casual or part time employees shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.

(5) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision to the Minimum Adult Award Wage of $373.40 per week.

(6) (a) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on traineeships or Jobskills placements, or to other categories of employees who by prescription are paid less than the minimum award rate.

(b) Liberty to apply is reserved in relation to any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.

(7) Subject to this clause the Minimum Adult Award Wage shall —

(a) apply to all work in ordinary hours.

(b) apply to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave and for all other purposes of this award.

2. Clause 6.—Wages: Delete this clause and insert the following in lieu thereof—

(1) 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 overaward, except when consistent with the State Wage Principles.

(2) (a) The rate of wages payable to the employees covered by the award shall be as follows—

	Rate Per Week $	Supplementary Payment $	Total Rate $
Artworker	543.71	46.00	589.71

(b) The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December, 1993 State Wage Decision, the December, 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

(c) Furthermore the rates of pay in this award include the $10.00 per week arbitrated safety net adjustment payable from the beginning of the first pay period on or after 14th day of November 1997.

This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement.

Increases made under State Wage Case Principles prior to November 1997, except those resulting from enterprise agreements, are not to be used to offset this arbitrated safety net adjustment of $10.00 per week.

The rates of pay in this award include the arbitrated safety net adjustment payable under the June 1998 State Wage Case Decision. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

(3) Artworker Allowances—

(a) Equipment Allowance 32.00

Provided that the equipment allowance shall not be paid where the employer supplies an employee with all necessary equipment

(b) Studio Allowance 52.10

Provided that such allowance shall only be payable where an artworker is directed by the employer to carry out his/her work primarily in his/her own studio.

(c) Construction Allowance 15.60

An employee shall not be entitled to this construction allowance except when required to work "on site" or any work in connection with the erection of a building or to carry out work which the employer and the union agree is construction work or in default of agreement, that is so declared by a Board of Reference.

3. Clause 7.—Special Rates and Provisions: Delete this clause and insert the following in lieu thereof—

(1) Confined Space

An employee required to work in a confined space, being a place the dimensions or nature of which necessitates working in a cramped position or without sufficient ventilation, shall be paid 46 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(2) Toxic Substances

(a) 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.

(b) 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.

(c) An employee using toxic substances or materials of a like nature shall be paid 46 cents per hour extra. Employees working in close proximity to employees so engaged shall be paid 38 cents per hour extra.

(d) 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.

(3) Wet Work

An employee required to work in a place where water is continually dripping on him/her so that his/her clothing and boots become wet or where there is water underfoot shall be paid 38 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(4) Dirty Work

An employee engaged on dirty work shall be paid 38 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(5) Spray Application—Painters

A painter engaged on all spray applications carried out in other than a properly constructed booth, approved by the Department of Labour and Industry, shall be paid 38 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(6) Height Money

An employee required to work on a chimney stack, spire, tower, radio or television mast or tower, air shaft, cooling tower, water tower or silo, where the construction exceeds fifteen metres in height shall be paid for all work above fifteen metres, 38 cents per hour or part thereof, with an additional 38 cents per hour or part thereof for work above each further fifteen metres in addition to the rates otherwise prescribed in this award.

(7) Swing Scaffold

(a) An employee employed—

(i) on any type of swing scaffold or any scaffold suspended by rope or cable, or bosun's chair or cantilever scaffold; or

(ii) on a suspended scaffold requiring the use of steel or iron hooks or angle irons at a height twenty feet or more above the nearest horizontal plane,

shall be paid $2.65 for the first four hours or part thereof and 56 cents for each hour thereafter on any day in addition to the rates otherwise prescribed in this award.

(b) A solid plasterer when working off a swing scaffold shall be paid an additional 9 cents per hour.

(8) Site Allowances

Where an employee is engaged on a construction site where the parties have agreed to a site allowance to compensate for all special factors and/or disabilities on a project, he/she shall be paid such site allowance. Provided that where it has been agreed that such site allowance shall be paid in lieu of any of the special rates above, such rates shall not be paid.

(9) Travel Allowance

A fares allowance of $11.80 per day shall be paid to employees required to work away from their usual place of employment.

BRICK MANUFACTURING AWARD 1979.
No. R 19 of 1979.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Federated Brick, Tile and Pottery Industrial Union of Australia (Union of Workers) Western Australian Branch

and

Midland Brick Pty Ltd and Others.

No. 1224 of 1998.

Brick Manufacturing Award 1979.

CHIEF COMMISSIONER W.S. COLEMAN.

14 September 1998.

Order.

HAVING heard Mr J. Bainbridge on behalf of the Applicant and Ms J. Dowling on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Brick Manufacturing Award 1979 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 29th July 1998.

(Sgd.) W. S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 9. – Overtime: Delete paragraph (5)(a) and (b) of this clause and insert in lieu thereof the following—

(5) (a) An employee required to work overtime for more than two hours without being notified on the previous day or earlier shall be supplied with a meal by the employer or be paid $5.55 for a meal, and

(b) If, owing to the amount of overtime worked, a second or subsequent meal is required then the employee shall be supplied with each such meal by the employer or be paid $3.35 for each meal so required.

2. Clause 11.—Wages—

A. Delete paragraph (1)(a) of this clause and insert in lieu thereof the following—

(1) (a) CLASSIFICATION:

	Base Rate $	Supplementary Payment $	Total Rate $
Adult Employees:			
Tunnel Kiln Operator	360.30	52.30	412.60
Machine Operator: Brick, Setting, Packing or Strapping	353.00	59.60	412.60
Kiln Car Decker in Charge	353.00	59.60	412.60
Refractory Moulder, Brick Cutter, Setter, Drawer, Off Bearer, Grinding Machine Operator, Brick Maker and Handler, Crucible Machine Operator	347.10	51.60	398.70
Burner	343.20	55.40	398.60
Powder Monkey	340.20	58.40	398.60
Hand Press Operator, Presser Fancy Bricks, Clay Hole Motor Loco Driver, Truck Loader, Loader Out to Trucks, Man Winding, Sorter, Packer, Strapper	339.10	51.00	390.10
Operator: Mixer, Weighbatcher Press, Sand Winning, Overhead Crane— After 2 months' service	350.60	48.00	398.60
Steam Curing Operator	335.40	63.20	398.60
Fork Lift Drivers	357.30	48.00	405.30
Front End Loaders—			
(i) 35 b.h.p.	336.60	53.30	389.90
(ii) 35 b.h.p.—130 b.h.p.	347.10	51.50	398.60
(iii) Over 130 b.h.p.	349.80	55.40	405.20
All Others and Trainees during first two months' of service	324.10	49.30	373.40

B. Delete paragraph (1)(b) of this clause and insert in lieu thereof the following—

(b) The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 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.

The rates of pay in this award also include the $10 per week arbitrated safety net adjustment payable from the beginning of the first pay period on or after 14th day of November 1997. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement.

Furthermore the rates of pay in this award include the arbitrated safety net adjustment payable under the June 1998 State Wage Case Decision. This arbitrated safety net adjustments shall be offset against any equivalent amount in rates of pay received by employees whose wages and conditions are regulated by this award and which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements.

Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

C. Delete subclauses (3) and (4) of this clause and insert in lieu thereof the following—

(3) LEADING HANDS—

In charge of:	$
(a) Not less than three and not more than ten employees	15.50
(b) More than ten but not more than twenty other employees	23.55
(c) More than twenty other employees	30.70

(4) SPECIAL RATES

(a) Machine and Pan Drivers oiling machinery outside ordinary working hours shall be paid an additional half hour's pay per day at ordinary rates for performing such work.

(b) Employees required to handle Manganese Dioxide shall be paid an allowance of $2.40 per day or part thereof whilst required to handle such substance.

3. Clause 33. – First Aid Allowance: Delete paragraph (5)(a) and (b) of this clause and insert in lieu thereof the following—

(1) An employee who has been trained to render first aid and who is the current holder of an appropriate first aid qualification such as a certificate from the St John Ambulance Association or a similar body shall be paid a weekly allowance of $11.20 if nominated by an employer to perform first aid duty.

(2) An employee who holds an appropriate certificate as prescribed in subclause (1) hereof who is nominated by an employer to be on stand-by to perform first aid duty shall be paid an allowance of $6.70 per week.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Federated Brick, Tile and Pottery Industrial Union of Australia (Union of Workers) Western Australian Branch

and

Midland Brick Pty Ltd and Others.

No. 1224 of 1998.

Brick Manufacturing Award 1979.

CHIEF COMMISSIONER W. S. COLEMAN.

21 September 1998.

Correcting Order.

WHEREAS an error occurred in the drafting of the above Order dated 14 September 1998, the following correction is made—

1. Delete instruction No. 3 and replace with the following—

3. Clause 33.—First Aid Allowance: Delete paragraphs (1) and (2) of this clause and insert in lieu thereof the following—

(Sgd.) W. S. COLEMAN,
[L.S.] Chief Commissioner.

BRIDGE HOUSE—SALVATION ARMY AGREEMENT.
No. AG 52 of 1993.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

The Salvation Army.

No. 1458 of 1998.

Bridge House—Salvation Army Agreement.
AG 52 of 1993.

10 September 1998.

Order.

HAVING heard Mr B. G. Cusack as agent for the Applicant and Mr P.S. Swingler 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 Bridge House—Salvation Army Agreement 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 date hereof.

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

Schedule.

Clause 4: Wages: Delete this clause and insert in lieu thereof the following—

4.—WAGES

(1) The following shall be the minimum rates of wages payable to employees covered by this Agreement—

	$ Per Week
(a) Qualified Cook	508.00
(b) Cook	449.00
(c) Supervisor	451.60
(d) Domestic	426.30

(2) These rates will be adjusted in accordance with State Wage Decisions.

(3) The classification "Supervisor" shall include any employee whose main role is the care of clients at Bridge House.

(4) The hourly rate shall be calculated by dividing the weekly rate by 38.

BUILDING AND ENGINEERING TRADES (NICKEL MINING AND PROCESSING) AWARD, 1968.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

WMC Resources Ltd and Others.

No. 1418 of 1998.

Building and Engineering Trades (Nickel Mining and Processing) Award, 1968.
No. 20 of 1968.

CHIEF COMMISSIONER W.S. COLEMAN.

24 September 1998.

Order.

HAVING heard Mr W. Game on behalf of the Applicant and Mr R. Gifford on behalf of the Respondent and by consent,

the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Building and Engineering Trades (Nickel Mining and Processing) Award, 1968 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 17th day of September 1998.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 44.—Rates of Pay and Classification Definitions—

A. Delete subparagraph (vi) of paragraph (a) of subclause (1) of this clause and insert in lieu thereof the following—

(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	Arbitrated Safety Net Adjustments	Total Rate
	$	$	$
EEG1	N/A		
EEG2	324.80	48.00	372.80
EEG3	372.40	48.00	420.40
EEG4	389.40	48.00	437.40
EEG5	404.10	48.00	452.10
EEG6	426.90	48.00	474.90

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. Delete subparagraph (vi) of paragraph (b) of subclause (1) of this clause and insert in lieu thereof the following—

(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	Arbitrated Safety Net Adjustments	Total Rate
	$	$	$
EEG1	N/A		
EEG2	341.90	48.00	389.90
EEG3	372.40	48.00	420.40
EEG4	389.40	48.00	437.40
EEG5	404.80	48.00	452.80
EEG6	426.90	48.00	474.90

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. Delete subparagraph (vi) of paragraph (c) of subclause (1) of this clause and insert in lieu thereof the following—

(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	Arbitrated Safety Net Adjustments	Total Rate
	$	$	$
BEG1	N/A		
BEG2	N/A		
BEG3	363.20	48.00	411.20
BEG4	376.70	48.00	424.70
BEG5	389.60	48.00	437.60
BEG6	413.80	48.00	461.80

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.

D. Delete subparagraph (vi) of paragraph (a) of subclause (2) of this clause and insert in lieu thereof the following—

(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	Arbitrated Safety Net Adjustments	Total Rate
	$	$	$
EEG1	302.00	48.00	350.00
EEG2	327.60	48.00	375.60
EEG3	363.20	48.00	411.20
EEG4	377.10	48.00	425.10
EEG5	384.20	48.00	432.20
EEG6	390.40	48.00	438.40

The above new rates include allowance for the withdrawal of the award leading hand rates 1, 2 and 3 respectively.

E. Delete subparagraph (vi) of paragraph (b) of subclause (2) of this clause and insert in lieu thereof the following—

(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	Arbitrated Safety Net Adjustments	Total Rate
	$	$	$
EEG1	302.00	48.00	350.00
EEG2	327.60	48.00	375.60
EEG3	363.20	48.00	411.20
EEG4	391.70	48.00	439.70
EEG5	404.80	48.00	452.80
EEG6	411.00	48.00	459.00

The above new rates include allowance for the withdrawal of the award leading hand rates.

F. Delete subparagraph (iv) of paragraph (c) of subclause (2) of this clause and insert in lieu thereof the following—

(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	Arbitrated Safety Net Adjustments	Total Rate
	$	$	$
BEG3	363.20	48.00	411.20
BEG4	376.70	48.00	424.70

The above new rate for BEG4 also include allowance for the withdrawal of the award leading hand rates 1, 2 and 3 respectively.

G. At the end of subclause (3) of this clause insert the following—

The rates of pay in this award include the arbitrated safety net adjustment payable under the June 1998 State Wage Case Decision. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award, which are above the rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases 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.

BUILDING TRADES AWARD 1968.
No. 31 of 1966.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch

and

Coca-Cola Bottlers Pty Ltd and Others.

No. 1886 of 1997.

Building Trades Award 1968.

No. 31 of 1966.

COMMISSIONER P E SCOTT.

31 July 1998.

Reasons for Decision.

THE COMMISSIONER: This is an application to amend Clause 36.—Redundancy of the Award. The Unions describe the application as being for the purpose of updating this Award and say that it is a flow on of a test case standard being the standard applicable in the building industry as recognised by the Commission in Court Session in dealing with other building industry awards (75 WAIG 2699). It is said that this is an award, which covers employees who work largely side by side with building industry type workers. The Unions say that the bulk of their membership are engaged in areas of joinery manufacturer, glass manufacture etc. where those employees are essentially working within the building industry. They say that although the Award also covers persons engaged as maintenance workers or factory workers, they are lesser in number.

The Respondent opposes the application and says that this Award does not cover the building and construction industry which is the industry which the Commission in Court Session determined would have conditions which take into account the particular exigencies of the building and construction industry, which include that employees go from job to job and they may never accumulate any significant amount of service which would justify payment of redundancy pay where genuine redundancy occurs. On that basis, the Respondents say that the claim is not justified. The Respondents say that what is sought is not so much a test case standard but a community standard applicable in the building and construction industry.

No evidence was put before the Commission by either the Applicants or the Respondents.

An examination of the decisions referred to by the parties in submissions indicates that in 1995, the Commission in Court Session considered applications to amend the Foremen (Building Trades) Award 1991 and a number of other awards to insert redundancy provisions "based on those that already apply in the construction industry" (75 WAIG 2699). It was clear that when dealing with these matters, the Commission in Court Session noted that because of the nature of the construction industry and the work involved, that the employees concerned, who are said to work on site, were involved in work of a transient nature, and the pattern of labour turnover was the subject of evidence before the Commission. In his Reasons for Decision the learned Chief Commissioner noted—

> "To be meaningful, the provision for redundancy must be relevant and the prospect for payment not illusory. It appears that where the industry has already regulated the circumstances under which payments are forthcoming "redundancy" is accepted to have a wider meaning than in industries where the concept originally developed. If, as a matter of public interest, there should be access to redundancy payments, it follows that the circumstances which attract that consideration should be particular to the arrangements for employment in that industry. However, it is not the case that what has already agreed to through the operation of the National Building and Construction Industry Award or the Metal Trades (General) Award (part 2) should have automatic application in circumstances of the Award presently before us. Those are not the submissions of the Union. These applications are pursued on the basis of the relevancy of the arrangements for "redundancy in this industry and a rejection of the limitations of those counterclaims which seek to establish a "TCR standard" based on the concept as it was originally developed in 1984." (page 2706)

The Chief Commissioner stated that in his view redundancy ought to be available to employees in sectors of the building and construction industry which included foremen but excluded "factory based employees" covered by the Industrial Spraypainting and Sandblasting Award. Concern was expressed by the Respondents at the prospect of a flow on of the redundancy payments to the Building Trades (Construction) Award 1987, No. R 14 of 1978 and it was noted that the fundamental test is whether the claim has merit; but that "flow on" in the absence of merit is a different thing. (page 2702) The Chief Commissioner also concluded that—

> "Subject to the exclusion of factory based employees under the Industrial Spraypainting and Sandblasting Award, employees in the building and construction industry covered by the Awards should have access to redundancy pay and that included foreman." (page 2707)

In a matter before the Commission in Court Session to amend the Building Trades (Construction) Award 1987 No. R 14 of 1978, *(76 WAIG 2144 @ 2149—2150)* it was noted that that Award was "the last award in this industry to be considered for redundancy payments." "This industry" was the building and construction industry. It was the "peculiarities of employment in the building and construction industry which is on the basis of daily hire and comprehends termination when the project is completed (or when the phase of the project for which the employee was engaged is completed) should attract an entitlement to redundancy pay. This entitlement should be paid at any time in the circumstances where employment ceases (other than for reasons of misconduct or refusal of duty)."

The decision of the Chief Commissioner goes on to say—

> "It is unacceptable, in my view, to hold out the prospect of a benefit in the circumstances of employment which is on the basis of daily hire when at best the relationship can continue until the project is completed. The concept of daily hire does not impute the expectation of a more permanent relationship. It reflects the vagaries of the industry and the expedition with which contractual relationships may be severed. An entitlement to redundancy benefits on resignation is, in my view, consistent with the balance between the employers ability to respond to the situation to minimise the economic detriment to him or her and the employees ability to do the same.
>
> This approach necessarily rejects the logic of any qualifying periods for assessing the benefit. It places a premium on the mobility of labour. However, it also reflects the

limits of what has been argued before the Commission, namely the features of employment which is "project – specific".

(76 WAIG 2144 at 2149-2150)

I have examined the Award currently before the Commission and I note that it is an award which applies "to all workers (including apprentices) employed in the calling or callings set out in Clause 11 of this Award in the industries carried on by the respondents set out in the schedule attached to this Award, and" to all employers employing those workers. There are certain exceptions to the Award coverage. The schedule to the Award which sets out the industries carried on by the respondents indicates a range of industries including aerated water manufacturers, aluminium prefabrication, ceiling board manufacturers and retail and wholesale distributors. There was no evidence before the Commission as to the nature of any of these industries but I think it is fair to say that this is an award which covers persons engaged either on factory based employment or as maintenance workers. It is true that some of these respondents may prepare materials used in the building construction industry and some of their employees may go on to site to undertake installation, but that is not generally the nature of the industry in which the employees covered by this Award are demonstrated to be engaged. Rather they would appear, on the face of the Award, to be engaged in an industry other than the building and construction industry. As the claim is based upon conditions which apply in the building and construction industry then there is nothing before the Commission to demonstrate that these are appropriate terms to apply to this Award even though it may be that there are some employees who from time to time work on site.

It is noted that clause 7—Contract of Service, provides that the contract is by the week although the Award has been amended to provide for fixed term employment and such appointments should not normally exceed 6 months in duration. The rates of pay set out in Clause 10.—Wages are weekly rates.

In all of these circumstances, I am not satisfied that the exigencies of daily hire where employees are engaged either for the day or the project apply to these employees. Accordingly, the redundancy conditions established to deal with the circumstances experienced by employees in the building and construction industry have not been demonstrated to be appropriate to the employees covered by this Award. Therefore the application should be dismissed.

Appearances: Ms J Harrison on behalf of the Applicants.

Mr K Dwyer on behalf of certain Respondents.

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

Coca-Cola Bottlers Pty Ltd and Others.

No. 1886 of 1997.

Building Trades Award 1968.

No. 31 of 1966.

COMMISSIONER P E SCOTT.

31 July 1998.

Order.

HAVING heard Ms J Harrison on behalf of the Applicants and Mr K Dwyer on behalf of certain Respondents, 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.

BUILDING TRADES AWARD 1968.
No. 31 of 1966.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Brownes Dairy Ltd and Others.

No. 2004 of 1997.

Building Trades Award 1968.
No. 31 of 1966.

COMMISSIONER P E SCOTT.

23 September 1998.

Order.

HAVING heard Ms J Harrison on behalf of the Applicant and Mr K Dwyer on behalf of the Respondents and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Building Trades Award 1968 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 7th day of September 1998.

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

Schedule.

1. Clause 38.—Superannuation: Delete this clause and insert the following in lieu thereof—

The superannuation provisions contained herein operate subject to the requirements of the hereinafter prescribed provision titled—Compliance, Nomination and Transition.

(1) Application—

(a) Subject to the provisions of subclause (4)—Exemptions of this clause, each employer to whom this award applies shall execute an agreement to become a participating employer in the preferred or an approved Occupational Superannuation Scheme, within one month of the enactment of this clause.

(b) For the purpose of this award the preferred Occupational Superannuation Scheme is the Westscheme.

(c) For the purpose of this award an approved Occupational Superannuation Scheme is one which complies with the standards for occupational superannuation schemes under the Occupational Superannuation Standards Act 1987 and Regulations made thereunder.

(2) Contributions—

(a) Subject to the provisions of subclause (3)—Exemptions of this clause each employer shall make monthly contributions to the fund in respect of all eligible employees at the rate of 7% of ordinary time earnings.

(b) Eligible employees are all full time and part time employees to whose employment this award applies and whose length of employment with the employer exceeds one month.

(c) Subject to the provisions of subclauses (3) and (4) of this clause, contributions shall be made in respect of each current eligible employee from the date the employer executes the fund trust deed. Contributions in respect of all other eligible employees shall be made from commencement of employment with the employer but in no case prior to the date of the employer executes the fund trust deed.

(d) Ordinary time earnings shall include base rate, supplementary payments, overaward payments, shift allowance and leading hand allowance.

(e) Contributions shall be paid for all periods during which the eligible employee is in receipt of payments from the employer under the Workers Compensation and Assistance Act and during which the employee is employed by the employer.

(f) Subject to the trust deed an employer shall not be required to contribute during periods of unpaid leave in excess of 38 hours.

(g) Subject to the trust deed an employer shall not be required to contribute during periods of unauthorised absence in excess of 8 hours.

(3) Employee Entry into Fund

(a) On executing the fund trust deed the employer shall provide each current employee with an application form and documentation explaining the fund.

(b) If an employee fails to return to the employer a completed application form to join the fund within two weeks of receipt the employer shall provide a reminder notice together with an application form and documentation explaining the fund to the employee.

(c) If the employee fails to complete and return the application to join the fund within two weeks of receipt of the second form no contribution need be made in respect of that employee until such time as a completed application form is received by the employer.

(d) It shall be the responsibility of the employer to ensure that all new employees complete an application to join the fund during the first month of employment.

Provided that where an eligible employee refuses to complete an application to join the fund the employer shall notify the union in writing of the employees refusal to do so.

(4) Exemptions

(a) Employers of eligible employees who are covered by a Superannuation Order or Award made pursuant to the Industrial Relations Act 1979 shall be exempted from the provisions of this clause in respect of those employees to whose employment the said Order or Award applies.

(b) Employers of eligible employees who are contributing to a Superannuation Fund, in accordance with an Order or Award made pursuant to the Industrial Relations Act 1979, the Conciliation and Arbitration Act 1904 or the Industrial Relations Act 1988 for a majority of employees and, at the date of issue of this Order, makes payment for eligible employees covered by this award in accordance with that Order or Award shall be exempt from the provisions of this clause.

(c) The preferred Occupational Superannuation Scheme for employers of eligible employees who are covered by the Local Government Superannuation Act 1980 shall be the Western Australian Occupational Superannuation Fund.

(d) Where an employer intends to join an approved Occupational Superannuation Scheme other than WESTSCHEME the employer shall notify the appropriate union(s) prior to so doing.

In the event of a dispute the matter shall be referred to the Western Australian Industrial Relations Commission.

(e) Any other approved occupational superannuation fund to which an employer or eligible employee who is a member of the religious fellowship known as Brethren elects to contribute.

(f) An employer may make application to the Western Australian Industrial Relations Commission for exemption from the provisions of this clause and until proceedings before the Western Australian Industrial Relations Commission are finalised the provisions of this clause shall be deemed to have been complied with.

Compliance, Nomination and Transition

Notwithstanding anything contained elsewhere herein which requires that contribution be made to a superannuation fund or scheme in respect of an employee, on and from 30 June 1998—

(a) Any such fund or scheme shall no longer be a complying superannuation fund or scheme for the purposes of this clause unless—

(i) the fund or scheme is a complying fund or scheme within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; and

(ii) under the governing rules of the fund or scheme, contributions may be made by or in respect of the employee permitted to nominate a fund or scheme;

(b) The employee shall be entitled to nominate the complying superannuation fund or scheme to which contributions are to be made by or in respect of the employee;

(c) The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable;

(d) A nomination or notification of the type referred to in paragraphs (b) and (c) of this subclause shall, subject to the requirements of regulations made pursuant to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the employee to whom such is directed;

(e) The employee and employer shall be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made;

(f) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by a employee;

Provided that on and from 30 June 1998, and until an employee thereafter nominates a complying superannuation fund or scheme—

(g) if one or more complying superannuation funds or schemes to which contributions may be made be specified herein, the employer is required to make contributions to that fund or scheme, or one of those funds or schemes nominated by the employer;

or

(h) if no complying superannuation fund or scheme to which contributions may be made be specified herein, the employer is required to make contributions to a complying fund or scheme nominated by the employer.

BUILDING TRADES AWARD 1968.
No. 31 of 1966.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia, Western Australian Branch

and

Brownes Dairy Ltd and Others.

No. 1176 of 1998.

Building Trades Award 1968.
No. 31 of 1966.

COMMISSIONER P E SCOTT.

2 October 1998.

Order.

HAVING heard Mr G Giffard on behalf of the Applicants and Mr K Dwyer on behalf of the Respondents and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Building Trades Award 1968 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 31st day of July 1998.

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

Schedule.

1. Clause 10.—Wages: Delete subclauses (1), (3) and (5) of this Clause and insert the following in lieu thereof—

The rates of wages payable to the employees covered by the award (other than duly registered apprentices) shall be as follows—

(1) Base Rate and Supplementary Payment (per week)

			Base Rate Per Week $	Safety Net Adjustment $
(a)	(i)	Bricklayers, stoneworkers, carpenters, joiners, painters, signwriters, glaziers, plasterers and plumbers as defined in Clause 6 of this award	376.20	48.00
	(ii)	Plumber holding registration in accordance with the Metropolitan Water Supply, Sewerage and Drainage Act	385.40	48.00
	(iii)	Joiner—Assembler A (as defined in Clause 6 of this award)	344.60	48.00
	(iv)	Joiner—Assembler B (as defined in Clause 6 of this award)	330.70	48.00
(b)	Builders Labourers—			
	(i)	Rigger	360.30	48.00
	(ii)	Drainer	360.30	48.00
	(iii)	Dogman	360.30	48.00
	(iv)	Scaffolder	345.00	48.00
	(v)	Powder Monkey	345.00	48.00
	(vi)	Hoist or Winch Driver	345.00	48.00
	(vi)	Concrete Finisher	345.00	48.00
	(vi)	Steel Fixer including tack welder	345.00	48.00
	(xi)	Operator Concrete Pump	345.00	48.00
	(x)	Bricklayer's Labourer	333.60	48.00
		Plasterer's Labourer	333.60	48.00
		Assistant Powder Monkey	333.60	48.00
		Assistant Rigger	333.60	48.00
		Demolition Worker (after three months' experience)	333.60	48.00
		Gear Hand	333.60	48.00
		Pile Driver	333.60	48.00
		Tackle Hand	333.60	48.00
		Jackhammer Hand	333.60	48.00
		Mixer Driver (concrete)	333.60	48.00
		Steel Erector	333.60	48.00
		Aluminium Alloy Structural Erector	333.60	48.00
		Gantry Hand or Crane Hand	333.60	48.00
		Crane Chaser	333.60	48.00
		Concrete Gang including Concrete Floater	333.60	48.00
		Steel or Bar Bender to pattern or plan	333.60	48.00
		Concrete Formwork Stripper	333.60	48.00
		Concrete Pump Hose Hand	333.60	48.00
	(xi)	Builder's Labourers employed on work other than specified in classifications (i) to (x)	307.70	48.00

(3) The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. 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, in so far 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.

Furthermore the rates of pay in this award include the $10.00 per week arbitrated safety net adjustment payable from the beginning of the first pay period on or after 14th day of November 1997

This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement.

Increases made under State Wage Case Principles prior to November 1997, except those resulting from enterprise agreements, are not to be used to offset this arbitrated safety net adjustment of $10.00 per week.

The rates of pay in this award include the arbitrated safety net adjustment payable under the June 1998 State Wage Case Decision. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage 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.

(5) Construction Allowance: (per week) $17.20. An employee shall not be entitled to this construction allowance except when required to work "on site" on any work in connection with the erection or demolition of a building or to carry out work which the

employer and the union agree is construction work or in default of agreement, that is so declared by the Board of Reference.

2. Clause 10A.—Minimum Wage—Adult Males and Females: Delete this clause and insert the following in lieu thereof—

The rates of pay in this award include the minimum weekly wage for adult employees payable under the June 1998 State Wage Case Decision. Any increase arising from the insertion of the adult minimum wage will be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements are not to be used to offset the adult minimum wage.

(i) The Minimum Adult Award Wage for full time adult employees is $373.40 per week payable from the beginning of the first pay period on or after 31st July 1998.

(ii) The Minimum Adult Award Wage of $373.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions to June 1998, including the $14.00, $12.00 and $10.00 per week arbitrated safety net adjustments from Matter No. 757 of 1998.

(iii) Unless otherwise provided in this subclause adults employed as casual or part time employees shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.

(iv) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision to the Minimum Adult Award Wage of $373.40 per week.

(v) (aa) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on traineeships, or Jobskills traineeships or to other categories of employees who by prescription are paid less than the minimum award rate.

(bb) Liberty to apply is reserved in relation to employees excluded under (aa) above and any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.

(vi) Subject to this subclause the Minimum Adult Award Wage shall —

(aa) apply to all work in ordinary hours.

(bb) apply to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave and for all other purposes of this award.

(vii) Nothing in this clause (or subclause) shall operate to reduce the rate of pay fixed by the award for an adult apprentice in force on 13th November 1997.

(Note: A notation will be made in each relevant award by the Registrar where the adult apprentice rate requires specific mention as at 13th November 1997.)

3. Clause 12.—Leading Hands: Delete subclause (1) of this clause and insert the following in lieu thereof—

12.—LEADING HANDS

(1) An employee specifically appointed to be a leading hand who is placed in charge of—

	Per Week $
(a) not more than one employee, other than an apprentice, shall be paid	10.98
(b) more than one and not more than five other employees shall be paid	24.49
(c) more than five and not more than ten other employees shall be paid	31.54
(d) more than ten other employees shall be paid	41.40

In each case, in addition to the rate prescribed for the highest classification or employee supervised, or his/her own rate, whichever is the highest.

4. Clause 13.—Special Rates and Provisions: Delete this clause and insert the following in lieu thereof—

13.—SPECIAL RATES AND PROVISIONS

(1) General conditions under which special rate is payable—

(a) The special rates prescribed in this clause shall be paid irrespective of the times at which work is performed and shall not be subject to any premium or penalty condition.

(b) Where more than one of the following rates provide a payment for disabilities of substantially the same nature then only the highest of such rates shall be payable.

(2) Insulation: An employee handling charcoal, pumice, granulated cork, silicate of cotton, insulwool, slag wool or other recognised insulating material of a like nature or working in the immediate vicinity so as to be affected by the use thereof shall be paid 49 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(3) Hot Work—

(a) An employee required to work in a place where the temperature has been raised by artificial means to between 46 degrees and 54 degrees Celsius shall be paid 38 cents per hour or part thereof in addition to the rates otherwise prescribed in this Award or in excess of 54 degrees Celsius shall be paid 49 cents per hour or part thereof in addition to the said rates.

(b) Where such work continues for more than two hours the employee shall be entitled to a rest period of 20 minutes after every two hours work without loss of pay, not including the special rate prescribed in paragraph (a) hereof.

(4) Cold Work—

(a) An employee required to work in a place where the temperature is lowered by artificial means to less than zero degrees Celsius shall be paid 39 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(b) Where such work continues for more than two hours the employee shall be entitled to a rest period of 20 minutes after every two hours' work without loss of pay, not including the special rate prescribed in paragraph (a) hereof.

(5) Confined Space: An employee required to work in a confined space, being a place the dimensions or nature of which necessitates working in a cramped position or without sufficient ventilation shall be paid 49 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(6) Toxic Substances—

(a) 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.

(b) 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.

(c) An employee using toxic substances or materials of a like nature shall be paid 49 cents per hour extra. Employees working in close proximity to employees so engaged shall be paid 39 cents per hour extra.

(d) 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.

(7) Asbestos: Employees required to use materials containing asbestos or to work in close proximity to employees using such materials shall be provided with and shall use all necessary safeguards as required by the appropriate occupational health authority and where such safeguards include the mandatory wearing of protective equipment (i.e. combination overalls and breathing equipment or similar apparatus) such employees shall be paid 49 cents per hour extra whilst so engaged.

(8) Dry Polishing or Cutting of Tiles: An employee required to dry polish tiles with a machine or to cut tiles with an electric saw shall be paid 49 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(9) Bitumen Work: An employee handling hot bitumen or asphalt or dipping materials in creosote shall be paid 49 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(10) Roof Repairs: An employee engaged on repairs to roofs shall be paid 49 cents per hour or part thereof in addition to the rates otherwise provided in this award.

(11) Wet Work: An employee required to work in a place where water is continually dripping on him/her so that his/her clothing and boots become wet or where there is water underfoot shall be paid 39 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(12) Dirty Work: An employee engaged on dirty work shall be paid 39 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(13) An employee engaged in repairs to sewers shall be paid at the rate of 39 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(14) An employee working in a dust-laden atmosphere in a joiners' shop where dust extractors are not provided or in such atmosphere caused by the use of materials for insulating, deafening or pugging work (as, for instance, pumice, charcoal, silicate of cotton or any other substitute), shall be paid at the rate of 39 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(15) Scaffolding Certificate Allowance: A tradesperson who is the holder of a scaffolding certificate or rigging certificate issued by the Department of Occupational Health, Safety and Welfare and is required to act on that certificate whilst engaged on work requiring a certificated person shall be paid 39 cents per hour or part thereof in addition to the rates otherwise prescribed in this award but this allowance shall not be payable cumulative on the allowance for swing scaffolds.

(16) Spray Application—Painters: A painter engaged on all spray applications carried out in other than a properly constructed booth, approved by the Department of Occupational Health, Safety and Welfare, shall be paid 39 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(17) Cleaning Down Brickwork: An employee required to clean down bricks using acids or other corrosive substances shall be supplied with gloves and be paid 36 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(18) Bagging: An employee engaged upon bagging brick or concrete structures shall be paid 36 cents per hour thereof in addition to the rates otherwise prescribed in this award.

(19) Furnace Work: An employee engaged in the construction or alternation or repairs to boilers, flues, furnaces, retorts, kilns, ovens, ladles and similar refractory work shall be paid $1.04 per hour or part thereof in addition to the rates otherwise prescribed in this award.

(20) Acid Work: An employee required to work on acid furnaces, acid stills, acid towers and all other acid resisting brickwork shall be paid $1.04 per hour or part thereof in addition to the rates otherwise prescribed in this award.

(21) Plasterers using flintcote shall be paid 26 cents per hour extra except where flintcote is applied by hawk and trowel to walls and ceilings when the rate shall be 49 cents per hour extra.

(22) Chemical and Manure Works and Oil Refineries: Journeymen and builders' labourers working on chemical and manure works or oil refineries shall receive 17 cents per hour in addition to the prescribed rate.

(23) Height Money: An employee required to work on a chimney stack, spire, tower, radio or television mast or tower, air shaft, cooling tower, water tower or silo, where the construction exceeds 15 metres in height shall be paid for all work above 15 metres, 39 cents per hour or part thereof, with an additional 39 cents per hour or part thereof for work above each further 15 metres in addition to the rates otherwise prescribed in this award.

(24) Swing Scaffold—

(a) An employee employed—

(i) on any type of swing scaffold or any scaffold suspended by rope or cable, or bosun's chair cantilever scaffold; or

(ii) on a suspended scaffold requiring the use of steel or iron hooks or angle irons at a height of 20 feet or more above the nearest horizontal plane.

shall be paid $2.83 for the first four hours or part thereof and 58 cents for each hour thereafter on any day in addition to the rates otherwise prescribed in this award.

(b) A solid plasterer when working off a swing scaffold shall be paid an additional 10 cents per hour.

(c) No apprentice with less than two years' experience shall use a swing scaffold or bosun's chair.

(25) Plumbing—

(a) A plumber doing sanitary plumbing work on repairs to sewer drainage or wastepipe services in any of the following places—

(i) Infectious and contagious diseases hospitals or any block or portion of a hospital used for the care of or treatment of patients suffering from any infectious or contagious disease.

(ii) Morgues, shall be paid 39 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(b) A plumber doing work on a ship of any class—

(i) whilst under way; or

(ii) in a wet place, being one in which the clothing of an employee necessarily becomes wet to an uncomfortable degree or one in which water accumulates underfoot; or

(iii) in a confined space; or

(iv) in a ship which has done one trip or more in a fume or dust-laden atmosphere, in bilges, or when cleaning blockages in soil pipes or waste pipes

or repairing brine pipes; shall be paid 49 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(c) A plumber carrying out pipework in a ship of any class under the plates in the engine and boiler rooms and oil fuel tanks shall be paid $1.02 per hour or part thereof in addition to the rates otherwise prescribed in this award.

(d) A plumber required to enter a well nine metres or more in depth for the purpose in the first place of examining the pump, pipe or any other work connected therewith, shall be paid $2.02 for such examination and 72 cents per hour thereafter for fixing renewing or repairing such work.

(e) Permit Work: Any licenced plumber called upon by his/her employer to use the licence issued to him/her by the Metropolitan Water Supply, Sewerage and Drainage Board for a period in any one week shall be paid $26.70 for that week, in addition to the rates otherwise prescribed in this award.

(f) Plumbers on Sewerage Work: Plumbers or apprentices in their third, fourth or fifth year, on work involving the opening up on house drains or wastepipes for the purpose of clearing blockages or for any other purpose, or work involving the cleaning out of septic tanks or dry wells, shall be paid a minimum of $2.10 per day in addition to the prescribed rate whilst so employed.

(26) Explosive Powered Tools: An operator of explosive powered tools, being an employee qualified in accord with the laws and regulations of the State of Western Australia to operate explosive powered tools is required to use an explosive powered tool shall be paid 92 cents for each day on which he uses such tool in addition to the rates otherwise prescribed in this award.

(27) Secondhand Timber: Where whilst working with secondhand timber, an employee's tools are damaged by nails, dumps or other foreign matter on the timber, shall be entitled to an allowance of $1.53 per day on each day upon which his tools are so damaged provided that no allowance shall be payable under this clause unless it is reported immediately to the employer's representative on the job in order that the claim may be proved.

(28) Computing Quantities: An employee, other than a leading hand, who is regularly required to compute or estimate quantities of materials in respect of the work performed by others shall be paid $2.83 per day or part thereof in addition to the rates otherwise prescribed in this award.

(29) Setter Out: A setter out in a joiner's shop shall be paid $4.17 per day in addition to the rates otherwise prescribed by this award but where an employee qualifies for this allowance and is appointed leading hand he/she shall be paid whichever amount is the higher but not both.

(30) Detail Worker: A detail worker shall be paid $4.17 per day in addition to the rates otherwise prescribed in this award but where an employee qualifies for this allowance and is appointed leading hand he/she shall be paid whichever amount is the higher but not both.

(31) Spray Painting—Painters—

(a) Lead paint shall not be applied by a spray to the interior of any building.

(b) All employees (including apprentices) applying paint by spraying shall be provided with full overalls and head covering and respirators by the employer.

(c) 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 $1.16 per day.

(32) Brewery Cylinders—Painters—

(a) A painter required to work in brewery cylinders or stout tuns shall be allowed 15 minutes spell in the fresh air at the end of each hour worked by him. Such fifteen minutes shall be counted as working time and paid for accordingly.

(b) A painter working in a brewery cylinder or a stout tun shall be paid at the rate of time and one half. When working overtime on such work a painter shall, in addition to the overtime rate payable, be paid one half of his ordinary rate.

(33) Fumes—

An employee required to work in a place where fumes of sulphur or other acid or other offensive fumes are present shall be paid such rates as are agreed upon between him/her and the employer.

(34) (a) Lead Paint Surfaces: No surface painted with lead paint shall be rubbed down or scraped by a dry process.

(b) Width of Brushes: All paint brushes shall not exceed 125mm in width and no kalsomine brush shall be more than 175mm in width.

(c) 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.

(35) Loads—

Where bricks are being used the employee shall not be required to carry—

(a) more than 40 bricks each load in a wheelbarrow (on a scaffold) to a height of 4.5 metres from the ground;

(b) more than 36 bricks each load in a wheelbarrow over and above a height of 4.5 metres on a scaffold.

The type of wheelbarrow shall be agreed upon with the Union.

(36) Grinding Facilities—

The employer shall provide adequate facilities for the employees to grind tools and employees shall be allowed time to use the same whenever reasonably necessary.

(37) First Aid Outfit—

The employer shall provide a sufficient supply of bandages and antiseptic dressings for use in cases of accident.

(38) Water and Soap—

Water and soap shall be provided at each shop or on each job by the employer for use by the employees.

(39) Provision of Boiling Water—

The employer shall provide boiling water at each shop for the use of his/her employees at lunch time.

(40) (a) 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 Occupational Health, Safety and Welfare Act 1984, a employee is required to wear such helmet.

(b) 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.

(41) Electrical Sanding Machines—

The use of electrical sanding machines for sanding down paint work shall be governed by the following provisions—

(a) The weight of each such machine shall not exceed 5.9 kilograms.

(b) Every employer operating any such machine shall endeavour to 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 under the provisions of the Electricity Act and the regulations made thereunder.

(c) Employers shall provide and supply respirators of a suitable type, to each employee and shall maintain same in an effective and clean state at all times. Where respirators are used by more than one employee, each such respirator shall be sterilised or a new pad inserted after use by each such employee.

(d) Employers shall also provide and supply goggles of suitable type provided that the goggles with celluloid lenses shall not be regarded as suitable.

(e) All employees shall use the protective equipment supplied when using electrical sanding machines of any type.

(42) Protective clothing for bricklayers and bricklayers' labourers engaged on construction or repair of refractory brickwork—

(a) Gloves shall be supplied when employees are engaged on repair work and shall be replaced as required, subject to employees handing in the used gloves.

(b) Boots shall be supplied upon request of the employees after six weeks' employment, the cost of such boots to be assessed at $20.00 and employees to accrue credit at the rate of $1.00 per week.

Employees leaving or being dismissed before 20 weeks' employment shall pay the difference between the credit accrued and the $20.00. The right to accrue credit shall commence from the date of request for the boots.

In the event of boots being supplied and the employee not wearing them whilst at work, the employer shall be entitled to deduct the cost of the boots if the failure to wear them continues after one warning by the employer.

Upon issue of the boots, employees may be required to sign the authority form in or to the effect of the Annexure to the clause. Boots shall be replaced each six months, dating from the first issue.

(c) Where necessary when bricklayers are engaged on work covered by subclauses (19) and (20) of this clause, overalls will be supplied upon the request of the employee and on the condition that they are worn while performing the work.

ANNEXURE

The employee claiming the supply of boots in accordance with paragraph (b) hereof may be required to sign a form giving an authority to the employer in accordance with the following—

Deduction Form

..... acknowledge receipt of one (1) pair of boots provided in accordance with the provisions of subclause (42) of Clause 13.—Special Rates and Provisions of the Building Trades Award No. 31 of 1966.

Should the full cost of the boots ($20.00) not be met by accumulation of credit (at the rate of $1.00 per week) from ..... I authorise deduction from any moneys due to me by my employer ..... of an amount necessary to meet the difference between the credit accrued and $20.00.

Signed .....

Dated .....

(43) An employee, holding a Third Year First Aid Medallion of the St. John Ambulance Association, appointed by the employer to perform first aid duties, shall be paid at the rate of $6.72 per week in addition to the prescribed rate.

(44) Attendants on Ladders—

No employees shall work on a ladder at a height of over 6.1 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.

(45) Where the employer provides transport to and from the job the conveyance used for such transport shall be provided with suitable seating and weatherproof covering.

(46) Sanitary Arrangements—

The employer shall comply with the provisions of section of the Occupational Health, Safety and Welfare Act, 1984-1987.

(47) The Secretary or any authorised officer of the Union shall have the right to visit any job for the purpose of ascertaining whether work is being performed in accordance with the provisions of the Occupational Health, Safety and Welfare Act, and any regulations made thereunder. Should he be of the opinion that the work being carried out is not in accordance with those provisions the Secretary or any authorised officer of the Union shall inform the employer and the workers concerned accordingly and may report any alleged breach of Act or the regulations to the Chief Inspector of the Department of Occupational Health, Safety and Welfare of Western Australia.

BUILDING TRADES (CONSTRUCTION) AWARD 1987.
No. R 14 of 1978.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia, Western Australian Branch

and

Adsigns Pty Ltd and Others.

No. 1174 of 1998.

Building Trades (Construction) Award 1987.
No. R 14 of 1978.

COMMISSIONER P E SCOTT.

7 October 1998.

Order.

HAVING heard Mr G Giffard on behalf of the Applicants, Mr K Richardson on behalf of the Master Builders' Association of Western Australia (Union of Employers), Mr S Varidel on behalf of The Master Painters', Decorators and Signwriters Association of Western Australia (Union of Employers) and The Master Plumbers' and Mechanical Services Association of Western Australia (Union of Employers) and Mr K Dwyer on behalf of various Respondents, 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 the 31st day of July 1998.

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

Schedule.

1. Clause 1B.—Minimum Adult Award Wage: Delete this clause and insert the following in lieu thereof—

(1) The rates of pay in this award include the minimum weekly wage for adult employees payable under the June 1998 State Wage Case Decision. Any increase arising from the insertion of the adult minimum wage will be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements are not to be used to offset the adult minimum wage.

(2) The Minimum Adult Award Wage for full time adult employees is $373.40 per week payable from the beginning of the first pay period commencing on or after 31st July 1998.

(3) The Minimum Adult Award Wage of $373.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions to June 1998, including the $14.00, $12.00 and $10.00 per week arbitrated safety net adjustments from Matter No. 757 of 1998.

(4) Unless otherwise provided in this clause adults employed as casual or part time employees shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.

(5) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision to the Minimum Adult Award Wage of $373.40 per week.

(6) (a) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on traineeships or Jobskills placements, or to other categories of employees who by prescription are paid less than the minimum award rate.

(b) Liberty to apply is reserved in relation to any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.

(7) Subject to this clause the Minimum Adult Award Wage shall —

(a) apply to all work in ordinary hours.

(b) apply to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave and for all other purposes of this award.

2. Clause 8. – Rates of Pay: Delete this clause and insert the following in lieu thereof—

(1) Except as elsewhere provided in this Award the rates of pay payable to an employee (other than an apprentice) shall be that prescribed herein calculated as an hourly rate in accordance with subclause (4) of this clause.

(2) Weekly Rate: The following amounts shall be applied for the purpose of the calculation in subclause (4) of this clause of the hourly rate to apply under this Award.

		Base Rate $	Supplementary Payment $	Arbitrated Safety Net Adjustment $	Weekly Rate $
(a)	(i) Bricklayers, stoneworkers, stonemasons, carpenters, joiners, painters, signwriters, glaziers, and plasterers roof tile fixers	365.20	52.10	48.00	465.30
	(ii) Plumber and/or gasfitter	368.00	52.10	48.00	468.10
	(iii) Plumber holding registration in accordance with the Metropolitan Water Supply, Sewerage and Drainage Act—				
	Base Rate	368.00			
	Reg. Allowance $ 17.30	385.30	52.10	48.00	485.40
	(iv) Marker/Setter Out	378.60	52.10	48.00	478.70
	(v) Special Class Tradesman	385.00	52.10	48.00	485.10
(b)	(i) Group 1				
	Rigger	362.30	52.10	48.00	462.40
	Drainer	362.30	52.10	48.00	462.40
	Dogman	362.30	52.10	48.00	462.40
	(ii) Group 2				
	Scaffolder	346.70	52.10	48.00	446.80
	Powder Monkey	346.70	52.10	48.00	446.80
	Hoist or Winch Driver	346.70	52.10	48.00	446.80
	Concrete Finisher	346.70	52.10	48.00	446.80
	Steel Fixer including Tack Welder	346.70	52.10	48.00	446.80
	Concrete Pump Operator	346.70	52.10	48.00	446.80
	(iii) Group 3				
	Bricklayer's Labourer	335.10	52.10	48.00	435.20
	Plasterer's Labourer	335.10	52.10	48.00	435.20
	Assistant Powder Monkey	335.10	52.10	48.00	435.20
	Assistant Rigger	335.10	52.10	48.00	435.20
	Demolition Worker (after three months' experience)	335.10	52.10	48.00	435.20
	Gear Hand	335.10	52.10	48.00	435.20
	Cement Gun Operator	335.10	52.10	48.00	435.20
	Concrete Cutting or Drilling Machine Operator	335.10	52.10	48.00	435.20
	Pile Driver	335.10	52.10	48.00	435.20
	Tackle Hand	335.10	52.10	48.00	435.20
	Jackhammer Hand	335.10	52.10	48.00	435.20
	Mixer Driver (Concrete)	335.10	52.10	48.00	435.20
	Steel Erector	335.10	52.10	48.00	435.20
	Aluminium Alloy Structural Erector	335.10	52.10	48.00	435.20
	Gantry Hand or Crane Hand	335.10	52.10	48.00	435.20
	Concrete Gang Including Concrete Floater	335.10	52.10	48.00	435.20
	Steel or Bar Bender to Pattern or Plan	335.10	52.10	48.00	435.20
	Concrete Formwork Stripper	335.10	52.10	48.00	435.20
	Concrete Pump Hose Hand	335.10	52.10	48.00	435.20
	Trades Labourer	335.10	52.10	48.00	435.20
	Brick Paver Labourer	335.10	52.10	48.00	435.20
	Brick Cleaner/Labourer	335.10	52.10	48.00	435.20
	(iv) Group 4				
	Builders' Labourers Employed on Work Other Than Specified in Classifications (i) to (iii)	306.60	52.10	48.00	406.70

(c) Supplementary Payments

Supplementary payments set out in this clause represent payments in lieu of equivalent overaward payments.

The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements are not to be used to offset arbitrated safety net adjustments.

Furthermore the rates of pay in this award include the $10.00 per week arbitrated safety net adjustment payable from the beginning of the first pay period on or after 14th day of November 1997

This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages

and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement.

Increases made under State Wage Case Principles prior to November 1997, except those resulting from enterprise agreements, are not to be used to offset this arbitrated safety net adjustment of $10.00 per week.

The rates of pay in this award include the arbitrated safety net adjustment payable under the June 1998 State Wage Case Decision. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

(3) Industry Allowance

The industry allowance at the rate of **$17.00** per week to be paid to each employee is to compensate for the following disabilities associated with construction work—

(a) Climate conditions when working in the open on all types of work.

(b) The physical disadvantage of having to climb stairs or ladders.

(c) The disability of dust blowing in the wind, brick dust and drippings from concrete.

(d) Sloppy and muddy conditions associated with the initial stages of the erection of a building.

(e) The disability of working on all types of scaffolding or ladders other than a swing scaffold, suspended scaffold, or a bosun's chair.

(f) The lack of the usual amenities associated with factory work (e.g. meal rooms, change rooms, lockers).

(4) Hourly Rate Calculation—Follow the Job Loading

(a) The hourly rate of pay to be paid to an adult employee (other than an apprentice) shall be calculated to the nearest cent (less than half a cent to be disregarded) by multiplying the sum of the amounts prescribed in subclause (2) and the amount prescribed in subclause (3) and where applicable in subclauses (6), (7), (8) and (9) of this clause by 52 and dividing the result by 50.4 by adding to that the amount prescribed in subclause (5) of this clause and by dividing the total by 38.

(b) The aforementioned calculation shall take into account a factor of eight days in respect of the incidence of loss of wages for periods of unemployment between jobs.

(5) Special Allowance

The special allowance at the rate of $7.70 per week to be paid to each employee is to compensate for the following—

(a) Excess travelling time incurred by employees in the building industry;

(b) The removal of loadings from the various building awards consequent upon the introduction of this paid rates award in the industry.

(6) Tool Allowance

Tool allowances shall be paid to tradesmen as prescribed hereunder—

	Per Week $
Carpenters, Joiners, Plumbers, Stonemasons, Stoneworkers	18.80
Plasterers, Fixers	15.40
Bricklayers	13.40
Roof Tile Fixers	9.80
Signwriters, Painters, Glaziers	4.60

(7) Location Allowance

Where applicable location allowances in accordance with Appendix A will be paid.

(8) Underground Allowance

(a) (i) Subject to paragraph (b) hereof, an employee required to work underground shall be paid an allowance of **$8.40** per week in addition to the allowance prescribed in subclause (3) of this clause and any other amount prescribed for such employee elsewhere in this award.

(ii) Where a shaft is to be sunk to a depth greater than six metres the payment of the underground allowance shall commence from the surface.

(iii) This allowance shall not be payable to an employee engaged upon "pot and drive" work at a depth of 3.5 metres or less.

(b) Where an employee is required to work underground for no more than four days or shifts in any ordinary week he/she shall be paid an underground allowance in accordance with the provisions of paragraph (t) of subclause (1) of Clause 9.—Special Rates and Provisions in lieu of the allowance prescribed in paragraph (a) hereof.

(9) Plumbing Trade Allowance

Plumbers shall be paid an allowance at the rate of **$13.60** per week to compensate for the following classes of work and in lieu of the relevant amounts in Clause 9.—Special Rates and Provisions whether or not such work is performed in any one week. When working outside the categories listed hereunder, a plumber shall receive the appropriate rates provided for in the said Clause 9.—Special Rates and Provisions.

(a) General Plumber

(i) Clearing stoppages in soil or waste pipes, or sewer drain pipes, also repairing and putting same in proper order;

(ii) Work in wet places;

(iii) Work requiring a swing scaffold, swing seat or rope;

(iv) Dirty or offensive work;

(v) Work in any confined space;

(vi) Work on a ladder exceeding eight metres in height.

(b) Mechanical Services Plumber

(i) Handling charcoal, pumice, granulated cork, silicate of cotton, insulwool, slag wool, or other recognised insulation material of a like nature or working in the immediate vicinity so as to be affected by the use thereof;

(ii) Work in a place where the temperature has been raised by artificial means to between 46 and 54 degrees celsius or exceeding 54 degrees celsius;

(iii) Work in a place where fumes of sul-

phur or other acid or other offensive fumes are present;

(iv) Dirty or offensive work;

(v) Work in any confined space;

(vi) Work on a ladder exceeding eight metres in height.

(c) Roof Plumber

(i) Work on the fixing of aluminium foil insulation on roofs or walls prior to the sheeting thereof;

(ii) Use of explosive powered tools;

(iii) Work requiring use of materials containing asbestos or to work in close proximity to employees using such materials shall be provided with and shall use all necessary safeguards as required by the appropriate occupational health authority including the mandatory wearing of protective equipment (i.e. combination overalls and breathing equipment or similar apparatus);

(iv) Dirty or offensive work;

(v) Work requiring a swing scaffold, swing seat or rope;

(vi) Work on a ladder exceeding eight metres in height.

(10) Leading Hands

(a) A person specifically appointed to be a leading hand shall be paid at the rate of the undermentioned additional amounts above the rate of the highest classification supervised, or his/her own rate, whichever is the highest, in accordance with the number of persons in his/her charge—

	Weekly Base Only $	Rate Per Hour $
(i) In charge of not more than one person	10.90	0.30
(ii) In charge of two and not more than five persons	24.20	0.66
(iii) In charge of six and not more than ten persons	30.80	0.83
(iv) In charge of more than ten persons	41.00	1.11

(b) The hourly rate prescribed in paragraph (a) hereof is calculated to the nearest cent (less than half a cent to be disregarded) by multiplying the weekly base amount by 52 and dividing the result by 50.4 and by dividing the amount by 38.

(11) Licensed Plumbers Accepting Responsibility

Any licensed plumber called upon by his/her employer to use the licence issued to him/her by the Metropolitan Water Supply, Sewerage and Drainage Board for a period in any week—**$26.60** for that week.

(12) Plumber Acting on Welding Certificate

A plumber who is requested by his/her employer to hold the relevant qualifications and has obtained a certificate of competency pursuant to procedures as set out by the Standards Association of Australia or other relevant recognised codes, or, who may have to carry out work which is subject to other special tests but not a normal trade test, and is required by his/her employer to act on such qualifications, shall be paid an additional 36 cents per hour for oxyacetylene welding and 36 cents per hour for electric welding for every hour of his/her employment whether or not he/she has in any hour performed work relevant to those qualifications held.

(13) Lead Work

A plumber engaged in leadburning or lead work in connection therewith shall be paid an additional **$1.16** per hour.

(14) Ship's Plumbing

A plumber engaged on plumbing work in connection with ships shall be paid an additional 81 cents per hour.

(15) Casual Hands

In addition to the rate appropriate for the type of work, a casual hand shall be paid an additional 20 per cent of the rate per hour with a minimum payment as for three hours employment. The penalty rate herein prescribed shall be deemed to include, inter alia, compensation for annual leave.

(16) Site Allowances

The Union on behalf of its members may request an employer to consider a site allowance to compensate for all special factors and/or disabilities on a project.

Where the parties have considered the merit of the claim and have agreed on a proposed rate, it shall be referred to the Commission for ratification.

Where agreement cannot be reached, the parties shall refer the matter to the Commission which shall determine an appropriate rate, if any, to compensate for such special factors and/or disabilities: Provided, however, that the Commission may determine that such site allowance shall be paid in lieu of any of the special rates related to conditions on the site as prescribed in Clause 9 subclause (1).

The Commission shall ratify or determine such matters on the criteria outlined in the Full Bench Decision of the Conciliation and Arbitration Commission dated February 25, 1983 (Print F1957).

Where the procedure prescribed by this subclause is being followed, work shall continue normally.

A site allowance determined in accordance with this subclause shall be deemed to be prescribed by this Award.

3. Clause 9. – Special Rates and Provisions: Delete subclause (1) of this clause and insert the following in lieu thereof—

(1) In addition to the rates otherwise prescribed in this Award, the following rates shall be payable to employees covered by the said Award—

(a) Insulation

An employee handling charcoal, pumice, granulated cork, silicate of cotton, insulwool, slag wool, limpet fibre, vermiculite or other recognised insulating material of a like nature or working in the immediate vicinity so as to be affected by the use thereof 47 cents per hour or part thereof.

(b) Hotwork

An employee who works in a place where the temperature has been raised by artificial means to between 46 degrees and 54 degrees Celsius—39 cents per hour or part thereof, exceeding 54 degrees celsius—47 cents per hour or part thereof.

Where such work continues for more than two hours, the employee shall be entitled to 20 minutes rest after every two hours work without loss of pay, not including the special rate provided by this paragraph.

(c) Cold Work

An employee who works in a place where the temperature is lowered by artificial means to less than zero degrees Celsius shall be paid 39 cents per hour.

Where such work continues for more than two hours, the employee shall be entitled to 20 minutes rest after every two hours work without loss of pay, not including the special rate provided by this paragraph.

(d) Confined Space

An employee required to work in a confined space shall be paid 47 cents per hour or part thereof.

("Confined Space" means a place the dimensions or nature of which necessitate working in a cramped position or without sufficient ventilation.)

(e) Swing Scaffold—

(i) an employee required to work from any type of swing or any scaffold suspended by rope or cable, bosun's chair, or suspended scaffold requiring use of steel or iron hooks or angle irons shall be paid the appropriate allowance set out below corresponding to the storey level at which the anchors or bracing, from which the stage is suspended, has been erected.

Such allowance shall be paid for minimum of four hours' work or part thereof until construction work (as defined) has been completed.

Height of Bracing	First Four Hours $	Each Additional Hour $
0-15 storeys	2.80	0.58
16-30 storeys	3.61	0.75
31-45 storeys	4.25	0.87
46-60 storeys	6.98	1.44
Greater than 60 storeys	8.90	1.83

Provided that an apprentice with less than two years' experience shall not use a swing scaffold or bosun's chair, and further provided that solid plasterers when working off a swing scaffold shall receive an additional 11 cents per hour.

(f) Explosive Powered Tools

An operator of explosive powered tools, as defined in this award, who is required to use an explosive powered tool, shall be paid 92 cents for each day on which he/she uses such a tool.

(g) Wet Work

An employee working in any place where water is continually dripping on him/her so that clothing and boots become wet, or where there is water underfoot, shall be paid 39 cents per hour whilst so engaged.

(h) Dirty Work

An employee engaged on unusually dirty work shall be paid 39 cents per hour.

(i) Towers Allowance

An employee working on a chimney stack, spire, tower, radio or television mast or tower, air shaft (other than above ground in a multi-storey building), cooling tower or silo, where the construction exceeds fifteen metres in height shall be paid 39 cents per hour for all work above fifteen metres, and 39 cents per hour for work above each further fifteen metres.

Provided that any similarly constructed building, or a building not covered by Clause 10.—Multi-Storey Allowance, which exceeds 15 metres in height may be covered by this subclause, or by that clause by agreement or where agreement is not reached, by determination of the Commission.

(j) Toxic Substances

(i) An employee required to use toxic substances 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) Employees using such materials will be provided with and shall use all safeguards as are required by Clause 29.—Protection of Employees and the appropriate Government authority or in the absence of such requirement such safeguards as are defined by a competent authority or person chosen by the union and the employer.

(iii) Employees using toxic substances or materials of a like nature shall be paid 47 cents per hour. Employees working in close proximity to employees so engaged shall be paid 39 cents per hour.

(iv) For the purpose of this paragraph toxic substances shall include epoxy based materials and 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.

(k) Fumes

An employee required to work in a place where fumes of sulphur or other acid or other offensive fumes are present shall be paid such rates as are agreed upon between him/her and the employer; provided that, in default of agreement, the matter may be referred to a Board of Reference for the fixation of a special rate.

Any special rate so fixed shall apply from the date the employer is advised of the claim and thereafter shall be paid as and when the fume condition occurs.

(l) Asbestos

Employees required to use materials containing asbestos or to work in close proximity to employees using such materials shall be provided with and shall use all necessary safeguards as required by the appropriate occupational health authority and where such safeguards include the mandatory wearing of protective equipment (i.e. combination overalls and breathing equipment or similar apparatus) shall be paid 47 cents per hour extra whilst so engaged.

(m) Furnace Work

An employee engaged in the construction or alteration or repairs to boilers, flues, furnaces, retorts, kilns, ovens, ladles and similar refractory work shall be paid $1.03 per hour. This additional rate shall be regarded as part of the wage rate for all purposes.

(n) Acid Work

An employee required to work on the construction or repairs to acid furnaces, acid stills, acid towers and all other acid resisting brickwork shall be paid $1.03 per hour. This additional rate shall be regarded as part of the wage rate for all purposes.

(o) Cleaning Down Brickwork

An employee required to clean down bricks using acids or other corrosive substances shall

be paid 36 cents per hour. While so employed employees will be supplied with gloves by the employer.

(p) Bagging

Employees engaged upon bagging brick or concrete structures shall be paid 36 cents per hour.

(q) Bitumen Work

An employee handling hot bitumen or asphalt or dipping materials in creosote shall be paid 47 cents per hour.

(r) Roof Repairs

Employees engaged on repairs to roofs shall be paid 47 cents per hour.

(s) Computing Quantities

Employees who are regularly required to compute or estimate quantities of materials in respect to the work performed by other employees shall be paid $2.81 per day or part thereof.

Provided that this allowance shall not apply to an employee classified as a leading hand.

(t) Underground Allowance

(i) An employee required to work underground for no more than 4 days or shifts in an ordinary week shall be paid $1.68 a day or shift in addition to any other amount prescribed for such employees elsewhere in this award.

Provided that an employee required to work underground for more than four days or shifts in an ordinary week shall be paid an underground allowance in accordance with the provisions of subclause (8) of Clause 8.—Rates of Pay.

(ii) Where a shaft is to be sunk to a depth greater than 6 metres the payment of the underground allowance shall commence from the surface.

(iii) This allowance shall not be payable to employees engaged upon "pot and drive" work at a depth of 3.5 metres or less.

(u) Plumbing

(i) A plumber doing sanitary plumbing work or repairs to sewer drainage or waste pipe services in any of the following places—

(aa) Infectious and contagious diseases hospitals or any block or portion of a hospital used for the care of or treatment of patients suffering from any infectious or contagious disease; or

(bb) Morgues—

shall be paid 37 cents per hour or part thereof.

(ii) A plumber required to enter a well 9 metres or more in depth for the purpose in the first place of examining the pump, pipe or any other work connected therewith shall be paid $1.67 for such examination and 74 cents per hour thereafter for fixing, renewing or repairing such work.

(iii) A plumber or an apprentice to plumbing, other than one in his/her first or second year of apprenticeship, on work involving the opening up of house drains or waste pipes for the purpose of clearing blockages or for any other purpose or on work involving the cleaning out of septic tanks or dry wells shall be paid a minimum of $2.05 per day.

(v) (a) An employee who—

(i) is appointed by his or her employer to be responsible for carrying out first aid duties as they may arise; and

(ii) holds a recognised first aid qualification (as set out hereunder) from the Australian Red Cross Society, St John Ambulance Association or similar body; and

(iii) is required by his or her employer to hold a qualification at that level; and

(iv) the qualification satisfies the relevant statutory requirement pertaining to the provision of first-aid services at the particular location where the employee is engaged;

(v) those duties are in addition to his or her normal duties, recognising what first aid duties encompass by definition;

shall be paid at the following additional rates to compensate that person for the additional responsibilities, skill obtained, and time spent acquiring the relevant qualifications;

(A) an employee who holds the Basic First Aid certificate or equivalent qualification recognised under the Occupational Safety and Health Act 1984—$1.66 per day; or

(B) an employee who holds at least a Senior First Aid certificate, Industrial First Aid certificate or equivalent, or higher qualification recognised under the Occupational Safety and Health Act 1984—$2.58 per day.

(b) In payment of an allowance under this clause, a person shall be paid only for the level of qualification required to be held, and there shall be no double counting for employees who hold more than one qualification.

(c) An employer shall be under no obligation to provide paid training leave or other payment of any kind to employees to acquire or update first aid qualifications.

(w) Heavy Blocks

(i) Employees lifting other than standard bricks

An employee required to lift blocks (other than cindcrete blocks for plugging purposes) shall be paid the following additional rates—

Where the blocks weigh over 5.5 kg and under 9 kg—39 cents per hour.

Where the blocks weigh 9 kg or over and up to 18 kg—69 cents per hour.

Where the blocks weigh over 18 kg—98 cents per hour.

An employee shall not be required to lift a building block in excess of 20 kg in weight unless such employee is provided with a mechanical aid or with an assisting employee; provided that an employee shall not be required to manually lift any building block in excess of 20 kg in weight to a height of more than 1.2 metres above the working platform.

Provided that this subclause shall not apply to employees being paid the extra rate for refractory work.

(ii) Stonemasonry Employees

The employer of stonemasonry employees shall provide mechanical means for the handling, lifting and placing of heavy blocks or pay in lieu thereof the rates and observe the conditions prescribed in paragraph (i) herein.

(x) Plaster or Composition Spray

An employee using a plaster or composition spray shall be paid an additional 39 cents per hour whilst so engaged.

(y) Slushing

An employee engaged at "Slushing" shall be paid 39 cents per hour.

(z) Dry Polishing of Tiles

Employees engaged on dry polishing of tiles (as defined) where machines are used shall be paid 47 cents per hour or part thereof.

(aa) Cutting Tiles

An employee engaged at cutting tiles by electric saw shall be paid 47 cents per hour whilst so engaged.

(bb) Second Hand Timber

Where, whilst working with secondhand timber, an employee's tools are damaged by nails, dumps or other foreign matter on the timber he/she shall be entitled to an allowance of $1.51 per day on each day upon which his/her tools are so damaged, provided that no allowance shall be payable under this paragraph unless it is reported immediately to the employer's representative on the job in order that he/she may prove the claim.

(cc) Height Work—Painting Trades

An employee working on any structure at a height of more than 9 metres where an adequate fixed support not less than 0.75 metres wide is not provided, shall be paid 36 cents per hour in addition to ordinary rates. This subclause shall not apply to an employee working on a bosun's chair or swinging stage.

This provision shall not apply in addition to the Towers Allowance prescribed in paragraph (i) of this subclause.

(dd) Brewery Cylinders—Painters

A painter in brewery cylinders or stout tuns shall be allowed 15 minutes' spell in the fresh air at the end of each hour worked by him/her.

Such 15 minutes shall be counted as working time and shall be paid for as such. The rate for working in brewery cylinders or stout tuns shall be at the rate of time and one-half. When an employee is working overtime and is required to work in brewery cylinders and stout tuns he/she shall, in addition to the overtime rates payable, be paid one half of the ordinary rate payable as provided by Clause 8.—Rates of Pay of this award.

(ee) Certificate Allowance

A tradesman who is the holder of a scaffolding certificate or rigging certificate issued by the Department of Industrial Affairs and is required to act on that Certificate whilst engaged on work requiring a certificated person shall be paid an additional 39 cents per hour.

Provided that this allowance shall not be payable cumulative on the allowance for swing scaffolds.

(ff) Spray Application—Painters

An employee engaged on all spray applications carried out in other than a properly constructed booth approved by the Department of Industrial Affairs shall be paid 39 cents per hour extra.

(gg) Bricklayer Operating Cutting Machine

One bricklayer on each site to operate the cutting machine and to be paid 47 cents per hour or part thereof whilst so engaged.

(hh) Spray Painting—Painters

(i) Lead paint shall not be applied by a spray to the interior of any building and no surface painted with lead paint shall be rubbed down or scraped by a dry process.

(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 $1.10 cents per day.

(ii) Grindstone Allowance

Where a grindstone or wheel is not made available as required by Clause 32(5)(b) of the award, an allowance of $4.12 per week shall be paid in lieu of same to each Carpenter or Joiner.

4. Clause 10. – Multi Storey Allowance: Delete subclause (3) of this clause and insert the following in lieu thereof—

(3) Rates For Multi-Storey Buildings

Except as provided for in subclause (4) of this clause, an allowance in accordance with the following table shall be paid to all employees on the building site. The second and subsequent allowance scales shall, where applicable, commence to apply to all employees when one of the following components of the building—structural steel, re-inforcing steel, boxing or walls, rises above the floor level first designated in each such allowance scale.

"Floor Level" means that stage of construction which in the completed building would constitute the walking surface of the particular floor level referred to in the table of payments.

From commencement of Building to Fifteenth Floor Level—31 cents per hour extra;

From Sixteenth Floor Level to Thirtieth Floor Level—38 cents per hour extra;

From Thirty-first Floor Level to Forty-fifth Floor Level—58 cents per hour extra;

From Forty-sixth Floor Level to Sixtieth Floor Level—74 cents per hour extra;

From Sixty-first Floor Level Onwards—93 cents per hour extra.

The allowance payable at the highest point of the building shall continue until completion of the building.

5. Appendix C – Pinjarra and Kwinana Alumina Refineries: Clause 2.—Site Allowance: Delete subclauses (a) and (b) of this clause and insert the following in lieu thereof—

(a) A site allowance of $1.31 per hour for each hour worked shall be paid on all work performed at the Pinjarra Alumina Refinery Site.

(b) A site allowance of $1.55 per hour for each hour worked shall be paid on all work performed at the Kwinana Alumina Refinery Site.

6. Appendix D—North West Shelf Gas Project:

A. Clause 5.—Site Disability Allowance: Delete this clause and insert the following in lieu thereof—

To compensate for conditions which exist and far exceed those conditions which are provided for within the award, including excessive dust, heat and extremes of terrain, an employee shall be entitled to a payment of $1.46 per hour for each hour worked.

B. Clause 6.—Special Rates: Delete the preamble to this clause and insert the following in lieu thereof—

Employees shall be paid an allowance at the rate of **$3.14** hour for each hour worked to compensate for disabilities associated with the following classes of work and in lieu of the relevant amounts in Clause 9.—Special Rates and Provisions of this award, whether or not such work is performed in any one hour—

7. Appendix F – Asbestos Eradication: Clause 5.—Rate of Pay: Delete this clause and insert the following in lieu thereof—

5.—RATE OF PAY

In addition to the rates prescribed in this award, an employee engaged in asbestos eradication (as defined) shall receive **$**1.30 per hour worked in lieu of Special Rates prescribed in Clause 9(1) with the exception of subclauses (b), (c), (e), (x), (ab) and (af).

8. Appendix G—Laser Equipment: Clause 4.—Laser Safety Officer Allowance: Delete this clause and insert the following in lieu thereof—

4.—LASER SAFETY OFFICER ALLOWANCE

Where an employee has been appointed by his employer to carry out the duties of a laser safety officer he shall be paid an allowance of $1.60 per day or part thereof whilst carrying out such duties. The allowance shall be paid as a flat amount without attracting any premium or penalty.

BUILDING TRADES (GOVERNMENT) AWARD 1968. No. 31 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and the Construction, Mining, Branch

and

The Contract Management Services and Others.

No. 1298 of 1998.

Building Trades (Government) Award 1968.

No. 31A of 1966.

CHIEF COMMISSIONER W. S. COLEMAN.

21 September 1998.

Order.

HAVING heard Mr G. Giffard on behalf of the Applicant and Ms C. Holmes and Mr B. Kirwin on behalf of the Respondents and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Building Trades (Government) Award 1968 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 13th day of August, 1998.

(Sgd.) W. S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 1B.—Minimum Adult Award Wage—

A. Delete subclauses (2) and (3) of this clause and insert the following in lieu thereof—

(2) The Minimum Adult Award Wage for full time adult employees is $373.40 per week payable from the beginning of the first pay period commencing on or after 12th June 1998.

(3) The Minimum Adult Award Wage of $373.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions to June 1998, including the $14.00, $12.00 and $10.00 per week arbitrated safety net adjustments from Matter No. 757 of 1998.

B. Delete subclause (5) of this clause and insert the following in lieu thereof—

(5) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision to the Minimum Adult Award Wage of $373.40 per week.

C. Immediately following subclause (7) of this clause insert the following new subclause—

(8) State Wage Decision. Any increase arising from the insertion of the adult minimum wage will be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wages rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements are not to be used to offset the adult minimum wage.

2. Clause 9.—Wages: Delete subclause (1) of this clause and insert the following in lieu therof—

				On Engagement	2nd Arbitrated Safety Net Adjustment	Total Rate	After 1 year of service (Per Week)	2nd Arbitrated Safety Net Adjustment	Total Rate	After 2 years of service	2nd Arbitrated Safety Net Adjustment	Total Rate
				$	$	$	$	$	$	$	$	$
(1)	(a)	Tradespersons: Bricklayers Stoneworkers, Carpenters, Joiners, Painters, Signwriters, Glaziers, Plasterers and Stonemasons as defined in Clause 6 of this Award		429.60	48	477.60	434.50	48	482.50	439.00	48	487.00
	(b)	Special Class Tradesperson (as defined)		447.80	48	495.80	452.95	48	500.95	457.65	48	505.65
	(c)	Plumbers holding registration in accordance with the Metropolitan Water Supply, Sewerage and Drainage Act		444.85	48	492.85	449.80	48	497.80	454.30	48	502.30
	(d)	Builders Labourers:										
		(i)	Rigger, Drainer, Dogman	407.25	48	455.25	414.10	48	462.10	418.80	48	466.80
		(ii)	Scaffolder, Powder Monkey, Hoist or Winch Driver, Concrete Finisher, Steelfixer, including Tack Welder, Concrete Pump Operator	395.25	48	443.25	398.40	48	446.40	403.05	48	451.05
		(iii)	Bricklayer's Labourer, Plasterer's Labourer, Assistant Rigger, Demolition Workers (after 3 months' experience), Gear Hand, Pile Driver, Tackle Hand, Jackhammer Hand, Mixer Driver (concrete), Steel Erector, Aluminium Alloy Structural Erector, Gantry Hand or Crane Hand, Crane Chaser, Concrete Gang including Concrete Floater, Steel or Bar Bender to Pattern or Plan, Concrete Formwork Stripper, Concrete Pump, Hose hand	386.85	48	434.85	391.15	48	439.15	396.25	48	444.25
		(iv)	Builder's Labourer employed on work other than specified in classifications (i)-(iii)	356.80	48	404.80	357.80	48	405.80	362.05	48	410.05

(e) The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 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.

The rates of pay in this award also include the $10 per week arbitrated safety net adjustment payable from the beginning of the first pay period on or after 14th day of November 1997. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement.

Furthermore the rates of pay in this award include the arbitrated safety net adjustment payable under

the June 1998 State Wage Case Decision. This arbitrated safety net adjustments shall be offset against any equivalent amount in rates of pay received by employees whose wages and conditions are regulated by this award and which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements are not to be used to offset arbitrated safety net adjustments.

3. Clause 9.—Wages: Delete subclause (3) of this clause and insert the following in lieu therof—

(3) Allowance for Lost Time: Thirteen days' sick leave and follow the job (per week)—

An employee whose employment is terminated through no fault of his/her own and who has not completed nine months' continuous service with his/her employer shall, for each week of continuous employment with that employer, immediately prior to his/her termination of employment be paid the lost time allowance prescribed hereunder less any payments made to him/her in respect of sick leave during that employment—

	$
(a) Bricklayers, stoneworkers, carpenters, joiners, painters, glaziers, signwriters, plasterers, plumbers and stonemasons	39.85
(b) Special Class Tradesperson (as defined)	41.84
(c) Registered Plumbers	41.40
(d) Builders Labourers	
(i) Classifications (i) to (iii) inclusive	39.07
(ii) Classifications (iv) to (ix)	36.74
(iii) Classification (x)	35.52
(iv) Classification (xi)	33.08

NOTE: In the event of any increase or decrease in the wages and other allowances prescribed in this clause, except the tool allowances, the amounts prescribed in this subclause shall be increased or decreased by an amount equal to 9.7% of that increase or decrease.

4. Clause 9.—Wages: Delete from subclause (4) up to and including paragraph (4)(a) of this clause and insert the following in lieu therof—

(4) Disabilities Allowance (Per Week): $17.42

(a) Subject to the provisions of paragraph (b), of this subclause an allowance of $17.42 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 the employer's business when an employee coming within the exception is engaged on the erection or demolition of a building exceeding 250 square feet in floor area.

5. Clause 9. – Wages: Delete from subclause (7) up to paragraph (7)(a) of this clause and insert the following in lieu therof—

(7) Plumbing Trade Allowance

Plumbers shall be paid an allowance at the rate of $13.44 per week to compensate for the following classes of work and in lieu of the relevant amounts in Clause 13.—Special Rates and Provisions of this award whether or not such work is performed in any one week. When working outside the categories listed hereunder, a plumber shall receive the appropriate rates provided for in the said Clause 13.—Special Rates and Provisions.

6. Clause 11.—Leading Hands: Delete subclause (1) of this clause and insert the following in lieu therof—

(1) Any employee referred to in Clause 9.—Wages of this award or a leading hand defined in paragraph (h) of subclause (3) of Clause 6.—Definitions of this award, who is placed in charge for not less than one day of—

(a) not less than three and not more than ten other employees referred to in Clause 9.—Wages shall be paid at the rate of $28.30 per week extra;

(b) more than ten and not more than twenty other employees referred to in Clause 9.—Wages shall be paid at the rate of $37.86 per week extra;

(c) more than twenty other employees referred to in Clause 9.—Wages shall be paid at the rate of $47.40 per week extra.

7. Clause 13.—Special Rates and Provisions—

A. Delete subclauses (2) to (40) of this clause and insert the following in lieu therof—

(2) Swing Scaffold—

(a) An employee employed—

(i) on any type of swing scaffold or any scaffold suspended by rope or cable or bosun's chair or cantilever scaffold, or

(ii) on a suspended scaffold requiring the use of steel or iron hooks or angle irons at a height 6.1 metres or more above the nearest horizontal plane,

shall be paid $2.76 for the first four hours or part thereof: and 56 cents for each hour thereafter on any day in addition to the rates otherwise prescribed.

(b) A solid plasterer when working on a swing scaffold shall be paid an additional 13 cents per hour.

(c) No apprentice with less than two years' experience shall use a swing scaffold or bosun's chair.

(d) Provided that no allowance shall be payable for working on such scaffolds when used under bridges or jetties unless the height of the scaffold above the water exceeds 0.9 metres.

(3) Insulation—

An employee handling charcoal, pumice, granulated cork, silicate of cotton, insulwool, slag wool or other recognised insulation material of a like nature or working in the immediate vicinity so as to be affected by the use thereof: shall be paid 46 cents per hour part thereof: in addition to the rates otherwise prescribed.

(4) Work in Dust Laden Atmosphere

Working in a dust laden atmosphere in a joiner's shop where dust extractors are not provided in or such atmosphere caused by the use of materials for insulating, deafening or plugging work (as, for instance, pumice, charcoal, silicate of cotton, or any other substitute) or from earthworks, 46 cents per hour extra.

(5) Confined Space—

An employee required to work in a confined space, being a place the dimension or nature of which necessitates working in a cramped position or without sufficient ventilation, shall be paid 46 cents per hour or part thereof: in addition to the rate otherwise prescribed.

(6) Sewer Work—

An employee engaged in repairs to sewers shall be paid 36 cents per hour or part thereof: in addition to the rates otherwise prescribed.

(7) Sanitary Plumbing Work—

A plumber doing sanitary plumbing work on repairs to sewer drainage or waste pipe services in any of the following places—

(a) Infectious and contagious disease hospitals or any block or portion of a hospital used for the care or treatment of patients suffering from any infectious or contagious disease.

(b) Morgues—

shall be paid 39 cents per hour or part thereof: in addition to the rates otherwise prescribed.

(8) Ship Plumbing—

A plumber doing work on a ship of any class—

(a) Whilst under way; or

(b) In a wet place being one in which the clothing of an employee necessarily becomes wet to an uncomfortable degree or one in which water accumulates underfoot; or

(c) In a confined space; or

(d) In a ship which has done one trip or more in a fume or dust laden atmosphere, in bilges, or when cleaning blockages in soil pipe or waste pipes or repairing brine pipes, shall be paid 55 cents per hour or part thereof: in addition to the rate otherwise prescribed.

(e) A plumber carrying out pipe work in a ship of any class under the plates in the engine and boiler rooms and oil fuel tanks shall be paid $1.12 per hour or part thereof: in addition to the rates otherwise prescribed.

(9) Well Work—

A plumber or labourer required to enter a well nine metres or more in depth for the purpose in the first place of examining the pump, pipe or any other work connected therewith, shall be paid $1.97 for such examination and 68 cents per hour extra thereafter for fixing, renewing or repairing such work.

(10) Permit Work—

Any licensed plumber called upon by his/her employer to use the licence issued to him/her by the Metropolitan Water Supply, Sewerage and Drainage Board for a period in any one week shall be paid $11.84 for that week in addition to the rates otherwise prescribed.

(11) Plumbers on Sewerage Work—

Plumbers or apprentices in their third, fourth or fifth year, on work involving the opening up of house drains or waste pipes for the purpose of clearing blockages or for any other purpose, or work involving the cleaning out of septic tanks or dry wells, shall be paid a minimum of $1.96 per day or part thereof: in addition to the prescribed rate.

(12) Height Money—

An employee required to work on a chimney stack, spire, tower, air shaft, cooling tower, water tower exceeding fifteen metres in height shall be paid for all work above fifteen metres, 39 cents per hour thereof: with an additional 39 cents per hour or part thereof: for work above each further fifteen metres in addition to the rates otherwise prescribed.

(13) Barge Work

A Main Roads Employee required to work on scaffolding which is mounted on a barge is to be paid an allowance of $3.52 per day, or majority thereof, or $1.76 per half day, or part thereof, for such work.

(14) Furnace Work—

An employee engaged in the construction or alteration or repairs to boilers, flues, furnaces, retorts, kilns, ovens, ladles and similar refractory work or on underpinning shall be paid $1.00 per hour or part thereof: in addition to the rates otherwise prescribed.

(15) Hot Work—

(a) An employee required to work in a place where the temperature has been raised by artificial means to between 46° Celsius and 54° Celsius shall be paid 39 cents per hour or part thereof: in addition to the rates otherwise prescribed, or in excess of 54° Celsius shall be paid 46 cents per hour or part thereof: in addition to the said rates.

(b) Where such work continues for more than two hours the employee shall be entitled to a rest period of twenty minutes after every two hours' work without loss of pay, not including the special rate prescribed in paragraph (a) hereof.

(16) Cold Work—

(a) An employee required to work in a place where the temperature is lowered by artificial means to less than 0° Celsius shall be paid 39 cents per hour or part thereof: in addition to the rates otherwise prescribed in this award.

(b) Where such work continues for more than two hours the employee shall be entitled to a rest period of twenty minutes after every two hours' work without loss of pay, not including the special rate prescribed in paragraph (a) hereof.

(17) Swanbourne and Graylands: Employees required to work at the Swanbourne and Graylands Hospitals controlled by the Mental Health Service shall be paid at the rate of 39 cents per hour in addition to the prescribed rate.

(18) Flintcote: Plasterers using flintcote shall be paid 39 cents per hour or part thereof: except when flintcote is applied by hawk and trowel to walls and ceilings when the rate shall be 66 cents per hour extra in addition to the prescribed rate.

(19) Dirty Work—

(a) An employee employed on excessively dirty work which is more likely to render the employee or his/her clothes dirtier than the normal run of work, shall be paid 39 cents per hour extra in addition to the prescribed rate (with a minimum payment of four hours when employed on such work).

(b) This shall not apply to an employee in receipt of the allowance prescribed in subclause (4) of Clause 9.—Wages of this award nor to a worker in receipt of the allowance prescribed in subclause (27) hereof.

(20) Stonemason on Wall—

A stonemason working on the wall (cottage work and foundation work in coastal stone excepted) shall be paid 39 cents per hour thereof: in addition to the rates otherwise prescribed.

(21) Setter Out—

A setter out (other than a leading hand) in a joiner's shop shall be paid $3.69 per day in addition to the rates otherwise prescribed.

(22) Detail Employee—

A detail employee (other than a leading hand) shall be paid $3.69 in addition to the rates otherwise prescribed.

(23) Spray Painting—Painter—

(a) Lead paint shall not be applied by a spray to the interior of any building.

(b) All employees (including apprentices) applying paint by spraying, shall be provided with full overalls and head covering and respirators by the employer.

(c) 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 substance used by an employee in spray painting, the employee shall be paid a special allowance of $1.00 per day.

(24) Lead Paint Surfaces—

(a) No surface painted with lead paint shall be rubbed down or scraped by a dry process.

(b) Width of Brushes: All brushes shall not exceed 127 millimetres in width and no kalsomine brush shall be more than 177.8 millimetres in width.

(c) 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.

(25) Spray Application—Painters—

A painter engaged on all applications carried out in other than a properly constructed booth approved by the Department of Labour and Industry shall be paid 39 cents per hour or part thereof: in addition to the rates otherwise prescribed in this award.

(26) An employee who is a qualified first aid person and is appointed by his/her employer to carry out first aid duties in addition to his/her usual duties shall be paid an additional rate of $1.30 per day.

(27) Toxic Substances—

(a) 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.

(b) An employee using such materials will be provided with and shall use all safeguards as are required by the appropriate Government Authority in the absence of such requirement such safeguards as are determined by a competent authority or person chosen by the union and the employer.

(c) An employee using toxic substances or materials of a like nature shall be paid 46 cents per hour extra. Employees working in close proximity to employees so engaged shall be paid 36 cents per hour extra.

(d) For the purposes 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.

(28) Abattoirs—

An employee, other than a plumber in receipt of the plumbing trade allowance, employed in an abattoir shall be paid such rate as is agreed upon between the parties, or, in default of agreement, the rate determined by the Board of Reference.

(29) Fumes—

An employee required to work in a place where fumes of sulphur or other acid or other offensive fumes are present shall be paid such rates as are agreed upon between him/her and the employer.

(30) Asbestos—

Employees required to use materials containing asbestos or to work in close proximity to employees using such materials shall be provided with and shall use all necessary safeguards as required by the appropriate occupational health authority and where such safeguards include the mandatory wearing of protective equipment (ie. combination overalls and breathing equipment or similar apparatus) such employees shall be paid 46 cents per hour whilst so engaged.

(31) Explosive Powered Tools—

An operator of explosive powered tools, being an employee qualified in accord with the laws and regulations of the State of Western Australia to operate explosive powered tools, who is required to use an explosive powered tool shall be paid 89 cents for each day on which he/she used a tool in addition to the rates otherwise prescribed.

(32) Wet Work—

An employee required to work in a place where water is continually dripping on him/her so that his/her clothing and boots become wet or where there is water underfoot shall be paid 39 cents per hour or part thereof: in addition to the rates otherwise prescribed in this award.

(33) Cleaning Down Brickwork—

An employee required to clean down bricks using acids or other corrosive substances shall be supplied with gloves and be paid 36 cents per hour or part thereof: in addition to the rates otherwise prescribed in this award.

(34) Bagging—

An employee engaged upon bagging brick or concrete structures shall be paid 36 cents per hour or part thereof: in addition to the rates otherwise prescribed in this award.

(35) Bitumen Work—

An employee handling hot bitumen or asphalt or dripping materials in creosote shall be paid 46 cents per hour or part thereof: in addition to the rates otherwise prescribed in this award.

(36) Scaffolding Certificate Allowance—

A tradesperson who is the holder of a scaffolding certificate or rigging certificate issued by the Department of Labour and Industry and is required to act on that certificate whilst engaged on work requiring a certified person shall be paid 39 cents per hour or part thereof: in addition to the rates otherwise prescribed in this award but this allowance shall not be payable cumulative on the allowance for swing scaffolds.

(37) Dry Polishing or Cutting of Tiles—

An employee required to dry polish tiles with a machine or to cut tiles with an electric saw shall be paid 46 cents per hour or part thereof: in addition to the rates otherwise prescribed in this award.

(38) Secondhand Timber—

Where, whilst working with second-hand timber, an employees tools are damaged by nails, dumps or other foreign matter on the timber, he/she shall be entitled to an allowance of $1.30 per day on each day upon which his/her tools are so damaged, provided that no allowance shall be payable under this clause unless it is reported immediately to the employer's representative on the job in order that the claim may be proved.

(39) Roof Repairs—

An employee engaged on repairs to roofs shall be paid 42 cents per hour or part thereof: in addition to the rates otherwise provided in this award.

(40) Computing Quantities—

An employee, other than a leading hand, who is required to compute or estimate quantities of materials in respect of the work performed by others shall be paid $2.77 per day or part thereof: in addition to the rates otherwise prescribed in this award.

B. Delete subclauses (53) of this clause and insert the following in lieu therof—

(53) An employee engaged on work at Fremantle Prison shall be paid 39 cents per hour extra.

8. Schedule C—Hospital Environment Allowance: Delete subclauses (1), (2) and (3) of this schedule and insert the following in lieu therof—

1. (a) For work performed in a hospital environment—$10.22 per week.

(b) For disabilities associated with work performed in—

Difficult access areas;
Tunnel complexes;
Areas with great temperature variation:—$3.56 per week.

Princess Margaret Hospital
King Edward Memorial Hospital
Sir Charles Gairdner Hospital
Royal Perth Hospital
Fremantle Hospital

2. For work performed in a hospital environment—$6.88 per week.

Kalgoorlie Hospital
Osborne Park Hospital
Albany Hospital
Bunbury Hospital
Geraldton Hospital
Mt Henry Hospital
Northam Hospital
Swan Districts Hospital
Perth Dental Hospital

3. For work performed in a hospital environment—$4.88 per week.

Bentley Hospital
Derby Hospital
Narrogin Hospital
Port Hedland Hospital
Rockingham Hospital
Sunset Hospital
Armadale Hospital
Broome Hospital
Busselton Hospital
Carnarvon Hospital
Collie Hospital
Esperance Hospital
Katanning Hospital
Merredin Hospital
Murray Hospital
Warren Hospital
Wyndham Hospital

9. Appendix D—Award Restructuring: Delete subclauses (8)(a) and (b) of this appendix and insert the following in lieu therof—

(a) Wage Rates

Level	Percentage Relativity to Level 4	Rates $	Safety Net Adjustment $	Total Weekly Rate $
New Entrant	78	335.10	48.00	383.10
1	82	352.30	48.00	400.30
2	87	375.50	48.00	423.50
3	92	397.00	48.00	445.00
4	100	429.60	48.00	477.60
5	105	451.10	48.00	499.10
6	110	472.60	48.00	520.60
7	115	494.00	48.00	542.00
8	120	515.50	48.00	563.50
9	125	537.00	48.00	583.00

(b) (i) In addition to the rates contained in paragraph (a) of this subclause, employees designated in classification levels to 7 inclusive shall receive an all purpose industry allowance of $10.84.

(ii) This allowance shall be paid in two instalments as follows—

(aa) $5.47 of the allowance shall be paid after the first twelve months of government service; and

(bb) the remaining $5.37 shall be paid on 24 months of government service.

BURSWOOD HOTEL (MAINTENANCE EMPLOYEES') AWARD, 1990.
No. A 6 of 1989(R).

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Burswood Hotel Pty Ltd.

No. 1403 of 1998.

Burswood Hotel (Maintenance Employees') Award, 1990.

No. A 6 of 1989(R).

CHIEF COMMISSIONER W.S. COLEMAN.

17 September 1998.

Order.

HAVING heard Mr W. Game on behalf of the Applicants and Mr G. Blyth 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 Burswood Hotel (Maintenance Employees') Award, 1990 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 17th day of September 1998.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 14. – Wage Rates—

A. Delete subclauses (2), (3) and (4) of this clause and insert in lieu thereof the following—

(2) Nominee

A licensed electrical mechanic or fitter who acts as nominee for an electrical contractor shall be paid an allowance of $43.74 per week.

(3) In addition to the weekly wage rate provided by subclause (1) of this clause an adult employee shall be paid—

	$
(a) After the completion of one year's continuous service	12.96
(b) After the completion of two year's service	26.26

Such payment shall be deemed part of the weekly wage rate for all purposes of the award.

(4) In addition to the weekly wage rate provided by subclause (1) of this clause a leading hand shall be paid—

	$
(a) If placed in charge of not less than three and not more than ten other employees	18.24
(b) If placed in charge of more than ten and not more than 20 other employees	27.91
(c) If placed in charge of more than 20 other employees	35.93

B. Delete subclauses (7), (8), (9) and (10) of this clause and insert in lieu thereof the following—

(7) An employee holding either a Third Year First Aid Medallion of the St. John Ambulance Association or a "C" Standard Senior First Aid Certificate of the Australian Red Cross Society, appointed by the Company to perform first

aid duties, shall be paid $7.03 per week in addition to their ordinary rate.

(8) An employee who holds, and in the course of their employment is required to use, a current "A" Grade or "B" Grade, or "L" Grade or "R" 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 $14.51 per week.

(9) An employee, who is in possession of, and is requested by the Company to use, a plumber's licence issued by the Metropolitan Water Supply, Sewerage and Drainage Board, shall, in each week so requested, be paid an allowance of $26.81 per week.

(10) A plumber holding registration in accordance with the Metropolitan Water Supply, Sewerage and Drainage Act shall be paid $18.35 per week in addition to their ordinary rate.

BURSWOOD HOTEL (MAINTENANCE EMPLOYEES') AWARD 1990.

No. A 6 of 1989(R).

WESTERN AUSTRALIAN

INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Burswood Hotel Pty Ltd.

No. 1399 of 1998.

Burswood Hotel (Maintenance Employees') Award, 1990.

No. A 6 of 1989(R).

CHIEF COMMISSIONER W.S. COLEMAN.

17 September 1998.

Order.

HAVING heard Mr W. Game on behalf of the Applicants and Mr G. Blyth 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 Burswood Hotel (Maintenance Employees') Award, 1990 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 17th day of September 1998.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 14. – Wage Rates—

A. Delete paragraph (a) of subclause (1) of this clause and insert in lieu thereof the following—

(1) (a) The adult weekly wage rates payable to employees covered by this award shall be as follows—

Classification	Rate Per Week	1st, 2nd, 3rd & $10.00 Arbitrated Safety Net Adjustments	Total Rate Per Week
	$	$	$
Electrical Fitter	485.40	48.00	533.40
Electrical Mechanic	485.40	48.00	533.40
Refrigeration Fitter	485.40	48.00	533.40
Building Tradesperson	485.40	48.00	533.40
General Trades Assistant	420.70	48.00	468.70

B. At the end of paragraph (b) of subclause (1) of this clause insert the following—

The rates of pay in this award include the arbitrated safety net adjustment payable under the June 1998 State Wage Case Decision. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases 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 Div, WA Branch

and

Burswood Pty Limited and Burswood Resort Management Limited

No. 1396 and 1399 of 1998

Burswood Island Resort (Maintenance Employees') Award No. A 22 of 1986

and

Burswood Hotel (Maintenance Employees') Award, 1990.

No. A 6 of 1989(R).

CHIEF COMMISSIONER W.S. COLEMAN.

21 September 1998.

Correcting Order.

WHEREAS the Applicant Union requested a change in the wording of a subclause to be consistent with other metal trades awards in the above Orders dated 17 September 1998, and in consultation with the Respondent, the following correction is made—

That in relation to the Burswood Island Resort (Maintenance Employees') Award No. A 22 of 1986, Clause 14.—Wages: Delete paragraph (b) of Subclause (1) of this clause and insert in lieu thereof the following and that in relation to Burswood Hotel (Maintenance Employees') Award, 1990, Clause 13.—Wages: Delete paragraph (b) of Subclause (1) of this clause and insert in lieu thereof the following—

(b) The rates of pay in this award include four arbitrated safety net adjustments totalling $34.00 the last payable from the beginning of the first pay period on or after the 14th day of November 1997. These arbitrated safety net adjustments shall be absorbed into any overaward payments.

Furthermore the rates of pay in this award include the arbitrated safety net adjustments of the following amounts—

(i) $14. 00 per week increase in award rates up to and including $550.00 per week.

(ii) $12.00 per week increase in award rates above $550.00 per week and up to and including $700.00 per week; and

(ii) $10.00 per week increase in award rates above $700.00 per week.

These arbitrated safety net adjustments shall be offset against any equivalent amount in rates of pay

received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement.

Increases made under State Wage Case Principles prior to June 1998, except those resulting from enterprise agreements, are not to be used to offset this arbitrated safety net adjustment of $14.00, $12.00 or $10.00 per week as the case may be.

(Sgd.) W. S. COLEMAN,
[L.S.] Chief Commissioner.

BURSWOOD ISLAND RESORT (MAINTENANCE EMPLOYEES') AWARD.

No. A 22 of 1986.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Burswood Resort (Management) Ltd.

No. 1396 of 1998.

Burswood Island Resort (Maintenance Employees') Award.

No. A 22 of 1986.

CHIEF COMMISSIONER W.S. COLEMAN.

17 September 1998.

Order.

HAVING heard Mr W. Game on behalf of the Applicants and Mr G. Blyth 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 Burswood Island Resort (Maintenance Employees') Award No. A 22 of 1986 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 17th day of September 1998.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 13. – Wage Rates—

A. Delete paragraph (a) of subclause (1) of this clause and insert in lieu thereof the following—

(1) (a) The adult weekly wage rates payable to employees covered by this award shall be as follows—

Classification	Rate Per Week	Arbitrated Safety Net Adjustments	Total Rate Per Week
	$	$	$
Video Department—			
Electronic Serviceperson (Grade I)	485.30	48.00	533.30
Electronic Serviceperson (Grade II)	513.40	48.00	561.40
Electronic Serviceperson (Grade III)	541.90	46.00	587.90
Engineering Department—			
Tradesperson	485.30	48.00	533.30
Plant Attendant	485.30	48.00	533.30
General Trades Assistant	420.70	48.00	468.70

B. At the end of paragraph (b) of subclause (1) of this clause insert the following—

The rates of pay in this award include the arbitrated safety net adjustment payable under the June 1998 State Wage Case Decision. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases 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.

BURSWOOD ISLAND RESORT (MAINTENANCE EMPLOYEES') AWARD.

No. A 22 of 1986.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Burswood Resort (Management) Ltd

No. 1408 of 1998

Burswood Island Resort (Maintenance Employees') Award.

No. A 22 of 1986.

CHIEF COMMISSIONER W.S. COLEMAN.

17 September 1998

Order.

HAVING heard Mr W. Game on behalf of the Applicants and Mr G. Blyth 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 Burswood Island Resort (Maintenance Employees') Award No. A 22 of 1986 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 17th day of September 1998.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 13. – Wage Rates—

A. Delete subclauses (2) through to (9) of this clause and insert in lieu thereof the following—

(2) In addition to the weekly wage rate provided by subclause (1) hereof an adult employee shall be paid—

	Per Week
	$
(a) After the completion of one year's continuous service	12.96
(b) After the completion of two years' continuous service	26.26

Such payments shall be deemed part of the weekly wage rate for all purposes of the award.

(3) Leading Hand: In addition to the appropriate total wage prescribed in this clause a Leading Hand shall be paid—

	$
(a) If placed in charge of not less than three and not more than ten other employees	18.24
(b) If placed in charge of more than ten and not more than twenty other employees	27.91
(c) If placed in charge of more than twenty other employees	35.93

(4) A casual employee shall be paid 20 per cent of the ordinary rate in addition to the ordinary rate for the calling in which they are employed.

(5) Nominee

A licensed electrical mechanic or fitter who acts as nominee for the Company shall be paid an allowance of $43.74 per week.

(6) An employee holding either a Third Year First Aid Medallion of the St. John Ambulance Association or a "C" Standard Senior First Aid Certificate of the Australian Red Cross Society, appointed by the Company to perform first aid duties, shall be paid $6.81 per week in addition to their ordinary rate.

(7) An employee who holds, and in the course of their employment is 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 $14.51 per week.

(8) An employee who is in possession of, and is requested by the Company to use, a plumber's licence issued by the Metropolitan Water Supply, Sewerage and Drainage Board, shall, in each week so requested, be paid an allowance of $25.16 per week.

(9) A plumber holding registration in accordance with the Metropolitan Water Supply, Sewerage and Drainage Act shall be paid $10.44 per week in addition to their ordinary rate.

CEMENT TILE MANUFACTURING AWARD No. 3 of 1966

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Federated Brick, Tile and Pottery Industrial Union of Australia (Union of Workers) Western Australian Branch

and

Monier Roof Tiles

No. 1225 of 1998.

Cement Tile Manufacturing Award No. 3 of 1966.

CHIEF COMMISSIONER W.S. COLEMAN.

14 September 1998.

Order.

HAVING heard Mr J. Bainbridge on behalf of the Applicant and Ms J. Dowling on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Cement Tile Manufacturing Award No. 3 of 1966 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 29th July 1998.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 8.—Overtime: Delete paragraphs (5)(a) and (b)of this clause and insert in lieu thereof the following—

(5) (a) An employee required to work overtime for more than two hours without being notified on the previous day or earlier shall be supplied with a meal by the employer or be paid $5.55 for a meal.

(b) If the amount of overtime to be worked necessitates a second or subsequent meal the employer shall, unless the employer has notified the employee(s) concerned the previous day or earlier that such second or subsequent meal will also be required, provide such meal or pay an amount of $5.05 for each second or subsequent meal.

2. Clause 10.—Wages—

A. Delete paragraph (1)(a) of this clause and insert in lieu thereof the following—

(1) (a) CLASSIFICATION:

	Rate Per Week	Supplementary Payment	Total Rate
ADULT EMPLOYEES:	$	$	$
Fork Lift Driver	357.80	54.80	412.60
Machine Operator	352.90	59.50	412.40
Hand Presser	352.90	53.90	406.80
Ridge Maker and Finisher and Stripper	352.90	53.90	406.80
Colour Operator	347.30	55.30	402.60
Stripper and Stacker Tiles	337.30	50.20	387.50
All Others	337.30	50.20	387.50

B. Delete paragraph (1)(b) of this clause and insert in lieu thereof the following—

(b) The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 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.

The rates of pay in this award also include the $10 per week arbitrated safety net adjustment payable from the beginning of the first pay period on or after 14th day of November 1997. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement.

Furthermore the rates of pay in this award include the arbitrated safety net adjustment payable under the June 1998 State Wage Case Decision. This arbitrated safety net adjustments shall be offset against any equivalent amount in rates of pay received by employees whose wages and conditions are regulated by this award and which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise

agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

C. Delete subclause (3) of this clause and insert in lieu thereof the following—

(3) LEADING HANDS—

In addition to the rates herein prescribed a Leading Hand appointed as such shall be paid per week:—

In charge of—

	$
(a) Not less than three and not more than ten other employee	17.25
(b) More than ten and not more than twenty other employees	24.35
(c) More than twenty other employees	31.55

3. Clause 32. – First Aid Allowance: Delete subclauses (1) and (2) of this clause and insert in lieu thereof the following—

(1) An employee who has been trained to render first aid and who is the current holder of an appropriate first aid qualification such as a certificate from the St John Ambulance Association or a similar body shall be paid a weekly allowance of $11.20 if nominated by an employer to perform first aid duty.

(2) An employee who holds an appropriate certificate as prescribed in subclause (1) hereof who is nominated by an employer to be on stand-by to perform first aid duty shall be paid an allowance of $6.70 per week.

EARTH MOVING AND CONSTRUCTION AWARD. No. 10 of 1963.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch

and

Carratti S and M and Others.

No. 2008 of 1997.

Earth Moving and Construction Award. No. 10 of 1963.

COMMISSIONER P E SCOTT.

23 September 1998.

Order.

HAVING heard Ms J Harrison on behalf of the Applicant and Mr K Dwyer 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 Earth Moving and Construction Award be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 7th day of September 1998.

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

Schedule.

1. Clause 32.—Superannuation: Delete this clause and insert the following in lieu thereof—

The superannuation provisions contained herein operate subject to the requirements of the hereinafter prescribed provision titled—Compliance, Nomination and Transition.

(1) DEFINITIONS

For the purpose of this clause—

(a) "Eligible Employee" shall mean any employee who has been employed under this award by the employer during at least five consecutive days and who has worked a minimum of 40 hours during that period. After completion of the above qualifying period, superannuation contributions shall then be made in accordance with subclause (2) hereof effective from the commencement of that qualifying period.

(b) "Fund" means a Superannuation Fund as defined in the Occupational Superannuation Standards Act 1987 and satisfying the superannuation fund conditions in relation to a year of income, as specified in that Act and complying with the operating standards as prescribed by the Regulations made under the Act. In the case of a newly established fund, the term shall include a Superannuation Fund that has received a notice of preliminary listing from the Insurance and Superannuation Commissioner.

(c) "Ordinary Time Earnings" shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including tool allowance, industry allowance, registration allowance, trade allowance, shift loading and leading hand, in charge or supervisory allowances where applicable, the regular over-award pay as well as casual rates received for ordinary hours of work. All other allowances and payments are excluded.

(d) "Act" means the Occupational Superannuation Standards Act 1987, and "Regulations" means the Occupational Superannuation Standards Regulations made pursuant to that Act from time to time.

(e) "The Relevant Fund" means the fund selected in respect of an employee pursuant to subclause (4) hereof.

(2) CONTRIBUTIONS

(a) In accordance with this clause and subject to the Trust Deed of the relevant fund, on behalf of each eligible employee an employer shall contribute to a relevant superannuation fund a superannuation contribution, equivalent to seven per cent of such eligible employee's ordinary time earnings each week, (rounded to the nearest 10 cents), provided that—

(i) upon completion of the qualifying period specified in subclause (1) hereof, contributions on behalf of each eligible employee shall apply from the date of commencement of employment of such employee; and

(ii) the contribution rate of an existing fund of which the eligible employee is a member may be improved to the extent that it is equivalent to that prescribed by paragraph (a) of this subclause and is in accordance with the Act and Regulations.

(b) The contributions required herein shall be made to the relevant fund in the manner and at the times specified by the terms of the fund or any agreement between the employer and trustees of the fund.

(c) No employer shall be required to pay superannuation contributions on behalf of any eligible employee whether full time, part time, or casual in respect of any week during which such employee receives less than ten hours' pay in ordinary time earnings.

(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 to 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 contributions 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 to this clause, to any of the following funds—

(i) BUSS, AUST, CTRF, the WESTSCHEME Superannuation Scheme; 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 Western Australian Industrial Relations Commission for determination.

(5) FUND MEMBERSHIP

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 March 1992 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 equivalent to at least seven per cent of ordinary time earnings.

(b) Leave is reserved to any employer to apply for exemption from this clause on the grounds of the standards of existing superannuation arrangements provided by the employer, or the employer's financial capacity to pay.

(7) ABSENCE FROM WORK

Subject to the Trust Deed of the fund of which an employee is a member, the following provisions shall apply.

(a) Paid Leave

Contributions shall continue whilst a member of a fund is absent on paid annual leave, sick leave, long service leave, public holidays, jury service, bereavement leave, or other paid leave.

(b) Unpaid Leave

Contributions shall not be required in respect of any period of absence from work without pay of one day or more.

(c) Work Related Injury or Illness

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.

Compliance, Nomination and Transition

Notwithstanding anything contained elsewhere herein which requires that contribution be made to a superannuation fund or scheme in respect of an employee, on and from 30 June 1998—

(a) Any such fund or scheme shall no longer be a complying superannuation fund or scheme for the purposes of this clause unless—

(i) the fund or scheme is a complying fund or scheme within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; and

(ii) under the governing rules of the fund or scheme, contributions may be made by or in respect of the employee permitted to nominate a fund or scheme;

(b) The employee shall be entitled to nominate the complying superannuation fund or scheme to which contributions are to be made by or in respect of the employee;

(c) The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable;

(d) A nomination or notification of the type referred to in paragraphs (b) and (c) of this subclause shall, subject to the requirements of regulations made pursuant to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the employee to whom such is directed;

(e) The employee and employer shall be bound by the nomination of the employee unless the

employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made;

(f) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by a employee;

Provided that on and from 30 June 1998, and until an employee thereafter nominates a complying superannuation fund or scheme—

(g) if one or more complying superannuation funds or schemes to which contributions may be made be specified herein, the employer is required to make contributions to that fund or scheme, or one of those funds or schemes nominated by the employer;

or

(h) if no complying superannuation fund or scheme to which contributions may be made be specified herein, the employer is required to make contributions to a complying fund or scheme nominated by the employer.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch

and

Carratti S and M and Others.

No. 2008 of 1997.

Earth Moving and Construction Award.
No. 10 of 1963.

COMMISSIONER P E SCOTT.

23 September 1998.

Order.

HAVING heard Ms J Harrison on behalf of the Applicant and Mr K Dwyer on behalf of the Respondents the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, and by consent, hereby orders—

That Application No. 2008 of 1997 be divided into two parts, to become Application No. 2008 of 1997 which shall deal with the superannuation contribution rate and Application No.2008A of 1997 which shall deal with the remainder of the matters.

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

EARTH MOVING AND CONSTRUCTION AWARD.
No. 10 of 1963.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch

and

Goldfields Contractors Pty Ltd and Others

No. 1299 of 1998

Earth Moving and Construction Award.

No. 10 of 1963.

CHIEF COMMISSIONER W.S. COLEMAN.

21 September 1998.

Order.

HAVING heard Mr G. Giffard on behalf of the Applicant and Mr K. Dwyer 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 Earth Moving and Construction Award be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 13th day of August, 1998.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 24.—Allowances and Special Provisions: Delete subclauses (1), (2), (3) and (4) of this clause and insert the following in lieu thereof—

(1) Dirt Money—

A dirt allowance of 38¢ per hour shall be payable in connection with work deemed to be more than ordinarily dirty; cases of dispute to be determined by the Board of Reference.

(2) Confined Space—

Workers working in confined space shall be paid an allowance of 45¢ per hour. "Confined space" means one of which the dimensions are such that the workman must work in an unusually stooped or cramped position or without adequate ventilation or where confinement within a limited place is productive of unusual discomfort to him.

(3) Wet Work—

(a) Any worker working in water or "wet places" shall be paid an extra allowance of $3.02 per day or part of a day.

(b) "Wet places" shall mean places where, in the performance of the work the splashing of water and mud saturate the worker's clothing or where protection is not provided to prevent splashings or dripping sufficient to saturate his clothing, and shall include wet material or wet ground in which it is impracticable for the worker wearing ordinary working boots to work without getting wet feet. Provided that this clause shall not apply to men working on surfaces made wet by rain.

(c) In exceptional cases where the work is excessively wet and which are not covered by paragraph (b) hereof, an extra allowance may be agreed upon, or failing agreement, determined by the Board of Reference.

(d) Subject to paragraph (c), the engineer in charge or the foreman shall decide whether any allowance is payable under this clause.

(e) Workers called upon to work overtime in water or in wet places shall receive an extra $3.02¢ or the appropriate allowance fixed by the Board of Reference for each eight hours or portion thereof, of overtime worked and such allowance shall be treated as portion of the wage for the calculation of overtime. For all other purposes, the extra payment shall be deemed an allowance.

(4) A multi-storey allowance shall be paid to all employees to whom this award applies engaged on site in the construction of a multi-storey building as defined in accordance with the following—

From commencement of building to 15th floor level—30 cents per hour extra.

From 16th floor level to 30th floor level—37 cents per hour extra.

From 31st floor level to 45th floor level—55 cents per hour extra.

From 46th floor level to 60th floor level—71 cents per hour extra.

From 61st floor level onwards—90 cents per hour extra.

For the purposes of this subclause a multi-storey building means a building which will, when complete, consist of 5 of more storey levels and any other structure which does not have regular storey levels but which exceeds 15 metres in height.

2. Clause 27. – Wages: Delete this clause and insert in lieu thereof the following—

27.—WAGES

The minimum rate of wage to be paid to and received by all employees shall be as follows—

CLASSIFICATION	TOTAL RATE PER WEEK $
PART 1	
(a) Engine Driver operating winch from pile driving rig net on pile driving	384.60
(b) All stationary steam engine drivers whose work requires first or second class certificate	392.90
(c) All other stationary steam engine drivers whose work requires third class certificate	379.70
(d) Drivers of Internal Combustion Engines—	
(i) if under 250 b.h.p.	388.50
(ii) if 250 b.h.p. or over	395.70
(e) Locomotive fireman	379.20
(f) Boiler Attendant—	
(i) attending one boiler	371.30
(ii) attending two boilers	377.40
(g) Driver of steam crane	386.10
(h) Scotch Derrick power crane	405.30
(i) Compressor driver over 30 h.p.	373.70
(j) Driver of Wayne Road Sweeper	397.60
(k) Additions to margins, an Engine Driver engaged under this Part, as hereinafter specified shall have his/her marginal rate increased as follows—	
(i) Attending to electric generator or alternator exceeding 10 k.w. capacity	18.55
(ii) Attending to refrigerator compressor or compressors	18.55
(iii) Engine Driver in charge of plant	18.55
(iv) Engine Driver in charge of switchboard of 350 k.w. capacity or more	5.85
(v) Crane Drivers engaged on building construction or demolition	17.10

PART 2 —Mechanical Equipment

CLASSIFICATION	TOTAL RATE PER WEEK inclusive of $15.90 Industry Allowance $
Group 1	403.10
(a) Operator lance type hand sprayer	
(b) Operator aggregate dryer	
(c) Operator pre-mix drag spreader	
(d) Operator aggregate belt spreader	
(e) Operator of joint inserting machine	
(f) Operator concrete spray curing machine, self-propelled	
(g) Operator pneumatic tyre tractor without power operated attachments, up to and including 15 kW net engine power	
Group 2	408.60
(a) Operator crawler tractor without power operated attachments up to and including Class M4	
(b) Operator crawler tractor with power operated attachments Class M2	
(c) Operator pneumatic tyred tractor without power operated attachments above 15 kW up to and including 60kW net engine power. (This includes tilting or one man hitch trailer.)	
CLASSIFICATION	
(d) Operator pneumatic tyred tractor with power operated attachments, up to and including 15 kW net engine power	
(e) Operator rear and bottom dump to and including 2 cubic metres struck capacity	
(f) Operator back hoe self powered (not self propelled)	
(g) Operator roller powered, under 8 tonnes	
(h) Operator roller powered, vibrating, under 4 tonnes	
(i) Operator trenching machine of the small Ditch Witch type	
(j) Operator bitumen sprayer	
(k) Screed operator, asphalt power	
(l) Mixer operator, asphalt plant (capacity of less than 10 tonnes of hot mix per hour)	
(m) Operator concrete spreader, powered, self propelled	
(n) Operator concrete finisher, powered, self propelled	
(o) Operator concrete finisher, powered, hand propelled	
(p) Second-driver—navvy and dragline or dredge type excavator	
Group 3	421.70
(a) Operator crawler tractor without power operated attachments Class M5 up to and including Class M10	
(b) Operator crawler tractor with power operated attachments Class M3 up to and including Class M5	
(c) Operator pneumatic tyred tractor without power operated attachments above 60kW up to and including 150 kW net engine power	
CLASSIFICATION	
(d) Operator pneumatic tyred tractor with power operated attachments above 15kW up to and including 60kW net engine power (not including tilting or one person hitch trailer)	
(e) Operator drawn grader	
(f) Operator trenching machine, chain type up to and including 1.5 metre depth or up to and including 300 mm width	
(g) Operator pile driver (power operated winch)	
(h) Operator rear and bottom dump of capacity above 2 cubic metres struck capacity up to and including 15 cubic metres struck capacity	
(i) Driver of bitumen sprayer	

CLASSIFICATION	TOTAL RATE PER WEEK inclusive of $15.90 Industry Allowance $
(j) Operator Aggregate Loader (Country Roads Board, Victoria Model)	
(k) Operator asphalt paver	
(l) Mixer operator, asphalt plant (capacity of more than 10 tonnes of hot mix per hour)	
(m) Operator roadroller, powered, 8 tonnes and up to 20 tonnes	
(n) Operator roadroller, powered, 8 tonnes and up to 25 tonnes	
(o) Operator roadroller, powered, vibrating, 4 tonnes and over	
(p) Locomotive driver—petrol, oil, pneumatic or electric driven (if carrying passengers an additional rate of 60¢)	
(q) Operator crawler loader up to and including 500 kg mass (See note 3)	
(r) Operator pneumatic tyred loader up to and including 30 kW net	
Group 4	430.70
(a) Operator crawler tractor without power operated attachments above Class M10 up to and including Class M30	
CLASSIFICATION	
(b) Operator crawler tractor with power operated attachments above Class M5 up to and including Class M15	
(c) Operator grader power operated, below 35 kW net engine power	
(d) Operator excavator up to and including 0.5 cubic metres	
(e) Operator trenching machine ladder type, depth greater than 1.5 metres up to 2.4 metres and width above 300 mm up to 450 mm and bucket wheel trencher with equivalent capacity in cubic metres per hour	
(f) Operator pneumatic tyred tractor with power operated attachments above 60 kW up to and including 150 kW net engine power	
(g) Operator self powered scraper up to and including 100 cubic metres struck capacity	
(h) Operator rear and bottom dump above 15 cubic metres struck capacity up to and including 30 cubic metres struck capacity	
(i) Operator pneumatic tyred tractor without power operated attachments above 150 kW up to and including 500 kW net engine power	
(j) Operator crawler loader above 5 000 kg mass up to and including 15 000 kg mass (See note 3)	
(k) Operator pneumatic tyred loader above 30 kW up to and including 105 kW net engine power	
(l) Operator roadroller, powered, over 25 tonnes	
(m) Operator special track laying, fixing or levelling machine (employed on railway construction in W.A.)	

CLASSIFICATION	TOTAL RATE PER WEEK inclusive of $15.90 Industry Allowance $
Group 5	435.00
(a) Operator crawler tractor with power operated attachments above Class M15 and up to and including Class M30	
(b) Operator grader power operated 35 kW up to and including 70 kW net engine power	
(c) Operator pneumatic tyred tractor with power operated attachments above 150 kW up to and including 500 kW net engine power	
(d) Operator self powered scraper above 10 cubic metres struck capacity up to and including 20 cubic metres struck capacity	
(e) Operator excavator above 0.5 cubic metres up to and including 2.2 cubic metres. (This group including Gradall.)	
(f) Operator trenching machine ladder type, greater than 2.4 metres depth, and minimum 450 mm width and bucket wheel trench equivalent in cubic metres per hour	
(g) Operator rear and bottom dump above 30 cubic metres struck capacity up to and including 60 cubic metres struck capacity	
(h) Operator crawler loader above 15 000 kg mass and up to and including 30 000 kg mass (See note 3)	
(i) Operator pneumatic tyred loader over 105 kW up to and including 200 kW net engine power	
(j) Operator crawler tractor without power operated attachments above Class M30 up to and including 60 000 kg mass	
Group 6	441.90
(a) Operator excavator above 2.2 cubic metres struck bucket capacity up to and including 5.5 cubic metres struck bucket capacity	
(b) Operator grader power operated above 75 kW up to and including 190 kW net engine power	
(c) Operated pneumatic tyred loader above 200 kW up to and including 500 kW net engine power	
(d) Operator crawler tractor with power operated attachment, above Class M30 up to and including 60 000 kg mass	
(e) Operator crawler loader above 30 000 kg mass up to and including 60 000 kg mass (See note 3)	
(f) Operator rear and bottom dump above 60 cubic metres struck capacity up to and including 120 cubic metres struck capacity	
(g) Operator self power scraper above 20 cubic metres struck capacity up to and including 50 cubic metres struck capacity	
Special Work: A driver operating a tractor fitted with a blade and using such blade in breaking trail in heavy sidling country shall be paid an additional allowance of 8 cents per hour for each day or part of a day in which he/she is so occupied.	

PART 2A—Mobile Crane Drivers

Operator of Mobile Crane with lifting capacity of—

CLASSIFICATION	TOTAL RATE PER WEEK inclusive of $15.60 Industry Allowance $
(i) Up to 8 tonnes	426.70
(ii) In excess of 8 tonnes and not exceeding 15 tonnes	432.20
(iii) In excess of 15 tonnes and not exceeding 40 tonnes	438.20
(iv) In excess of 40 tonnes and not exceeding 80 tonnes	443.20
(v) In excess of 80 tonnes and not exceeding 100 tonnes	447.40
(vi) In excess of 100 tonnes and not exceeding 140 tonnes	453.40
(vii) In excess of 140 tonnes and not exceeding 180 tonnes	461.60
(viii) In excess of 180 tonnes and not exceeding 220 tonnes	471.40
(ix) In excess of 220 tonnes	485.30

Note: Mobile cranes are defined as those mounted on a specially designed chassis or a lorry and capable of load manipulation, slewing, and travelling under their own power. Mobile cranes constructed as an attachment to or modification of a tractor, fall into the appropriate group for the tractor with power operated attachment.

The rates prescribed in Parts 2 and 2A of this Clause include an industry allowance as specified to compensate for the disabilities usually associated with earth moving and construction work.

1. (a) Crawler Tractors are classified in accordance with the proposed Australian Standard—"Classification of Crawler Tractor by Mass" as follows—

Class	Shipping Mass—Kilograms
M2	over 1000 up to 2000
M3	over 2000 up to 3000
M4	over 3000 up to 4000
M5	over 4000 up to 5000
M10	over 7000 up to 10000
M15	over 10000 up to 15000
M30	over 25000 up to 30000
M50	over 40000 up to 50000

(b) Crawler Tractors above 50 000 kg mass are classified as indicated in the wages table of this clause.

2. The classification of pneumatic tyred tractors and pneumatic tyred loaders is based on the proposed Australian Standard for Metric Tractor Classification.

3. Crawler Tractor front-end loaders are to be classified by using the mass of the tractor, including the loader attachment in lieu of the bare shipping mass.

4. Self propelled rollers are classified by mass complete, including maximum ballast.

5. Mobile cranes constructed as an attachment to or modification of a tractor, fall into the appropriate group for the tractor with power operated attachment.

6. Tractors without power operated attachment includes tractors—

(i) with power operated attachments not in use; and

(ii) with items which, although they have a power-unit of their own are not controlled by the operator of the tractor except for starting and stopping (for example—Drawn Vibrating Roller).

7. Back hoe when attached to a tractor shall be considered as a power operated attachment to the tractor.

8. Reference to bituminous surfacing equipment or Materials includes tar, sprayed work and hot mix work.

PART 3	TOTAL RATE PER WEEK $
Rates additional to and cumulative with any other rate specified for the employee—	
(1) Employee operating side loader (truck mounted)	1.37
(2) Employee operating mechanical bucket type loader, truck or tractor mounted	1.37
(3) Employee in charge of plant (as defined)	21.94

Employee in charge of plant means—

(a) when two or more employees are employed at the plant at the one time, the employee who is invested with the superintendence and responsibility or who has to accept the superintendence and responsibility; or

(b) an employee who is invested with the superintendence and responsibility or who has to accept the superintendence and responsibility over one or more other employees; or

(c) when he/she is the only person of his/her class employed on the plant the employee who does the general repair work of the plant in addition to the work of operating, but not when he/she merely assists a fitter or engineer to do such work; or

(d) where shifts are worked the employee who is directed to carry out the general repair work of the plant in addition to the work of operating, but not when he/she merely assists a fitter or engineer to do such work.

Minimum Wage—Adult Males and Females—

Notwithstanding the terms of this clause (or subclause) no adult employee shall be paid less than the Minimum Adult Award Wage unless otherwise provided in this clause.

(i) The Minimum Adult Award Wage for full time adult employees is $373.40 per week payable from the beginning of the first pay period on or after 13th August 1998.

(ii) The Minimum Adult Award Wage of $373.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions to June 1998, including the $14, $12 and $10 per week arbitrated safety net adjustments from Matter No. 757 of 1998.

(iii) Unless otherwise provided in this subclause adults employed as casual or part time employees shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.

(iv) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision to the Minimum Adult Award Wage of $373.40 per week.

(v) (aa) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on traineeships, or Jobskills traineeships or to other categories of employees who by prescription are paid less than the minimum award rate.

(bb) Liberty to apply is reserved in relation to employees excluded under (aa) above and any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.

(vi) Subject to this subclause the Minimum Adult Award Wage shall —

(aa) apply to all work in ordinary hours.

(bb) apply to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave and for all other purposes of this award.

(vii) Nothing in this clause (or subclause) shall operate to reduce the rate of pay fixed by the award for an adult apprentice in force on 13th November 1997.

(viii) The rates of pay in this award include the minimum weekly wage for adult employees payable under the June 1998 State Wage Case Decision. Any increase arising from the insertion of the adult minimum wage will be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above he wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements are not to be used to offset the adult minimum wage.

(Note: A notation will be made in each relevant award by the Registrar where the adult apprentice rate requires specific mention as at 13th November 1997.)

Notwithstanding the foregoing, where in this award an additional rate is prescribed for any work as a percentage, fraction or multiple of the ordinary rate of pay, it shall be calculated upon the rate prescribed in this award for the classification in which the employee is employed.

The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increases payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety adjustments.

Furthermore the rates of pay in this award include the $10.00 per week arbitrated safety net adjustment payable from the beginning of the first pay period on or after 14th day of November 1997

This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement.

Increases made under State Wage Case Principles prior to November 1997, except those resulting from enterprise agreements, are not to be used to offset this arbitrated safety net adjustment of $10.00 per week.

The rates of pay in this award include the arbitrated safety net adjustment payable under the June 1998 State Wage Case Decision. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements are not to be used to offset arbitrated safety net adjustments.

3. Appendix I—

A. Delete paragraph (3)(b) of this clause and insert in lieu thereof the following—

(b) Arbitrated Safety Net Payment

Employees shall be paid an arbitrated safety net payment of $48.00 which shall be added to the base rate specified in subclause (2) hereof for the purpose of calculating the actual weekly rate.

The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increases payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety adjustments.

Furthermore the rates of pay in this award include the $10.00 per week arbitrated safety net adjustment payable from the beginning of the first pay period on or after 14th day of November 1997

This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement.

Increases made under State Wage Case Principles prior to November 1997, except those resulting from enterprise agreements, are not to be used to offset this arbitrated safety net adjustment of $10.00 per week.

The rates of pay in this award include the arbitrated safety net adjustment payable under the June 1998 State Wage Case Decision. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases 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. Delete subclause (8) of this clause and insert in lieu thereof the following—

(8) Allowances and Special Provisions

(a) Dirt Money

A dirt allowance of 39 cents per hour shall be payable in connection with work deemed to be more than ordinarily dirty; cases of dispute to be determined by the Board of Reference.

(b) Confined Space

Workers working in confined space shall be paid an allowance of 47 cents per hour. "Confined space" means one of which the dimensions are such that the workperson must work in an unusually stooped or cramped position or without adequate ventilation or where confinement within a limited place is productive of unusual discomfort to him/her.

(c) Wet Work

(i) Any worker working in water or "wet places" shall be paid an extra allowance of $3.07 per day or part of a day.

(ii) "Wet places" shall mean places where, in the performance of the work the splashing of water and mud saturate the worker's clothing or where protection is not provided to prevent splashings or dripping sufficient to saturate his/her clothing, and shall include wet material or wet ground in which it is impracticable for the worker wearing ordinary working boots to work without getting wet feet. Provided that this clause shall not apply to workers working on wet surfaces made wet by rain.

(iii) In exceptional cases where the work is excessively wet and which are not covered by paragraph (ii) hereof, an extra allowance my be agreed upon, or failing agreement, determined by the Board of Reference.

(iv) Subject to paragraph (iii), the engineer in charge or the foreperson shall decide whether any allowance is payable under this clause.

(v) Workers called upon to work overtime in water or in wet places shall receive an extra $3.07 or the appropriate allowance fixed by the Board of Reference for each eight hours or portion thereof, of overtime worked and such allowance shall be treated as portion of the wage for the calculation of overtime. For all other purposes, the extra payment shall be deemed an allowance.

(d) A multi-storey allowance shall be paid to all employees to whom this Appendix applies engaged on site in the construction of a multi-storey building as defined in accordance with the following—

From commencement of building to 15th floor level—31 cents per hour extra.

From 16th floor level to 30th floor level—38 cents per hour extra.

From 31st floor level to 45th floor level—57 cents per hour extra.

From 46th floor level to 60th floor level—72 cents per hour extra.

From 61st floor level onwards—93 cents per hour extra.

For the purposes of this subclause a multi-storey building means a building which will, when complete, consist of 5 or more storey levels and any other structure which does not have regular storey levels but which exceeds 15 metres in height.

4. Appendix II:

A. Delete subclauses (5) and 6) of this Appendix and insert in lieu thereof the following—

(5) Site Disability Allowance

To compensate for conditions which exist and far exceed those conditions which are provided for within the award, including excessive dust, heat and extremes of terrain, an employee shall be entitled to a payment of $1.44 per hour for each hour worked.

(6) Special Rates

Employees shall be paid an allowance at the rate of $3.09 per hour for each hour worked to compensate for disabilities associated with the work and in lieu of the provisions of Clause 24.—Allowances and Special Provisions of this award.

B. Delete paragraph (14)(a) of this Appendix and insert in lieu thereof the following—

(a) Subject to the conditions prescribed herein, an employee who is ready willing and available for work on each day Monday to Saturday for not less than fifty four (54) hours per week, except for an employee engaged on shift work, and who works as directed by his/her employer, shall be entitled to a payment at the rate of $126.03 per week. Provided that an employee engaged on shift work, shall work not less than fifty four (54) hours over his/her rostered week.

C. Delete paragraphs (14)(h) and (i) of this Appendix and insert in lieu thereof the following—

(h) An employee who works in excess of fifty four (54) hours per week shall be paid an additional $2.42 per hour for each hour so worked.

(i) For the purposes of this clause payments which may accrue or be forfeited for any portion of a week shall be made on the basis of $2.42 per hour.

ELECTRICAL CONTRACTING INDUSTRY AWARD. R 22 of 1978.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

The Electrical Contractors' Association of Western Australia (Union of Employers) and Others.

No. 1401 of 1998.

Electrical Contracting Industry Award R 22 of 1978.

CHIEF COMMISSIONER W.S. COLEMAN.

6 October 1998.

Order.

HAVING heard Mr C. Young on behalf of the Applicant and Ms A. Young on behalf of the Respondent and Ms V. Paul on

behalf of the Electrical Contractors Association of W.A. and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Electrical Contracting Industry Award R 22 of 1978 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 10th day of September 1998.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. FIRST SCHEDULE – WAGES—

A. Delete paragraphs (a) and (b) of subclause (2) of this clause and insert in lieu thereof the following—

(2) (a)

CLASSIFICATION	Rate Per Week	Arbitrated Safety Net Adjustment	Total Rate Per Week
(i) LEVEL 1			
Electronics Tradesperson	549.90	46.00	595.90
(ii) LEVEL 2			
(aa) Electrician—Special Class	491.50	48.00	539.50
(bb) Instrument Fitter/Electrical Grade 2	499.20	48.00	547.20
(iii) LEVEL 3			
(aa) Electrical Installer	467.30	48.00	515.30
(bb) Electrical Fitter	467.30	48.00	515.30
(cc) Instrument Fitter/Electrical Grade 1	484.90	48.00	532.90
(dd) Linesperson—Grade 1 (ie. With not less that 3 years experience as a Linesperson)	467.30	48.00	515.30
(ee) Cable Jointer	467.30	48.00	515.30
(iv) LEVEL 4			
Linesperson—Grade 2 (ie. With not less that 3 years experience as a Linesperson)	449.30	48.00	497.30
(iv) LEVEL 5			
Electrical Assistant	394.70	48.00	442.70

(b) The rates of pay in this award include four arbitrated safety net adjustments totalling $34.00 the last payable from the beginning of the first pay period on or after the 14th day of November 1997. These arbitrated safety net adjustments shall be absorbed into any overaward payments.

Furthermore the rates of pay in this award include the arbitrated safety net adjustments of the following amounts—

(i) $14.00 per week increase in award rates up to an including $550.00 per week.

(ii) $12.00 per week increase in award rates above $550.00 per week and up to an including $700.00 per week; and

(iii) $10.00 per week increase in award rates above $700.00 per week.

These arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement.

Increases made under State Wage Case Principles prior to June 1998, except those resulting from enterprise agreements, are not to be used to offset this arbitrated safety net adjustment of $14.00, $12.00 or 10.00 per week as the case may be.

B. Delete paragraphs (a) and (b) of subclause (4) of this clause and insert in lieu thereof the following—

(a) Wage per week expressed as a percentage of the Electrical Installer's rate per week and Safety Net Adjustment Payment.

	%	Rate Per Week $	Arbitrated Safety Net Adjustment $	Total Rate Per Week $
Four Year Term				
First Year	39	182.25	18.72	200.97
Second Year	51	238.32	24.48	262.80
Third Year	67	313.09	32.16	345.25
Fourth Year	79	369.17	37.92	407.09
Three and a Half Year Term				
First six Months	39	182.25	18.72	200.97
Next Year	51	238.32	24.48	262.80
Next Year	67	313.09	32.16	345.25
Final Year	79	369.17	37.92	407.09
Three Year Term				
First Year	51	238.32	24.48	262.80
Second Year	67	313.09	32.16	345.25
Third Year	79	369.17	37.92	407.09

(b) The rates of pay in this award include four arbitrated safety net adjustments totalling $34.00 the last payable from the beginning of the first pay period on or after the 14th day of November 1997. These arbitrated safety net adjustments shall be absorbed into any overaward payments.

Furthermore the rates of pay in this award include the arbitrated safety net adjustments of the following amounts—

(i) $14.00 per week increase in award rates up to an including $550.00 per week.

(ii) $12.00 per week increase in award rates above $550.00 per week and up to an including $700.00 per week; and

(iii) $10.00 per week increase in award rates above $700.00 per week.

These arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement.

Increases made under State Wage Case Principles prior to June 1998, except those resulting from enterprise agreements, are not to be used to offset this arbitrated safety net adjustment of $14.00, $12.00 or 10.00 per week as the case may be.

C. Delete subclause (11) of this clause and insert in lieu thereof the following—

(11) Minimum Wage

(a) No adult employee shall be paid less than the Minimum Adult Award Wage unless otherwise provided by this clause.

(b) The Minimum Adult Award Wage for full time adult employees is $373.40 per week payable from the beginning of the first pay period commencing on or after the 10th day of September 1998.

(c) The Minimum Adult Award Wage of $373.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions to June, 1998, including the arbitrated safety net adjustment of $14.00, $12.00 or $10.00 per week as the case may be, from Matter No. 757 of 1998.

(d) Unless otherwise provided in this clause adults employed as casual or part time employees shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.

(e) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision to the Minimum Adult Award Wage of $373.40 per week.

(f) (i) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on traineeships or Jobskills placements, or to other categories of employees who by prescription are paid less than the minimum award rate.

(ii) Liberty to apply is reserved in relation to any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.

(g) Subject to this clause the Minimum Adult Award Wage shall—

(i) apply to all work in ordinary hours.

(ii) apply to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave and for all other purposes of this award.

(h) (i) The rates of pay in this award include the minimum weekly wage for adult employees payable under the June 1998 State Wage Case Decision. Any increase arising from the insertion of the adult minimum wage will be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

(ii) Increases under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset the adult minimum wage.

ELECTRICAL, ENGINEERING AND BUILDING TRADES (WEST AUSTRALIAN NEWSPAPERS LIMITED) AWARD, 1988.

No. A17 of 1985.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

West Australian Newspapers Ltd and Others

No. 1400 of 1998

Electrical, Engineering and Building Trades (West Australian Newspapers Limited) Award, 1988.

No. A17 of 1985.

CHIEF COMMISSIONER W.S. COLEMAN.

9 October 1998.

Order.

HAVING heard Mr C. Young on behalf of the Applicant and Mr R. Joyce on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Electrical, Engineering and Building Trades (West Australian Newspapers Limited) Award, 1988 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 2nd day of October 1998.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. First Schedule—Wages: Delete subclauses (3), (4) and (5) of this clause and insert in lieu thereof the following—

(3) Responsibility Payment

An Engineering or Electrical Tradesperson, Special Class Electrician or Electronic Tradesperson or Building Tradesperson required to work when supervisory staff are not on duty shall receive the additional flat payment per shift—

(a) Saturday—$ 6.49

(b) Sunday—$12.66

(4) In addition to the appropriate total wage prescribed in this schedule, a leading hand in charge of not less than three or more other employees shall be paid $37.81 per week.

(5) An Industrial Electronics Tradesperson, an Electrician—Special Class, an Electrical fitter and/or Armature Winder or an Electrical installer who holds, and in the course of this 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 $14.40 per week.

ELECTRICAL, ENGINEERING AND BUILDING TRADES (WEST AUSTRALIAN NEWSPAPERS LIMITED) AWARD, 1988.

No. A17 of 1985.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

West Australian Newspapers Ltd and Others.

No. 1427 of 1998.

Electrical, Engineering and Building Trades (West Australian Newspapers Limited) Award, 1988.

No. A17 of 1985.

CHIEF COMMISSIONER W.S. COLEMAN.

9 October 1998.

Order.

HAVING heard Mr C. Young on behalf of the Applicant and Mr R. Joyce on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Electrical, Engineering and Building Trades (West Australian Newspapers Limited) Award, 1988 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 2nd day of October 1998.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. First Schedule – Wages—

A. Delete subclause (1) of this clause and insert in lieu thereof the following—

(1)	(a) Classification	Base Rate Payment	Supplementary Payment	Additional Adjustment	Arbitrated Safety Net	Total Rate
		$	$	$	$	$
C6	Industrial Electronic Tradesperson (with 2 or more years experience)	456.50	65.00	48.60	46.00	616.10
C6	Industrial Electronic Tradesperson (with less than 2 years experience)	456.50	65.00	30.30	46.00	597.80
C8	Electrical, Engineering and Building Tradesperson—Carpenter-Tradesperson—Special Class	401.70	57.20	81.60	46.00	586.50
C10	Electrical, Engineering Tradesperson and Building Tradesperson—Multi-skilled Carpenter (more than 2 years experience with the employer)	365.20	52.00	99.10	46.00	562.30
C10	Electrical, Engineering and Building Tradesperson (with less than 2 years continuous experience with the employer)	365.20	52.00	82.60	48.00	547.80
C12	Tool Storeperson	319.20	45.40	40.30	48.00	452.90
C12/13	Trades Assistant	306.80	42.60	55.50	48.00	452.90

(b) The rates of pay in this award include four arbitrated safety net adjustments totalling $34.00 the last payable from the beginning of the first pay period on or after the 14th day of November 1997. These arbitrated safety net adjustments shall be absorbed into any overaward payments.

Furthermore the rates of pay in this award include the arbitrated safety net adjustments of the following amounts—

(i) $14.00 per week increase in award rates up to and including $550.00 per week.

(ii) $12.00 per week increase in award rates above $550.00 per week and up to and including $700.00 per week; and

(ii) $10.00 per week increase in award rates above $700.00 per week.

These arbitrated safety net adjustments shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement.

Increases made under State Wage Case Principles prior to June 1998, except those resulting from enterprise agreements, are not to be used to offset this arbitrated safety net adjustment of $14.00, $12.00 or $10.00 per week as the case may be.

B. Delete subclause (8) of this clause and insert in lieu thereof the following—

(8) Minimum Wage

(a) No adult employee shall be paid less than the Minimum Adult Wage unless otherwise provided by this clause.

(b) The Minimum Adult Award Wage for full time adult employees is $373.40 per week payable from the beginning of the first pay period commencing on or after 2nd October 1998.

(c) The Minimum Adult Award Wage of $373.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions to June 1998, including the arbitrated safety net adjustments of $14.00, $12.00 or $10.00 per week as the case may be, from Matter No 757 of 1998.

(d) Unless otherwise provided in this clause adults employed as casual or part time employees shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.

(e) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision of the Minimum Adult Award Wage of $373.40.

(f) (i) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on Traineeships or Jobskills placements, or to other categories of employees who by prescription are paid less than the minimum award rate.

(ii) Liberty to apply is reserved in relation to any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.

(g) Subject to this clause the Minimum Adult Award Wage shall—

(i) apply to all work in ordinary hours

(ii) apply to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave and for all other purposes of this award.

(h) (i) The rates of pay in this award include the minimum weekly wage for adult employees payable under the June 1998 State Wage Case Decision. Any increase arising from the insertion of the adult minimum wage will be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award agreements. Absorption which is contrary to the terms of an agreement is not required.

(ii) Increases under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset the adult minimum wage.

ELECTRONICS INDUSTRY AWARD.
No. A22 of 1985.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

A.D. Engineering Pty Ltd and Others

No. 1398 of 1998.

Electronics Industry Award No. A22 of 1985.

CHIEF COMMISSIONER W.S. COLEMAN.

6 October 1998.

Order.

HAVING heard Mr C. Young on behalf of the Applicant and Ms A. Young on behalf of the Respondent and Ms V. Paul on behalf of the Electrical Contractors Association of W.A. and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Electronics Industry Award No. A22 of 1985 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 10th day of September 1998.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 20. – Special Provisions—

A. Delete subclauses (1) to (8) inclusively and insert in lieu thereof the following—

(1) Dirt Money: An employee shall be paid an allowance of 36 cents per hour when engaged on work of an unusually dirty nature where clothes are necessarily unduly soiled or damaged or boots are unduly damaged by the nature of the work done.

(2) Confined Space: An employee shall be paid an allowance of 42 cents per hour when, because of the dimensions of the compartment or space in which he/she is working, he/she is required to work in a stooped or otherwise cramped position or without proper ventilation.

(3) Hot Work: An employee shall be paid an allowance of 36 cents per hour when he/she works in the shade in any place where the temperature is raised by artificial means to between 46.1 and 54.4 degrees celsius.

(4) Height Money: An employee shall be paid an allowance of $1.69 for each day on which the employee works at a height of 15.5 metres or more above the nearest horizontal plane.

(5) (a) Where, in the opinion of the Board of Reference the conditions under which work is to be performed are, by reason of excessive heat, exceptionally oppressive, the Board may—

(i) Fix an allowance, or allowances, not exceeding the equivalent of half the ordinary rate;

(ii) Fix the period (including a minimum period) during which any allowance so fixed is to be paid; and

(iii) Prescribe such other conditions, relating to the provision of protective clothing or equipment and the granting of rest periods, as the Board sees fit.

(b) The provisions of paragraph (a) of this subclause do not apply unless the temperature in the shade at the place of work has been raised by artificial means beyond 54.4 degrees celsius.

(c) An allowance fixed pursuant to paragraph (a) of this subclause includes any other allowance which would otherwise be payable under this clause.

(6) Diesel Engine Ships: The provisions of subclauses (1) and (2) hereof do not apply to an employee when the employee is engaged on work below the floor plates in diesel engine ships, but the employee shall be paid an allowance of 59 cents per hour whilst so engaged.

(7) Percussion Tools: An employee shall be paid an allowance of 21 cents per hour when working a pneumatic riveter of the percussion type and other pneumatic tools of the percussion type.

(8) Chemical, Artificial Manure and Cement Works: An employee, other than a general labourer, in chemical, artificial manure and cement works, in respect of all work done in and around the plant outside the machine shop, shall be paid an allowance calculated at the rate of $8.74 per week. The allowance shall be paid during overtime but shall not be subject to penalty additions. An employee receiving this allowance is not entitled to any other allowance under this clause.

B. Delete subclause (14) and insert in lieu thereof the following—

(14) An employee holding either a Third Year First Aid Medallion of the St. John Ambulance Association or a "C" standard Senior First Aid Certificate of the Australian Red Cross

Society, appointed by the employer to perform first aid duties shall be paid $6.91 per week in addition to his/her ordinary rate.

2. Clause 33. – Wages—

A. Delete subclause (2) of this clause and insert in lieu thereof the following—

(2) Leading Hands—

In addition to the appropriate rate of wage prescribed in subclause (1) of this clause a leading hand shall be paid—

	$
(a) If placed in charge of not less than three and not more than ten other employees	17.92
(b) If placed in charge of more than ten but not more than 20 other employees	27.42
(c) If placed in charge of more than 20 other employees	35.30

B. Delete subclause (5) of this clause and insert in lieu thereof the following—

(5) (a) Where an employer does not provide a technician, serviceperson, installer, assembler or an apprentice with the tools ordinarily required by that person in the performance of work as a technician, serviceperson, installer, assembler or an apprentice the employer shall pay a tool allowance of—

(i) $9.93 per week to such technician, serviceperson, installer or assembler; or

(ii) in the case of an apprentice a percentage of $9.93 being the percentage which appears against his year of apprenticeship in subclause (3) of this clause for the purpose of such technician, serviceperson, installer, assembler or apprentice supplying and maintaining tools ordinarily required in the performance of work as a technician, serviceperson, installer, assembler 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) An employer shall provide for the use of technicians, servicepeople, installers or apprentices all necessary power tools, special purpose tools and precision measuring instruments.

(d) A technician, serviceperson, installer or apprentice shall replace or pay for any tools supplied by the employer if lost through his negligence.

PART II—CONSTRUCTION WORK

2. Clause 5. – Special Rates and Provisions—

A. Delete subclause (2) of this clause and insert in lieu thereof the following—

(2) (a) The employer shall, where practicable, provide a waterproof and secure place on each job for the safekeeping of an employee's tools when not in use and an employee's working clothes and where an employee is absent from work because of illness or accident and has advised the employer to that effect in accordance with the provisions of Clause 11.—Sick Leave of PART I—GENERAL of this award the employer shall ensure that the employee's tools and working clothes are securely stored during his absence.

(b) Subject to paragraph (c) hereof where the employee's tools or working clothes are lost by fire or breaking and entering whilst securely stored in the place provided by the employer under paragraph (a) hereof the employer shall reimburse the employee for that loss but only up to a maximum of $215.92.

(c) The provisions of paragraph (b) hereof shall only apply with respect to tools and working clothes used by an employee in the course of his employment as set out in a list furnished to the employer at least twenty four hours before being lost by fire or theft and if the employee has reported any theft to the police.

4. Clause 10. Wages: Delete subclauses (5) to (7) inclusively of this clause and insert in lieu thereof the following—

(5) Construction Allowances—

(a) In addition to the appropriate rates of pay prescribed in this clause an employee shall be paid—

(i) $31.74 per week if engaged on the construction of a large industrial undertaking or any large civil engineering projects.

(ii) $28.61 per week if engaged on a multi-storeyed building, but only until the exterior walls have been erected and the windows completed and a lift made available to carry the employee between the ground floor and the floor upon which he is required to work. A multi-storeyed building is a building which, when completed, will consist of at least five storeys.

(iii) $16.84 per week if engaged otherwise on construction work falling within the definition of construction work in Clause 5.—Definitions of PART I—GENERAL, of this award.

(b) Any dispute as to which of the aforesaid allowances apply to particular work shall be determined by the Board of Reference.

(6) Leading Hand—

In addition to the appropriate rate of wage prescribed in subclause (1) this clause a leading hand shall be paid—

	$
(a) If placed in charge of not less than three and not more than ten other employees	17.92
(b) If placed in charge of more than ten but not more than 20 other employees	27.42
(c) If placed in charge of more than 20 other employees	35.30

(7) (a) Where an employer does not provide a Technician, Serviceperson, Installer or Apprentice with the tools ordinarily required by that Serviceperson, Technician, Installer, or Apprentice in the performance of work as a Technician, Serviceperson, Installer or Apprentice the employer shall pay a tool allowance of—

(i) $9.93 per week to such Technician, Serviceperson or Installer, or

(ii) in the case of an apprentice a percentage of $9.93 being the percentage referred to in subclause (3) of Clause 33.—Wages of PART I—GENERAL, of this award, for the purpose of such

Technician, Serviceperson, Installer or Apprentice supplying and maintaining tools ordinarily required in the performance of work as a Technician, Serviceperson, Installer 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) An employer shall provide for the use of Technicians, Servicepersons, Installers and Apprentices all necessary power tools, special purpose tools and precision measuring instruments.

(d) A Technician, Serviceperson, Installer or Apprentice shall replace or pay for any tools supplied by the employer if lost through that person's negligence.

ELECTRONICS INDUSTRY AWARD.
No. A22 of 1985.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

A.D. Engineering Pty Ltd and Others.

No. 1409 of 1998.

Electronics Industry Award No. A22 of 1985.

CHIEF COMMISSIONER W.S. COLEMAN.

6 October 1998.

Order.

HAVING heard Mr C. Young on behalf of the Applicant and Ms A. Young on behalf of the Respondent and Ms V. Paul on behalf of the Electrical Contractors Association of W.A. and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Electronics Industry Award No. A22 of 1985 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 10th day of September 1998.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 2.—Arrangement: Immediately following 1A.—Statement of Principles—June, 1998 insert the following new clause—

1B. Minimum Adult Award Wage

2. Clause 1A.—Statement of Principles—June, 1998: Immediately following this clause insert the following new clause—

1B.—MINIMUM ADULT AWARD WAGE

(1) No adult employee shall be paid less than the Minimum Adult Award Wage unless otherwise provided by this clause.

(2) The Minimum Adult Award Wage for full time adult employees is $373.40 per week payable from the beginning of the first pay period commencing on or after the 10th day of September 1998.

(3) The Minimum Adult Award Wage of $373.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions to June, 1998, including the arbitrated safety net adjustment of $14.00, $12.00 or $10.00 per week as the case may be, from Matter No. 757 of 1998.

(4) Unless otherwise provided in this clause adults employed as casual or part time employees shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.

(5) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision to the Minimum Adult Award Wage of $373.40 per week.

(6) (a) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on traineeships or Jobskills placements, or to other categories of employees who by prescription are paid less than the minimum award rate.

(b) Liberty to apply is reserved in relation to any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.

(7) Subject to this clause the Minimum Adult Award Wage shall—

(a) apply to all work in ordinary hours.

(b) apply to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave and for all other purposes of this award.

(8) (a) The rates of pay in this award include the minimum weekly wage for adult employees payable under the June 1998 State Wage Case Decision. Any increase arising from the insertion of the adult minimum wage will be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

(b) Increases under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset the adult minimum wage.

3. Clause 33.—Wages: Delete subclause (1) of this clause and insert in lieu thereof the following—

(1) (a) Adults

	Rate Per Week	Arbitrated Safety Net Adjustment	Total Rate Per Week
Electronic Technician (Grade III)	537.50	46.00	583.50
Electronic Technician (Grade II)	463.30	48.00	511.30
Electronic Technician (Grade I)	442.20	48.00	490.20
Electronic Serviceperson	418.90	48.00	466.90
Installer	375.90	48.00	423.90
Serviceperson's Assistant	357.90	48.00	405.90
Assembler (1)	352.60	48.00	400.60
Assembler	331.50	48.00	379.50
Trainee Installer (90% of Installer)	338.30	43.20	381.50

(b) The rates of pay in this award include four arbitrated safety net adjustments totalling $34.00 the last payable from the beginning of the first pay period on or after the 14th day of

November 1997. These arbitrated safety net adjustments shall be absorbed into any overaward payments.

Furthermore the rates of pay in this award include the arbitrated safety net adjustments of the following amounts—

(i) $14.00 per week increase in award rates up to an including $550.00 per week.

(ii) $12.00 per week increase in award rates above $550.00 per week and up to an including $700.00 per week; and

(iii) $10.00 per week increase in award rates above $700.00 per week.

These arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement.

Increases made under State Wage Case Principles prior to June 1998, except those resulting from enterprise agreements, are not to be used to offset this arbitrated safety net adjustment of $14.00, $12.00 or 10.00 per week.

PART II—CONSTRUCTION WORK

3. Clause 10.—Wages—

A. Delete subclause (3) of this clause and insert in lieu thereof the following—

(3) (a) CLASSIFICATIONS

	Rate Per Week	Special Payment	Arbitrated Safety Net Adjustment	Total Rate Per Week
Electronic Technician (Grade III)	537.50	31.50	46.00	615.00
Electronic Technician (Grade II)	463.30	26.90	48.00	538.20
Electronic Technician (Grade I)	442.20	25.40	48.00	515.60
Electronic Serviceperson	418.90	24.00	48.00	490.90
Installer	375.90	18.10	48.00	442.00
Trainee Installer (90% of Installer)	338.30	16.30	43.20	397.80

(b) The rates of pay in this award include four arbitrated safety net adjustments totalling $34.00 the last payable from the beginning of the first pay period on or after the 14th day of November 1997. These arbitrated safety net adjustments shall be absorbed into any overaward payments.

Furthermore the rates of pay in this award include the arbitrated safety net adjustments of the following amounts—

(i) $14.00 per week increase in award rates up to an including $550.00 per week.

(ii) $12.00 per week increase in award rates above $550.00 per week and up to an including $700.00 per week; and

(iii) $10.00 per week increase in award rates above $700.00 per week.

These arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement.

Increases made under State Wage Case Principles prior to June 1998, except those resulting from enterprise agreements, are not to be used to offset this arbitrated safety net adjustment of $14.00, $12.00 or 10.00 per week.

B. Delete subclause (9) of this clause and insert in lieu thereof the following—

(9) Minimum Wage—

(a) No adult employee shall be paid less than the Minimum Adult Award Wage unless otherwise provided by this clause.

(b) The Minimum Adult Award Wage for full time adult employees is $373.40 per week payable from the beginning of the first pay period commencing on or after the 10th day of September 1998.

(c) The Minimum Adult Award Wage of $373.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions to June, 1998, including the arbitrated safety net adjustment of $14.00, $12.00 or $10.00 per week as the case may be, from Matter No. 757 of 1998.

(d) Unless otherwise provided in this clause adults employed as casual or part time employees shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.

(e) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision to the Minimum Adult Award Wage of $373.40 per week.

(f) (i) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on traineeships or Jobskills placements, or to other categories of employees who by prescription are paid less than the minimum award rate.

(ii) Liberty to apply is reserved in relation to any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.

(g) Subject to this clause the Minimum Adult Award Wage shall—

(i) apply to all work in ordinary hours.

(ii) apply to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave and for all other purposes of this award.

(h) (i) The rates of pay in this award include the minimum weekly wage for adult employees payable under the June 1998 State Wage Case Decision. Any increase arising from the insertion of the adult minimum wage will be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which

are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

(ii) Increases under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset the adult minimum wage.

(Note: A notation will be made in each relevant award by the Registrar where the adult apprentice rate requires specific mention as at 13th November 1997.)

ENGINE DRIVERS' (BUILDING AND STEEL CONSTRUCTION) AWARD.
No. 20 of 1973.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch

and

Master Builders' Association of Western Australia (Union of Employers) and Others.

No. 2007 of 1997.

Engine Drivers' (Building and Steel Construction) Award No. 20 of 1973.

COMMISSIONER P E SCOTT.

23 September 1998.

Order.

HAVING heard Ms J Harrison on behalf of the Applicant, Mr K Richardson on behalf of the Master Builders' Association of Western Australia (Union of Employers) and Mr K Dwyer on behalf of various Respondents and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Engine Drivers' (Building And Steel Construction) Award No. 20 of 1973 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 7th day of September 1998.

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

Schedule.

1. Clause 35.—Superannuation: Delete clause and insert the following in lieu thereof—

The superannuation provisions contained herein operate subject to the requirements of the hereinafter prescribed provision titled—Compliance, Nomination and Transition.

(1) DEFINITIONS

For the purpose of this clause—

(a) "Eligible Employee" shall mean any employee who has been employed under this award by the employer during at least five consecutive days and who has worked a minimum of 40 hours during that period. After completion of the above qualifying period, superannuation contributions shall then be made in accordance with subclause (2) hereof effective from the commencement of that qualifying period.

(b) "Fund" means a Superannuation Fund as defined in the Occupational Superannuation Standards Act 1987 and satisfying the superannuation fund conditions in relation to a year of income, as specified in that Act and complying with the operating standards as prescribed by the Regulations made under the Act. In the case of a newly established fund, the term shall include a Superannuation Fund that has received a notice of preliminary listing from the Insurance and Superannuation Commissioner.

(c) "Ordinary Time Earnings" shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including tool allowance, industry allowance, registration allowance, trade allowance, shift loading and leading hand, in charge or supervisory allowances where applicable, the regular over-award pay as well as casual rates received for ordinary hours of work. All other allowances and payments are excluded.

(d) "Act" means the Occupational Superannuation Standards Act 1987, and "Regulations" means the Occupational Superannuation Standards Regulations made pursuant to that Act from time to time.

(e) "The Relevant Fund" means the fund selected in respect of an employee pursuant to subclause (4) hereof.

(2) CONTRIBUTIONS

(a) In accordance with this clause and subject to the Trust Deed of the relevant fund, on behalf of each eligible employee an employer shall contribute to a relevant superannuation fund a superannuation contribution, equivalent to seven per cent of such eligible employee's ordinary time earnings each week, (rounded to the nearest 10 cents), provided that—

(i) upon completion of the qualifying period specified in subclause (1) hereof, contributions on behalf of each eligible employee shall apply from the date of commencement of employment of such employee; and

(ii) the contribution rate of an existing fund of which the eligible employee is a member may be improved to the extent that it is equivalent to that prescribed by paragraph (a) of this subclause and is in accordance with the Act and Regulations.

(b) The contributions required herein shall be made to the relevant fund in the manner and at the times specified by the terms of the fund or any agreement between the employer and trustees of the fund.

(c) No employer shall be required to pay superannuation contributions on behalf of any eligible employee whether full time, part time, or casual in respect of any week during which such employee receives less than ten hours' pay in ordinary time earnings.

(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 to 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 contributions 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 to this clause, to any of the following funds—

(i) BUSS, AUST, CTRF, the WESTSCHEME Superannuation Scheme; 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 Western Australian Industrial Relations Commission for determination.

(5) FUND MEMBERSHIP

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 March 1992 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 equivalent to at least seven per cent of ordinary time earnings.

(b) Leave is reserved to any employer to apply for exemption from this clause on the grounds of the standards of existing superannuation arrangements provided by the employer, or the employer's financial capacity to pay.

(7) ABSENCE FROM WORK

Subject to the Trust Deed of the fund of which an employee is a member, the following provisions shall apply.

(a) Paid Leave

Contributions shall continue whilst a member of a fund is absent on paid annual leave, sick leave, long service leave, public holidays, jury service, bereavement leave, or other paid leave.

(b) Unpaid Leave

Contributions shall not be required in respect of any period of absence from work without pay of one day or more.

(c) Work Related Injury or Illness

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.

Compliance, Nomination and Transition

Notwithstanding anything contained elsewhere herein which requires that contribution be made to a superannuation fund or scheme in respect of an employee, on and from 30 June 1998—

(a) Any such fund or scheme shall no longer be a complying superannuation fund or scheme for the purposes of this clause unless—

(i) the fund or scheme is a complying fund or scheme within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; and

(ii) under the governing rules of the fund or scheme, contributions may be made by or in respect of the employee permitted to nominate a fund or scheme;

(b) The employee shall be entitled to nominate the complying superannuation fund or scheme to which contributions are to be made by or in respect of the employee;

(c) The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable;

(d) A nomination or notification of the type referred to in paragraphs (b) and (c) of this subclause shall, subject to the requirements of regulations made pursuant to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the employee to whom such is directed;

(e) The employee and employer shall be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made;

(f) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by a employee;

Provided that on and from 30 June 1998, and until an employee thereafter nominates a complying superannuation fund or scheme—

(g) if one or more complying superannuation funds or schemes to which contributions may be made be specified herein, the employer is required to make contributions to that fund or scheme, or one of those funds or schemes nominated by the employer;

or

(h) if no complying superannuation fund or scheme to which contributions may be made be specified herein, the employer is required to make contributions to a complying fund or scheme nominated by the employer.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch

and

Master Builders' Association of Western Australia (Union of Employers) and Others.

No. 2007 of 1997.

Engine Drivers' (Building and Steel Construction) Award No. 20 of 1973.

COMMISSIONER P E SCOTT.

23 September 1998.

Order.

HAVING heard Ms J Harrison on behalf of the Applicant and Mr K Richardson on behalf of the Master Builders' Association of Western Australia and Mr K J Dwyer on behalf of certain Respondents the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, and by consent, hereby orders:

That Application No. 2007 of 1997 be divided into two parts, to become Application No. 2007 of 1997 which shall deal with the superannuation contribution rate and Application No.2007A of 1997 which shall deal with the remainder of the matters.

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

ENGINE DRIVERS' (BUILDING AND STEEL CONSTRUCTION) AWARD.
No. 20 of 1973.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia – Western Australian Branch

and

Master Builders' Association of Western Australia (Union of Employers) and Others.

No. 1183 of 1998.

Engine Drivers' (Building and Steel Construction) Award No. 20 of 1973.

COMMISSIONER P E SCOTT.

2 October 1998.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant, Mr K Richardson on behalf of the Master Builders' Association of Western Australia (Union of Employers) and Mr K Dwyer on behalf of various Respondents and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Engine Drivers' (Building and Steel Construction) Award No. 20 of 1973 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 31st day of July 1998.

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

Schedule.

1. Clause 1B.—Minimum Adult Award Wage: Delete this clause and insert the following in lieu thereof—

(1) The rates of pay in this award include the minimum weekly wage for adult employees payable under the June 1998 State Wage Case Decision. Any increase arising from the insertion of the adult minimum wage will be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements are not to be used to offset the adult minimum wage.

(2) The Minimum Adult Award Wage for full time adult employees is $373.40 per week payable from the beginning of the first pay period commencing on or after 31st July 1998.

(3) The Minimum Adult Award Wage of $373.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions to June 1998, including the $14.00, $12.00 and $10.00 per week arbitrated safety net adjustments from Matter No. 757 of 1998.

(4) Unless otherwise provided in this clause adults employed as casual or part time employees shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.

(5) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision to the Minimum Adult Award Wage of $373.40 per week.

(6) (a) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on traineeships or Jobskills placements, or to other categories of employees who by prescription are paid less than the minimum award rate.

(b) Liberty to apply is reserved in relation to any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.

(7) Subject to this clause the Minimum Adult Award Wage shall—

(a) apply to all work in ordinary hours.

(b) apply to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave and for all other purposes of this award.

2. Clause 24.—Allowances and Special Provisions: Delete this clause and insert the following in lieu thereof—

(1) An employee required to work in a place where the temperature has been raised by artificial means to between 46° and 54° Celsius shall be paid 39 cents per hour or part thereof in addition to the rates otherwise prescribed in this award, or in excess of 54° Celsius shall be paid 47 cents per hour or part thereof in addition to the said rates.

(2) Dirt Money: a dirt allowance of 39 cents per hour or part thereof shall be payable in connection with work deemed to be unusually dirty; cases of dispute to be settled by a Board of Reference.

(3) Height Allowance:

(a) Tower crane drivers shall be paid a height allowance in accordance with the following schedule, the height to be measured from ground level, i.e. street level to floor of crane cabin—

From ground level up to and including 30 metres—31 cents per hour.

Over 30 metres and up to 45 metres—38 cents per hour.

Over 45 metres and up to 60 metres—64 cents per hour.

Over 60 metres—31 cents per hour additional for each 15 metres over 60 metres.

(b) Mobile crane drivers, when employed for any day or part thereof on a building site where a multi storey building is being or is to be constructed shall be paid a multi-storey allowance in accordance with the following table—

From commencement of building to 15th floor level—31 cents per hour extra.

From 16th floor level to 30th floor level—38 cents per hour extra.

From 31st floor level to 45th floor level—57 cents per hour extra.

From 46th floor level to 60th floor level—72 cents per hour extra.

From 61st floor level onwards—93 cents per hour extra.

2. Clause 27.—Wages: Delete this clause and insert the following in lieu thereof—

The weekly wage to be paid to all employees shall be as follows—

(1) When an employee is engaged on building or steel construction work on site in or in connection with—

(a) the construction, erection, repair, renovation, maintenance, ornamentation, alteration or demolition of a large industrial undertaking or any large civil engineering project or any multi-storey building; or

(b) the construction, erection, repair, renovation, maintenance, ornamentation, alteration or demolition of any structure or civil engineering project which the employer and the union agree, or in the event of disagreement, which the Board of Reference declares to be construction work,

shall consist of the sum of the base rate reflected in Column "A" of subclause (2) and the amounts reflected in subclauses (3), (4) and (5) of this clause.

For an employee engaged on other work than that specified above in (a) or (b) the weekly wage shall consist of the sum of the base rate reflected in Column "B" of subclause (2), and the amounts reflected in subclauses (3), (4) and (5) of this clause.

(2)

CLASSIFICATION	"COLUMN A" BASE RATE $	"COLUMN B" BASE RATE $
0 - 8 tonnes	368.40	344.00
8 - 15 tonnes	378.40	350.60
15 - 40 tonnes	386.90	358.40
40 - 80 tonnes	393.60	364.40
80 - 100 tonnes	398.70	369.10
100 - 140 tonnes	406.30	376.00
140 - 180 tonnes	416.30	384.80
180 - 220 tonnes	429.70	396.90
Over 220 tonnes	447.10	413.10
Tower Crane	410.10	
Stiff Leg Crane		364.70

(3) (a) Supplementary Payment

Employees shall be paid an additional payment of $52.10 which shall be added to the base rate specified in subclause (2) hereof for the purpose of calculating the actual weekly rate.

The supplementary payment set out in this clause represents a payment in lieu of equivalent overaward payments

(b) Arbitrated Safety Net Payment

Employees shall be paid an arbitrated safety net payment of $48.00 which shall be added to the base rate specified in subclause (2) hereof for the purpose of calculating the actual weekly rate.

The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increases payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety adjustments.

Furthermore the rates of pay in this award include the $10.00 per week arbitrated safety net adjustment payable from the beginning of the first pay period on or after 14th day of November 1997

This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement.

Increases made under State Wage Case Principles prior to November 1997, except those resulting from enterprise agreements, are not to be used to offset this arbitrated safety net adjustment of $10.00 per week.

The rates of pay in this award include the arbitrated safety net adjustment payable under the June 1998 State Wage Case Decision. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage 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) Special Allowance

In addition to the base rate specified in subclause (2) hereof employees shall be paid for all purposes of the award a special allowance $7.70 per week and such allowance shall not be altered as a consequence of wage indexation decisions.

(5) Industry Allowance

In addition to the rates specified in subclause (2) an industry allowance of $16.70 per week should be paid to all employees under this award to compensate for the disabilities usually associated with building and steel construction work.

(6) Actual Weekly Rate

The actual weekly rate shall be calculated by multiplying the sum of the appropriate amounts prescribed in subclause (2), subclause (3) (a) and subclause (5) hereof by 52 on 50.4. This subtotal shall be rounded to the nearest ten cents and then have added to it the Arbitrated Safety Net Payment prescribed in subclause (3) (b) and the Special Allowance prescribed in subclause (4) hereof.

(7) Overaward Payment

For the purposes of this clause, overaward payment is defined as the amount in rates of pay which an employee would receive in excess of the minimum award wage (ie base rate, arbitrated safety net and supplementary payment) as prescribed in this award for the classification in which such employee is engaged. Provided that this definition shall exclude overtime, shift allowances, penalty rates, expense related allowances, industry allowances, disability allowances, location allowances, special rates or allowances, responsibility allowances and any other ancillary payments of a like nature prescribed by this award.

3. 4th Schedule—Special Site Provisions:

A. Part 1—Metropolitan Sites: Delete subclause (1) of this clause and insert the following in lieu thereof—

1. S.E.C. Kwinana	79 cents per hour for each hour worked and 5 cents per hour footwear allowance for each hour worked.

B. Part 2—Resource Development Project Sites:

1. Clause 1. Muja Power Station: Delete subclause (3)(c)(i) of this clause and insert the following in lieu thereof—

(c) (i) In lieu of the provisions of Clause 24.—Allowances and Special Provisions and of subclause (4) of Clause 27.—Wages of the award, employees shall be paid an allowance of $1.21 per hour for each hour worked.

2. Clause 2. North West Shelf Gas Project: Delete subclauses (5),(6) and (14) of this clause and insert the following in lieu thereof—

(5) Site Disability Allowance

To compensate for conditions which exist and far exceed those conditions which are provided for within the award, including excessive dust, heat and extremes of terrain, an employee shall be entitled to a payment of $1.43 per hour for each hour worked.

(6) Special Rates

Employees shall be paid an allowance at the rate of $3.08 per hour for each hour worked to compensate for disabilities associated with the work and in lieu of the provisions of Clause 24.—Allowances and Special Provisions of this award.

(14) Special Conditions of Employment Payment

(a) Subject to the conditions prescribed herein, an employee who is ready, willing and available for work on each day Monday to Saturday for not less than fifty four (54) hours per week, except for an employee engaged on shift work, and who works as directed by his/her employer, shall be entitled to a payment at the rate of $129.94 per week. Provided that an employee engaged on shift work, shall work not less than fifty four (54) hours over his/her rostered week.

This payment shall accrue weekly and be only paid in consequence of termination of employment.

(b) An employee who in any week, but for absence on paid leave in accordance with the award would have qualified to accrue the payment under paragraph (a) of this subclause, shall be entitled to accrue such payment notwithstanding the absence on leave.

(c) An employee who is absent in any week, other than in accordance with paragraph (b) of this subclause, shall be entitled to accrue that portion only of the payment prescribed in paragraph (a) of this subclause, calculated by reference to the time worked in that week in accordance with paragraph (i) hereof.

(d) The payment prescribed in paragraph (a) of this subclause shall be forfeited in any week in which an employee engages in industrial action.

Provided that, in any week in which industrial action occurs after an employee has complied with the provisions of the Project Disputes Procedure in subclause (17) of this Clause, an employee shall forfeit only that portion of the payment as is

referable to the period of industrial action, calculated in accordance with paragraph (i) hereof.

(e) An employee engaged on site for less than one week shall accrue the payment of the allowance only for those days which he/she worked within that week, calculated in accordance with paragraph (i) hereof.

(f) An employee commencing or terminating employment with his/her employer after the beginning of a week shall accrue the payment on the basis of the number of hours worked within that week, calculated in accordance with paragraph (i) hereof.

(g) In the case of termination for misconduct or where the employee fails to give notice in accordance with the Award, the payment will not accrue for that week.

(h) An employee who works in excess of fifty four (54) hours per week shall be paid an additional $2.34 per hour for each hour so worked.

(i) For the purposes of this subclause payments which may accrue or be forfeited for any portion of a week shall be made on the basis of $2.41 per hour.

3. Clause 3. Worsley Alumina Refinery Construction Project: Delete subclauses (3) and (9) of this clause and insert the following in lieu thereof—

(3) Site Allowance—

Employees shall be paid an allowance of $1.49 per hour for each hour worked to compensate for climatically induced disabilities.

(9) Allowance on Termination of Employment—

(a) An allowance of 41 cents per hour for each hour worked shall be paid on termination of employment.

(b) This allowance is inclusive of the special rates allowance which applied to certain other workers on site up to December 15, 1982.

ENGINE DRIVERS' (GENERAL) AWARD.
No. R 21A of 1977.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia, Western Australian Branch

and

Coca-Cola Bottlers Pty Ltd and Others.

No. 1177 of 1998.

Engine Drivers' (General) Award.
No. R 21A of 1977.

COMMISSIONER P E SCOTT.

2 October 1998.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and Mr K Dwyer 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 Engine Drivers' (General) Award be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 31st day of July 1998.

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

Schedule.

1. Clause 1B.—Minimum Adult Award Wage: Delete this clause and insert the following in lieu thereof—

(1) The rates of pay in this award include the minimum weekly wage for adult employees payable under the June 1998 State Wage Case Decision. Any increase arising from the insertion of the adult minimum wage will be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements are not to be used to offset the adult minimum wage.

(2) The Minimum Adult Award Wage for full time adult employees is $373.40 per week payable from the beginning of the first pay period commencing on or after 31st July 1998.

(3) The Minimum Adult Award Wage of $373.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions to June 1998, including the $14.00, $12.00 and $10.00 per week arbitrated safety net adjustments from Matter No. 757 of 1998.

(4) Unless otherwise provided in this clause adults employed as casual or part time employees shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.

(5) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision to the Minimum Adult Award Wage of $373.40 per week.

(6) (a) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on traineeships or Jobskills placements, or to other categories of employees who by prescription are paid less than the minimum award rate.

(b) Liberty to apply is reserved in relation to any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.

(7) Subject to this clause the Minimum Adult Award Wage shall —

(a) apply to all work in ordinary hours.

(b) apply to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave and for all other purposes of this award.

2. Clause 19.—Wages: Delete this clause and insert the following in lieu thereof—

The rates of pay in this Award include the three arbitrated safety net adjustments totalling $24.00 per week available under the Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the 1994 State Wage Decision or 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 as a result of agreements reached at enterprise level since 1 November 1991 pursuant to enterprise agreements, enterprise flexibility agreements or consent awards or award variations to give effect to enterprise agreements insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety adjustments.

Furthermore the rates of pay in this award include the $10.00 per week arbitrated safety net adjustment payable from the beginning of the first pay period on or after 14th day of November 1997

This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement.

Increases made under State Wage Case Principles prior to November 1997, except those resulting from enterprise agreements, are not to be used to offset this arbitrated safety net adjustment of $10.00 per week.

The rates of pay in this award include the arbitrated safety net adjustment payable under the June 1998 State Wage Case Decision. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage 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.

(1) Classification:	Wage Per Week $	Supplementary Payments Per Week $	Safety Net Adjustments $	Total Per Week $
(a) Turbine Driver	345.30	16.80	48.00	410.10
(b) Steam Engine Drivers—				
(i) whose work requires 1st or 2nd class certificate	341.30	16.80	48.00	406.10
(ii) whose work requires a 3rd class certificate	333.10	10.80	48.00	391.90
(c) Internal Combustion Engine Drivers—				
(i) 180 kW brake power or over	344.20	16.80	48.00	409.00
(ii) 35 kW brake power or over but under 180 kW brake power	337.90	15.40	48.00	401.30
(iii) under 35 kW brake power	330.80	10.80	48.00	389.60
(d) Electric Motor Attendant—				
(i) on motors over 180 kW power	339.60	16.80	48.00	404.40
(ii) on motors 70 kW power to 180 kW power inclusive	329.10	9.30	48.00	386.40
(iii) on motors under 70 kW power	318.40	6.40	48.00	372.80
Where an employee attends two or more motors he/she shall be paid at a rate calculated on the aggregate kW power of such motors.				
Note: kW power shall be that shown on the maker's nameplate.				
(e) Greaser or Oiler	318.40	6.40	48.00	372.80
(f) Fireperson—				
(i) attending one boiler	327.40	7.60	48.00	383.00
(ii) attending two or more boilers	333.20	10.80	48.00	392.00
(g) Trimmer	306.90	4.40	48.00	359.30
(h) Scotch Derrick Crane Driver	347.40	16.80	48.00	412.20
(i) Overhead electric crane driver who requires a certificate under the Inspection of Machinery Act	334.40	12.30	48.00	394.70
(j) Mobile Crane Driver				
(i) lifting capacity up to and including 5 tonnes	339.60	13.80	48.00	401.40
(ii) lifting capacity over 5 tonnes but not exceeding 10 tonnes	344.10	16.80	48.00	408.90
(iii) lifting capacity over 10 tonnes but not exceeding 20 tonnes	349.90	19.90	48.00	417.80
(iv) lifting capacity over 20 tonnes but not exceeding 40 tonnes	360.20	23.10	48.00	431.30
(v) lifting capacity over 40 tonnes but not exceeding 80 tonnes	366.30	26.00	48.00	440.30
(vi) lifting capacity in excess of 80 tonnes	373.90	28.00	48.00	449.90
(k) Excavator Driver—				
(i) up to .5m^3	350.00	19.90	48.00	417.90
(ii) over .5 m^3 and up to and including 2.25m^3	353.30	21.50	48.00	422.80
(iii) over 2.25 m^3	364.00	24.80	48.00	436.80
(l) Tractors—while using power operated attachments—				
(i) up to 35 kW brake power	337.70	12.20	48.00	397.90
(ii) over 35 kW brake power to 70 kW brake power	344.20	16.80	48.00	409.00
(iii) over 70 kW brake power to 110 kW brake power	350.00	19.90	48.00	417.90
(iv) over 110 kW brake power	353.30	21.50	48.00	422.80
(m) Loader, front end or overhead - Appropriate Tractor Margin				
(n) Grader self propelled				
(i) over 70 kW brake power	364.00	24.80	48.00	436.80
(ii) 35 to 70 kW brake power inclusive	353.30	21.50	48.00	422.80
(iii) under 35 kW brake power	350.00	19.90	48.00	417.90

(2) Additions to Weekly Wage Rates

(a) An Engine Driver, Electric Motor Attendant or Fireperson engaged as hereinafter specified shall have his/her wage increase as follows—

	Per Week $
(i) Attending to refrigerating and/or air compressor or compressors	19.60
(ii) Attending to an electric generator or dynamo exceeding 10 kw capacity	19.60
(iii) Attending to switchboard where the generating capacity is 350 kw or over	6.21
(iv) An Engine Driver who attends a boiler or boilers	19.60

(b) Employees employed on boiler cleaning inside the boiler of flues of combustion chamber shall be paid an additional rate of **97 cents** per hour whilst so engaged.

(3) Industry Allowance

(a) In addition to the rates prescribed in this clause an amount of **$17.07** per week shall be paid to employees engaged under this award in rock quarries, limestone quarries and sand pits to compensate for dust and climatic conditions when working in the

open and for deficiencies in general amenities and facilitates. Provided that employees in the limestone quarries of Cockburn Cement Ltd shall be paid an amount of **41 cents** per hour in lieu of the **$17.07** referred to in this subclause.

(b) (i) In addition to the rates prescribed in this clause a driver of an overhead electric crane, mobile crane, front end loader or tractor, employed by Cockburn Cement Limited shall, subject to as hereinafter provided, be paid an allowance of **16 cents** per hour.

(ii) The allowance prescribed in this paragraph is to compensate for the extra duties, including servicing and re-fuelling of machines, associated with the work practices of Cockburn Cement Limited and shall be paid for each hour worked in a quarry, or for each hour worked elsewhere on shifts other than day shift Monday to Friday.

ENGINEERING AND ENGINE DRIVERS' (NICKEL SMELTING) AWARD, 1973.
No. 4 of 1973.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

WMC Resources Ltd and Others.

No. 1412 of 1998.

Engineering and Engine Drivers' (Nickel Smelting) Award, 1973.
No. 4 of 1973.

CHIEF COMMISSIONER W.S. COLEMAN.

24 September 1998.

Order.

HAVING heard Mr W. Game on behalf of the Applicant and Mr R. Gifford 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 Engineering and Engine Drivers' (Nickel Smelting) Award, 1973 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 17th day of September 1998.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 26.—Rates of Pay and Classification Definitions—

A. Delete paragraph (a) of subclause (4) of this clause and insert in lieu thereof the following—

(4) (a) The minimum rates of wages payable to employees covered by this award shall be as follows—

Engineering Employee Group

Wage Group	Classification Title	Minimum Training Requirements	Rate Per Week	Arbitrated Safety Net	Total Rate Per Week Adjustment
EE G1	Engineering Employee Grade 1	In-house Training	309.80	48.00	357.80
EE G2	Engineering Employee Grade 2	Production/ Engineering Certificate I	323.50	48.00	371.50
EE G3	Engineering Employee Grade 3	Production/ Engineering Certificate II	343.60	48.00	391.60
EE G4	Engineering Employee Grade 4	Trade Certificate	363.60	48.00	411.60
EE G5	Engineering Employee Grade 5	Completion of 33% Qualification for EE G7	384.30	48.00	432.30
EE G6	Engineering Employee Grade 6	Completion of 66% Qualification for EE G7	397.80	48.00	445.80
EE G7	Engineering Employee Grade 7	Post Trade Certificate or Formal Equivalent	410.70	48.00	458.70
Plant Control Group					
PC G1	Plant Controller Grade 1	In-house Training	313.40	48.00	361.40
PC G2	Plant Controller Grade 2	Production/ Engineering Certificate I	333.50	48.00	381.50
PC G3	Plant Controller Grade 3	Production/ Engineering Certificate II	343.20	48.00	391.20
PC G4	Plant Controller Grade 4	Trade Certificate	363.20	48.00	411.20
PC G5	Plant Controller Grade 5	Completion of 33% of Qualification for PC G7	377.20	48.00	425.20
PC G6	Plant Controller Grade 6	Completion of 67% of Qualification for PC G7	390.70	48.00	438.70
PC G7	Plant Controller Grade 7	Post Trade Certificate or Formal Equivalent	403.70	48.00	451.60

B. At the end of paragraph (b) of subclause (4) of this clause insert the following—

The rates of pay in this award include the arbitrated safety net adjustment payable under the June 1998 State Wage Case Decision. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award, which are above the rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

ENGINEERING TRADES AND ENGINE DRIVERS (NICKEL REFINING) AWARD, 1971.
No. 10 of 1971.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

WMC Resources Ltd and Others.

No. 1414 of 1998.

Engineering Trades and Engine Drivers (Nickel Refining) Award, 1971.
No. 10 of 1971.

CHIEF COMMISSIONER W.S. COLEMAN.

24 September 1998.

Order.

HAVING heard Mr W. Game on behalf of the Applicant and Mr R. Gifford 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 Engineering Trades and Engine Drivers (Nickel Refining) Award, 1971 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 17th day of September 1998.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 30.—Wages—

A. Delete paragraph (a) of subclause (1) of this clause and insert in lieu thereof the following—

(1) (a) Subject to the provisions of this clause, the minimum rates of wages payable to the employees covered by this award shall be as follows—

	Rate Per Week $	Arbitrated Safety Net Adjustments $	Total Rate Per Week $
Electrical/Instrument Tradesperson	378.10	48.00	426.10
Electrician—Special Class	397.10	48.00	445.10
Instrument Electrical Fitter	419.20	48.00	467.20
Engineering Tradesperson	363.60	48.00	411.60
Machinist —Second Class	330.50	48.00	378.50
—Third Class	317.90	48.00	365.90
Certificated Rigger	348.00	48.00	396.00
Rigger—Other	328.60	48.00	376.60
Tool Storeperson	319.30	48.00	367.30
Battery Attendant	312.40	48.00	360.40
Trades Assistant	311.40	48.00	359.40
Crane Attendant and Dogman	314.90	48.00	362.90
Mobile Crane Driver lifting capacity—more than 10 tons but less than 20 tons	343.10	48.00	391.10
more than 20 tons but less than 40 tons	347.30	48.00	395.30
Power House Operator			
Grade 1	367.40	48.00	415.40
Grade 2	385.30	48.00	433.30
Grade 3	395.50	48.00	443.50

B. At the end of paragraph (b) of subclause (1) of this clause insert the following—

The rates of pay in this award include the arbitrated safety net adjustment payable under the June 1998 State Wage Case Decision. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award, which are above the rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

ENGINEERING TRADES (GOVERNMENT) AWARD, 1967.
Award Nos. 29, 30 and 31 of 1961 and 3 of 1962.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Hon Minister for Works and Others.

No. 1413 of 1998.

"Engineering Trades (Government) Award, 1967 Award Nos. 29, 30 and 31 of 1961 and 3 of 1962.

CHIEF COMMISSIONER W.S. COLEMAN.

9 October 1998.

Order.

HAVING heard Mr W. Game on behalf of the Applicant and Ms T. Babaeff 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 "Engineering Trades (Government) Award, 1967 Award Nos. 29, 30 and 31 of 1961 and 3 of 1962 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 17th day of September 1998.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 15.—Shift Work: Delete paragraph (c) of subclause (5) and insert in lieu thereof the following—

(c) Monday to Friday shift penalties shall apply to employees rostered to work on the rostered day off as prescribed in Clause 13.—Hours of Duty.

2. Clause 17.—Special Rates and Provisions—

A. Delete subclauses (1)-(5) and insert in lieu thereof the following—

(1) Height Money—

An employee shall be paid an allowance of $1.69 for each day work is carried out at a height of 15.5 metres or more above the nearest horizontal plane, but this provision does not apply to linespersons nor to riggers and splicers on ships or buildings.

(2) Dirt Money—

Dirt Money of 36 cents per hour shall be paid as follows—

(a) To employees employed on hot or dirty locomotives, or stripping locomotives, boilers, steam, petrol, diesel or electric cranes, or when repairing Babcock and Wilcox or other stationary boilers on site (except repairs on bench to steam and water mounting), or when repairing the conveyor gear in conduit of power houses and when repairing or overhauling electric or steam pile-driving machines and boring plants.

(b) Bitumen Sprayers—Large Units—

(i) To employees whilst engaged on work appertaining to the spraying of bitumen but exclusive of the standard chassis engine from the front end of the main tank to the back end of the plant. Provided that work on the compressor and its engine shall not be subject to dirt money.

(ii) To motor mechanics in the motor section for all work performed on the standard chassis from and including the sump to the rear end of the chassis, but excluding the engine and parts forward thereto unless the work is of a specially dirty nature, where clothes are necessarily unduly soiled or injured by the nature of the work done. Provided that to employees engaged as above on sprays of the Bristow type, dirt money of 39 cents per hour shall be paid.

(c) Bitumen Sprayers—Small Units—

(i) To employees for work done on main tank, its fittings, pump and spray arms.

(ii) To motor mechanics on work from and including the sump to the rear end of the chassis, but excluding the engine and parts forward thereto unless the work is of a specially dirty nature where clothes are necessarily unduly soiled or injured by the nature of the work done.

(d) To employees on all other dirty tar sprays and kettles.

(e) Diesel Engines—Work on engines or on gear box attached to engines but excluding work on rollers (wheels) on which a diesel powered roller travels.

(f) Dirt Money shall only be paid during the stages of dismantling and cleaning and shall not cover employees who receive portions of the work after cleaning has taken place.

(g) Notwithstanding anything contained in the foregoing provisions, dirt money shall not be paid unless the work is of an exceptionally dirty nature where clothes are necessarily unduly soiled or injured by the nature of the work done.

(3) Confined Space—

42 cents per hour extra shall be paid to any employee working in any place the dimensions of which necessitate the employee working in an unusually stooped or otherwise cramped position, or where confinement within a limited space is productive of unusual discomfort.

(4) Any employee actually working a pneumatic tool of the percussion type shall be paid 20 cents per hour extra whilst so engaged.

(5) Hot Work—

An employee shall be paid an allowance of 36 cents per hour while working in the shade in any place where the temperature is raised by artificial means to between 46.1 and 54.4 degrees Celsius.

B. Delete subclauses (8)-(16) and insert in lieu thereof the following—

(8) Any employee working in water over his/her boots or, if gumboots are supplied, over the gumboots, shall be paid an allowance of 93 cents per day.

(9) Employees using Anderson-Kerrick steam cleaning units or units of a similar type on cranes or other machinery shall be paid an allowance of 36 cents per hour.

(10) Well Work—

An employee required to enter a well nine metres or more in depth for the purpose in the first instance of examining the pump, or any other work connected therewith, shall receive an amount of $1.99 for such examination and 76 cents per hour extra thereafter for fixing, renewing or repairing such work.

(11) Ship Repair Work—

Any employee engaged in repair work on board ships shall be paid an additional $3.66 per day for each day on which so engaged.

(12) An employee shall, whilst working in double bottom tanks on board vessels, be paid an allowance of $1.43 per hour.

(13) An employee shall, whilst using explosive powered tools, be paid an allowance of 11 cents per hour, with a minimum payment of 82 cents per day.

(14) Abattoirs—

An employee employed in and about an abattoir shall be paid an allowance calculated at the rate of $11.73 per week. The allowance shall be paid during overtime but shall not be subject to penalty additions. An employee receiving this allowance is not entitled to any other allowance under this clause. The allowance prescribed herein may be reduced to $10.76 with respect to any employee who is supplied with overalls by the employer.

(15) Employees engaged on iron ore and manganese ore loading equipment at the Geraldton Harbour shall be paid an allowance of 37 cents per hour, with a minimum payment for four hours.

(16) Morgues—

An employee required to work in a morgue shall be paid 37 cents per hour or part thereof in addition to the rates prescribed in this clause.

C. Delete subclause (19) and insert in lieu thereof the following—

(19) An employee required to repair or maintain incinerators shall be paid $2.12 per unit.

D. Delete subclauses (21)-(24) and insert in lieu thereof the following—

(21) (a) Subject to the provisions of this clause, an employee whilst employed on foundry work shall be paid a disability allowance of 25 cents for each hour worked to compensate for all disagreeable features associated with foundry work including heat, fumes, atmospheric conditions, sparks, dampness, confined space and noise.

(b) The foundry allowance herein prescribed shall also apply to apprentices and unapprenticed juniors employed in foundries. Provided that where an apprentice is, for a period of half a day or longer, away from the foundry for the purpose of receiving tuition, the amount of foundry allowance paid to him shall be decreased proportionately.

(c) The foundry allowance herein prescribed shall be in lieu of any payment otherwise due under this clause and does not in any way limit an employer's obligations to comply with all relevant requirements of Acts and Regulations relative to conditions in foundries.

(d) For the purpose of this subclause foundry work shall mean—

(i) Any operation in the production of castings by casting metal in moulds made of sand, loam, metal moulding composition or other material or mixture of materials, or by shell moulding,

centrifugal casting or continuous casting; and

(ii) Where carried on as an incidental process in connection with and in the course of production to which paragraph (i) of this definition applies, the preparation of moulds and cores (but not in the making of patterns and dies in a separate room), knock-out processes and dressing operations, but shall not include any operation performed in connection with—

(aa) non-ferrous die casting (including gravity and pressure);

(bb) casting of billets and/or ingots in metal mould;

(cc) continuous casting of metal into billets;

(dd) melting of metal for use in printing; and

(ee) refining of metal.

(22) An electronics tradesperson, an electrician—special class, an electrical fitter and/or an armature winder or an electrical installer who holds 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, 1948 shall be paid an allowance of $14.20 per week.

(23) Where an employee is engaged in a process involving asbestos and is required to wear protective equipment, ie. respiratory protection in the form of a high efficiency class H particulate respirator and/or special clothing, a disability allowance of 45 cents per hour shall be paid for each hour or part thereof that such employee is so engaged.

(24) Towing Allowance: A Level 1, 2 or 3 Tradesperson who drives a tow truck towing an articulated bus in traffic shall be paid an allowance of $3.23 per shift when such duties are performed. This allowance shall be payable irrespective of the time such work is performed and is not subject to any premium of penalty additions.

E. Delete subclauses (26)-(29) and insert in lieu thereof the following—

(26) First Aid Allowance: An employee, holding either a Third Year First Aid Medallion of the St. John Ambulance Association or a "C" Standard Senior First Aid Certificate of the Australian Red Cross Society, appointed by the employer to perform first aid duties, shall be paid $6.89 per week in addition to his/her ordinary rate.

(27) Polychlorinated Biphenyls—

Employees required to remove or handle equipment or fittings containing polychlorinated biphenyls (PCBs) for which protective clothing must be worn shall, in addition to the rates and provisions contained in this Clause, be paid an allowance of $1.43 per hour whilst so engaged.

(28) Nominee Allowance

A licensed electrical fitter or installer who acts as nominee for the employer shall be paid an allowance of $12.37 per week.

(29) Hospital Environment Allowance—

Notwithstanding the provisions of this clause, the following allowances shall be paid to maintenance employees at the hospitals listed hereunder.

(a) (i) $9.90 per week for work performed in a hospital environment; and

(ii) $3.44 per week for disabilities associated with work performed in difficult access areas, tunnel complexes and areas with great temperature variation at—

Princess Margaret Hospital
King Edward Memorial Hospital
Sir Charles Gairdner Hospital
Royal Perth Hospital
Fremantle Hospital

(b) $6.67 per week for work performed in a hospital environment at—

Kalgoorlie Hospital
Osborne Park Hospital
Albany Hospital
Bunbury Hospital
Geraldton Hospital
Mt. Henry Hospital
Northam Hospital
Swan Districts Hospital
Perth Dental Hospital

(c) $4.73 per week for work performed in a hospital environment at—

Bentley Hospital
Derby Hospital
Narrogin Hospital
Port Hedland Hospital
Rockingham Hospital
Sunset Hospital
Armadale Hospital
Broome Hospital
Busselton Hospital
Carnarvon Hospital
Collie Hospital
Esperance Hospital
Katanning Hospital
Merredin Hospital
Murray Hospital
Warren Hospital
Wyndham Hospital

3. First Schedule—Wages—

A. Delete subclause (5) and insert in lieu thereof the following—

(5) (a) In addition to the rates contained in subclauses (2) and (3) hereof, employees designated in classifications C14 to C7 inclusive shall receive an all purpose industry allowance of $11.10.

(b) This allowance will be paid in two instalments, as follows—

(i) $5.60 of the allowance shall be paid after the first 12 months of Government service; and

(ii) the remaining $5.50—totalling $11.10—shall be paid on completion of 24 months of Government service.

(c) The industry allowance shall be adjusted in accordance with any movements to the wage prescribed in subclause (2) hereof, as follows—

(i) the increase shall apply to the 'plus 24 months of service' rate;

(ii) the increase is to be rounded to the nearest ten cents;

(iii) the rate is to be divided by two to calculate instalments in accordance with subparagraphs (i) and (ii) of paragraph (b) hereof, provided that the instalment rates are not expressed in less than ten cent amounts; and

(iv) in the event of such an equal division of the industry allowance not resulting in the rates being expressed in not less than ten cent amounts, as provided in sub-paragraph (iii) hereof, the division shall be unequal and weighted to the 12 months' service instalment.

B. Delete subclause (8) and insert in lieu thereof the following—

(8) (a) Leading Hands

A tradesperson placed in charge of three or more other employees shall, in addition to the ordinary rate, be paid per week—

	$
If placed in charge of not less than three and not more than ten other employees	17.90
If placed in charge of more than ten and not more than 20 other employees	27.30
If placed in charge of more than 20 other employees	35.20

(b) Any tradesperson moulder employed in a foundry where no other jobbing moulder is employed shall be paid at the rate prescribed for leading hands in charge of not less than three and not more than ten other employees.

(c) 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 a Leading Hand in charge of not less than three and not more than ten other employees.

(d) In addition to any rates to which an employee may be entitled under this clause a Mechanic-in-Charge, employed by the Department of Conservation and Land Management in the following towns, shall be paid per week—

	$
Manjimup, Collie	43.90
Harvey, Dwellingup, Mundaring, Yanchep	22.00
Ludlow, Nannup, Margaret River, Kirup, Walpole, Pemberton	11.00
Jarrahdale	11.00

C. Delete subclause (10) to (12) inclusively and insert in lieu thereof the following—

(10) Construction Allowance

(a) In addition to the appropriate rate of pay prescribed in subclause (1) hereof, an employee shall be paid—

(i) $31.60 per week if engaged on the construction of a large industrial undertaking or any large civil engineering project;

(ii) $28.40 per week if engaged on a multi-storey 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-storey building" is a building which, when completed, will consist of at least five stories.

(iii) $16.80 per week if engaged otherwise on construction work falling within the definition of construction work in Clause 5.—Classification Structure and Definitions of this award.

(b) Any dispute as to which of the aforesaid allowances applies to particular work shall be determined by the Board of Reference.

(c) Any allowance paid under this subclause includes any allowance otherwise prescribed in Clause 17.—Special Rates and Provisions of this award.

(11) 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) $9.90 per week to such tradesperson; or

(ii) in the case of an apprentice a percentage which appears against the relevant year of apprenticeship in subclause (5) of this Schedule,

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 this Schedule.

(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 an apprentice shall replace or pay for any tools supplied by the employer, if lost through the negligence of such employee.

(12) Drilling Allowance

A driller using a Herbert two-spindle sensitive machine to drill to a marked circumference shall be paid an additional $1.60 per hour whilst so engaged.

ENGINEERING TRADES (GOVERNMENT) AWARD, 1967.
Award Nos. 29, 30 and 31 of 1961 and 3 of 1962.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing, and Allied Workers Union of Australia, Engineering and Electrical Division, W.A. Branch

and

The Minister for Works and Others.

No. 1426 of 1998.

Engineering Trades (Government) Award, 1967 Award Nos. 29, 30 and 31 of 1961 and 3 1962.

CHIEF COMMISSIONER W.S. COLEMAN.

8 September 1998.

Order.

HAVING heard Mr C. Young on behalf of the Applicant and The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers and Ms T. Babaeff 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 Engineering Trades (Government) Award, 1967 Award Nos. 29, 30 and 31 of 1961 and 3 1962 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 24th day of August, 1998.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. First Schedule Wages—

A. Delete subclauses (1) and (2) of this clause and insert in lieu thereof the following—

(1) (a) The rates of pay in this award include four arbitrated safety net adjustments totalling $34.00 the last payable from the beginning of the first pay period on or after the 14th day of November 1997. These arbitrated safety net adjustments shall be absorbed into any overaward payments.

Furthermore the rates of pay in this award include the arbitrated safety net adjustments of the following amounts—

(i) $14.00 per week increase in award rates up to and including $550.00 per week.

(ii) $12.00 per week increase in award rates above $550.00 per week and up to and including $700.00 per week; and

(iii) $10.00 per week increase in award rates above $700.00 per week.

These arbitrated safety net adjustments shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement.

Increases made under State Wage Case Principles prior to June 1998, except those resulting from enterprise agreements, are not to be used to offset this arbitrated safety net adjustment of $14.00, $12.00 or $10.00 per week as the case may be.

(b) Subject to this Schedule, an adult employee in a classification specified in the table set out in subclause (2) hereof (other than an apprentice or an employee of the Building Management Authority) shall be paid at the respective award wage rate per week assigned to that class of work.

The all-purpose hourly rate for this Award shall be 1/38th of the total rate prescribed herein.

(2)

		On Engagement $	Safety Net Adjustment $	Total Rate $
Classification:				
C 5	Advanced Engineering Tradesperson—Level II	566.80	46.00	612.80
C 6	Advanced Engineering Tradesperson—Level I	545.00	46.00	591.00
C 7	Engineering Tradesperson Special Class—Level II	501.40	48.00	549.40
C 8	Engineering Tradesperson Special Class—Level I	479.60	48.00	527.60
C 9	Engineering Tradesperson—Level II	457.80	48.00	505.80
C10	Engineering Tradesperson—Level I/Production Systems Employee	436.00	48.00	484.00
C11	Engineering Employee—Level IV	402.90	48.00	450.90
C12	Engineering Employee—Level III	381.10	48.00	429.10
C13	Engineering Employee—Level II	357.50	48.00	405.50
C14	Engineering Employee—Level I	340.10	48.00	388.10

C. Delete subclause (14) of this clause and insert in lieu thereof the following—

(14) Minimum Wage—

(a) No adult employee shall be paid less than the Minimum Adult Wage unless otherwise provided by this clause.

(b) The Minimum Adult Award Wage for full time adult employees is $373.40 per week payable from the beginning of the first pay period commencing on or after 27 July 1998.

(c) The Minimum Adult Award Wage of $373.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions to June 1998, including the arbitrated safety net adjustment of $14.00, $12.00 or $10.00 per week as the case may be, from Matter no. 757 of 1998.

(d) Unless otherwise provided in this clause adults employed as casual or part time employees shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.

(e) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision of the Minimum Adult Award Wage of $373.40.

(f) (i) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on Traineeships or Jobskills placements, or to other categories of employees who by prescription are paid less than the minimum award rate.

(ii) Liberty to apply is reserved in relation to any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.

(g) Subject to this clause the Minimum Adult Award Wage shall—

(i) Apply to all work in ordinary hours.

(ii) Apply to the calculation of overtime and all other penalty rates, superannuation payments, during sick leave, annual leave, long service leave and for all other purposes of this award.

(h) (i) The rates of pay in this award include the minimum weekly wage for adult employees payable under the June 1998 State Wage Case Decision. Any increase arising from the insertion of the adult minimum wage will be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award agreements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage Case Principles or under the current Statement of Principles, except those resulting from enterprise agreements, are not to be used to offset the adult minimum wage.

2. Fifth Schedule—Building Management Authority Wages and Conditions: Delete paragraph (a) of subclause (5) of this clause and insert in lieu thereof the following—

(5) Wages—

(a) The wages for Building Management Authority employees as from the first pay period commencing on or after the 24th day of August 1998 will be as follows—

Classification	On Engagement $	Safety Net Adjustment $	Total Rate Per Week $
Engineering Tradesperson—			
Level 4— Group A	492.60	48.00	540.60
Group B	502.30	48.00	550.30
Group C	511.70	48.00	559.70
Level 3A	465.40	48.00	513.40
Level 3B	457.70	48.00	505.70
Level 2	442.00	48.00	490.00
Level 1	436.00	48.00	484.00
Engineering Employee			
Level 4— Group A	406.20	48.00	454.20
Group B	392.70	48.00	440.70
Group C	384.20	48.00	432.20
Group D	381.70	48.00	429.70
Level 3	370.00	48.00	418.00
Level 2	363.00	48.00	411.00
Level 1	341.90	48.00	389.90

Classification	After one year		
Engineering Tradesperson—			
Level 4— Group A	498.60	48.00	546.60
Group B	508.30	48.00	556.30
Group C	517.70	48.00	565.70
Level 3A	471.10	48.00	519.10
Level 3B	462.60	48.00	510.60
Level 2	447.30	48.00	495.30
Level 1	441.20	48.00	489.20
Engineering Employee—			
Level 4— Group A	411.10	48.00	459.10
Group B	397.10	48.00	445.10
Group C	388.20	48.00	436.20
Group D	383.90	48.00	431.90
Level 3	374.50	48.00	422.50
Level 2	367.10	48.00	415.10
Level 1	346.00	48.00	394.00

Classification	After Two Years of Service $	Safety Net Adjustment $	Total Rate Per Week $
Engineering Tradesperson—			
Level 4— Group A	503.60	48.00	551.60
Group B	513.30	48.00	561.30
Group C	523.10	46.00	569.10
Level 3A	475.50	48.00	523.50
Level 3B	467.30	48.00	515.30
Level 2	451.50	48.00	499.50
Level 1	445.60	48.00	493.60
Engineering Employee			
Level 4— Group A	415.00	48.00	463.00
Group B	401.10	48.00	449.10
Group C	391.90	48.00	439.90
Group D	386.90	48.00	434.90
Level 3	378.00	48.00	426.00
Level 2	370.80	48.00	418.80
Level 1	349.10	48.00	397.10

The rates of pay in this award include four arbitrated safety net adjustments totalling $34.00 the last payable from the beginning of the first pay period on or after the 14th day of November 1997. These arbitrated safety net adjustments shall be absorbed into any overaward payments.

Furthermore the rates of pay in this award include the arbitrated safety net adjustments of the following amounts—

(i) $14.00 per week increase in award rates up to and including $550.00 per week.

(ii) $12.00 per week increase in award rates about $550.00 per week and up to and including $700.00 per week; and

(iii) $10.00 per week increase in award rates above $700.00 per week.

These arbitrated safety net adjustments shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement.

Increases made under State Wage Case Principles prior to June 1998, except those resulting from enterprise agreements, are not to be used to offset this arbitrated safety net adjustment of $14.00, $12.00 or $10.00 per week as the case may be.

FURNITURE TRADES INDUSTRY AWARD.
No. A6 of 1984.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Forrest Products, Furnishing and Allied Industries Industrial Union of Workers, W.A. Branch

and

Joyce Australia Ltd and Others.

No. 1248 of 1998.

Furniture Trades Industry Award.

CHIEF COMMISSIONER W.S. COLEMAN.

8 September 1998.

Order.

HAVING heard Mr M. Lourey on behalf of the Applicant and Mr J. Uphill 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 Furniture Trades Industry Award be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 13th day of August 1998.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 8.—Wages—

A. Delete subclauses (2) and (3) of this Clause and insert in lieu thereof the following—

(2) Wages

The minimum rate of wage for employees covered by this award shall be—

	Base Rate $	Arbitrated Safety Net Adjustments $	Total Minimum Rate $
(a) Furniture Making Employee—Group 1	325.40	48.00	373.40
Furniture Making Employee—Group 2	342.10	48.00	390.10
Furniture Making Employee—Group 3	364.60	48.00	412.60
Furniture Making Employee—Group 4	385.50	48.00	433.50
Furniture Making Employee—Group 5	417.20	48.00	465.20
Furniture Making Employee—Group 6	438.10	48.00	486.10
Furniture Making Employee—Group 7	458.90	48.00	506.90

(b) The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreement, are not to be used to offset arbitrated safety net adjustments.

Furthermore, the rates of pay in this award include the $10.00 per week arbitrated safety net adjustment payable from the beginning of the first pay period on or after 14th day of November 1997.

This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement.

Increases made under State Wage Case Principles prior to November 1997, except those resulting from enterprise agreements, are not to be used to offset this arbitrated safety net adjustment of $10.00 per week.

The rates of pay in this award include the arbitrated safety net adjustment payable under the June 1998 State Wage Case Decision. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

(3) Tool Allowance

Where the employer does not provide a cabinetmaker with the tools ordinarily required by a cabinetmaker in the performance of his or her work of cabinetmaking, the employer shall pay a tool allowance of $10.20 per week.

The tool allowance for cabinetmaking apprentices shall be subject to the provisions hereof and, where applicable, paid at the rate prescribed by subclause (3) of Clause 34.—Apprentices.

B. Delete subclause (6) of this Clause and insert in lieu thereof the following—

(6) Minimum Adult Award Wage

Notwithstanding the terms of this clause (or subclause) no adult employee shal be paid less than the Minimum Adult Award Wage unless otherwise provided in this clause.

(i) The Minimum Adult Award Wage for full time adult employees is $373.40 per week payable from the beginning of the first pay period commencing on or after 13 August 1998.

(ii) The Minimum Adult Award Wage of $373.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions to June 1998, including the $10.00 per week arbitrated safety net adjustment from Matter No. 940 of 1997 and the $14.00 per week arbitrated safety net adjustment from Matter No. 757 of 1998.

(iii) Unless otherwise provided for in this subclause, adults employed as casual or part time employees shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.

(iv) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision to the Minimum Adult Award Wage of $373.40 per week.

(v) (aa) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on traineeships, or Jobskills traineeships or to other categories of employees who by prescription are paid less than the minimum award rate.

(bb) Liberty to apply is reserved in relation to employees excluded under (aa) above and any special categories of employees not included here or otherwise in relation to the applicatiopn of the Minimum Adult Award Wage.

(vi) Subject to this subclause the Minimum Adult Award Wage shall—

(aa) apply to all work in ordinary hours.

(bb) apply to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave and for all other purposes of this award.

(vii) Nothing in this clause (or subclause) shall operate to reduce the rate of pay fixed by the award for an adult apprentice in force on 13th November 1997.

(Note: A notation will be made in each relevant award by the Registrar where the adult apprentice rate requires specific mention as at 13th November 1997.)

2. Clause 10.—Leading Hands: Delete this clause and insert in lieu thereof the following new clause—

An employee placed in charge of—

(1) Not less than three and not more than ten other employees shall be paid $18.90 per week extra.

(2) More than ten and not more than twenty other employees shall be paid $23.20 per week extra.

(3) More than 20 other employees shall be paid $30.70 per week extra.

3. Clause 15.—Meal Money: Delete subclauses (1) and (2) of this clause and insert in lieu thereof the following—

(1) An employee required to work overtime for more than two hours Monday to Friday inclusive, shall be supplied with a meal by the employer or paid $7.10 for a meal.

(2) If the amount of overtime required to be worked necessitates a second or subsequent meal, the employer shall provide such meal(s) or pay an amount of $4.80 for each second or subsequent meal.

4. Clause 45.—First Aid Equipment: Delete subclause (2) of this clause and insert in lieu thereof the following—

(2) An employee who has been trained to render first aid and who is the current holder of appropriate first aid qualifications such as a certificate from the St John Ambulance or asimilar body, shall be paid a weekly allowance of $7.10 if he/she is appointed by his/her employer to perform first aid duty.

GOLD MINING ENGINEERING AND MAINTENANCE AWARD.
No. 26 of 1947.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

WMC Resources Ltd and Others.

No. 1422 of 1998.

Gold Mining Engineering and Maintenance Award No. 26 of 1947.

CHIEF COMMISSIONER W.S. COLEMAN.

24 September 1998.

Order.

HAVING heard Mr W. Game on behalf of the Applicant and Mr R. Gifford 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 Gold Mining Engineering and Maintenance Award be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 17th day of September 1998.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 5.—Classification Structure and Rates of Pay—

A. Delete paragraph (a) of subclause (1) of this clause and insert in lieu thereof the following—

(1) (a)

Classification	Rate Per Week	Arbitrated Safety Net Adjustments	Total Rate Per Week
	$	$	$
Maintenance Employee Level 1	314.60	48.00	362.60
Maintenance Employee Level 2	329.00	48.00	377.00
Maintenance Employee Level 3	345.00	48.00	393.00
Maintenance Tradesperson Level 1	363.10	48.00	411.10
Maintenance Tradesperson Level 2	381.30	48.00	429.30
Maintenance Tradesperson Level 3	399.50	48.00	447.50
Maintenance Tradesperson Level 4	417.60	48.00	465.60

B. At the end of paragraph (b) of subclause (1) of this clause insert the following—

The rates of pay in this award include the arbitrated safety net adjustment payable under the June 1998 State Wage Case Decision. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award, which are above the rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases 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. Appendix 1—Kalgoorlie Consolidated Gold Mines Pty Ltd—

A. Clause 5.—Wages: Delete paragraph (a) of subclause (1) of this clause and insert in lieu thereof the following—

(1) (a) Until the transitional arrangements outlined in subclause (4) of Clause 3.—Classification Structures and Definitions of this Appendix have been complied with, the minimum rates of wages payable per week to employees covered by this Appendix shall be as follows—

Occupation	Rate Per Week	Arbitrated Safety Net Adjustments	Total Rate Per Week
	$	$	$
Driller and/or Screwer	314.60	48.00	362.60
Motor Attendant	314.60	48.00	362.60
Electrical Installer	363.20	48.00	411.20
Linesperson—			
Grade 1—i.e. with not less than three years' experience as a linesperson	363.20	48.00	411.20
Grade 2—i.e. with less than three years' experience as a linesperson	345.00	48.00	393.00
Pipe Fitter	329.00	48.00	377.00
Coppersmith	363.20	48.00	411.20
Blacksmith	363.20	48.00	411.20
Electrical Fitter	363.20	48.00	411.20
Fitter	363.20	48.00	411.20
Motor Mechanic	363.20	48.00	411.20
Turner and/or Machinist	363.20	48.00	411.20
Oxy-acetylene and Electrical Welder	363.20	48.00	411.20
Pattern Maker	374.30	48.00	422.30
Drill Doctor	327.40	48.00	375.40
Boilermaker	363.20	48.00	411.20

B. At the end of paragraph (b) of subclause (1) of this clause insert the following—

The rates of pay in this award include the arbitrated safety net adjustment payable under the June 1998 State Wage Case Decision. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award, which are above the rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award

arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases 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.

GOLF LINK AND BOWLING GREEN EMPLOYEES' AWARD, 1993.
No. 16 of 1967.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Albany Bowling Club and Others.

No. 1353 of 1998.

Golf Link and Bowling Green Employees' Award, 1993
No. 16 of 1967.

CHIEF COMMISSIONER W.S. COLEMAN.

24 September 1998.

Order.

HAVING heard Mr B. Krygsman on behalf of the Applicant and Mr C. Keys and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT Golf Link and Bowling Green Employees' Award, 1993 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 10th day of September 1998.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 27.—Wages—

A. Delete the preamble, and subclause (1) of this clause and insert in lieu thereof the following—

The following shall be the minimum rates of wages payable to employees covered by this award.

	Base Rate per fortnight $	Arbitrated Safety Net Adjustment $	Total Rate per fortnight $
CLASSIFICATIONS			
(1) Adult Employees			
Trainee (90% of Groundsperson Grade 1 rate)	561.40	96.00	657.40
Groundsperson Grade 1	623.80	96.00	719.80
Groundsperson Grade 2	630.80	96.00	726.80
Assistant Greenkeeper	675.40	96.00	771.40
Greenkeeper Tradesperson Grade 1	795.40	96.00	891.40
Greenkeeper Tradesperson Grade 2	814.00	96.00	910.00

The rates of pay in this award include three arbitrated safety net adjustments totalling $96.00 per fortnight 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 $16.00 per fortnight 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.

Furthermore the rates of pay in this award include the $20.00 per fortnight arbitrated safety net adjustment payable from the beginning of the first pay period on or after 14th day of November 1997.

This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement.

Increases made under State Wage Case Principles prior to November 1997, except those resulting from enterprise agreements, are not to be used to offset this arbitrated safety net adjustment of $20.00 per fortnight.

The rates of pay in this award include the arbitrated safety net adjustment payable under the June 1998 State Wage Case Decision. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award, which are above the rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

B. Delete subclauses (3) and (4) of this clause and insert in lieu thereof the following—

(3) Leading Hands (Greenkeeper Tradesperson)

In addition to the appropriate rate prescribed in subclause (1) of this clause a Leading Hand shall be paid—

	Extra Per Fortnight $
(a) If placed in charge of up to three other employees including at least one other Greenkeeper;	16.40
(b) If placed in charge of more than three other employees including at least one other Greenkeeper	36.10

(4) Minimum Wage Rates

Notwithstanding the terms of this clause (or subclause) no adult employee shall be paid less than the Minimum Adult Award Wage unless otherwise provided in this clause.

(i) The Minimum Adult Award Wage for full time adult employees is $746.80 per fortnight payable from the beginning of the first pay period on or after 10th September 1998.

(ii) The Minimum Adult Award Wage of $746.80 per fortnight is deemed to include all arbitrated safety net adjustments from State Wage Case decisions to June 1998, including the $20.00 per fortnight arbitrated safety net adjustment from Matter No. 940 of 1997 and the $28.00 per fortnight arbitrated safety net adjustment from matter No. 757 of 1998.

(iii) Unless otherwise provided in this subclause adults employed as casual or part time employees shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.

(iv) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision to the

Minimum Adult Award Wage of $746.80 per fortnight.

(v) (aa) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on traineeships, or Jobskills traineeships or to other categories of employees who by prescription are paid less than the minimum award rate.

(bb) Liberty to apply is reserved in relation to employees excluded under (aa) above and any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.

(vi) Subject to this subclause the Minimum Adult Award Wage shall —

(aa) apply to all work in ordinary hours.

(bb) apply to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave and for all other purposes of this award.

(vii) Nothing in this clause (or subclause) shall operate to reduce the rate of pay fixed by the award for an adult apprentice in force on 13th November 1997.

(Note: A notation will be made in each relevant award by the Registrar where the adult apprentice rate requires specific mention as at 13th November 1997.)

HEALTH ATTENDANTS AWARD, 1979.
No. A 49 of 1978.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Carine Glades Health Studio and Others.

No. 1467 of 1998.

Health Attendants Award, 1979
No. A 49 of 1978.

15 September 1998.

Reasons For Decision (extempore).

SENIOR COMMISSIONER: This is an application to amend the Health Attendants Award, 1979. In particular, it is an application to amend Clause 8.—Part-Time Workers, of the Award. In essence, what the Union seeks is to amend the Award to provide that part-time workers are paid one-thirty-eighth, as an hourly rate, of the wages fixed in Clause 11.—Wages, of the Award, rather than one-fortieth as the Award, by Clause 8.—Part-Time Workers, now prescribes.

The Union argues, and in my view rationally, that the Award provides for a 38 hour week as the ordinary working week. Indeed, as I have already pointed out, Clause 26.—Payment of Wages—38 Hour Week, of the Award seems to imply, if it does not expressly say so, that employees working less than a full week should be paid on a pro rata basis based on a 38 hour week. Thus the amendment which the Applicant seeks really does no more than bring to the Award a degree of consistency which apparently does not now exist.

The Union puts the need for the current amendment down to being an oversight made at the time when the Award was amended in or about 1990. Perhaps the real explanation is that when in 1987 the Award was amended to reduce the normal working week from 40 hours to 38 hours, the hourly rate was to be fixed by a divisor of 40 until approximately a year later, as subclause 26(9) reveals. Thus at that time there was no reason to amend the provision now in question. With the effluxion of time this provision has become anachronistic in light of other provisions in the Award. Whether this is as the result of an oversight or not, it seems rational, for the reasons advanced, to make the amendment now sought.

Appearances: Ms D.E. MacTiernan as agent for the Applicant.

No appearance by the Respondents.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Carine Glades Health Studio and Others.

No. 1467 of 1998.

Health Attendants Award, 1979
No. A 49 of 1978.

15 September 1998.

Order.

HAVING heard Ms D.E. MacTiernan as agent for the Applicant and there being no appearance by the Respondents, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Health Attendants Award, 1979 be varied by deleting the word "one-fortieth" and replacing with the word "one-thirty-eighth" in subclause (1) of Clause 8; and by deleting the words "forty hours" and replacing with the words "thirty eight hours" in subclause (2)(a) of Clause 8; with effect from the beginning of the first pay period commencing on or after the date hereof.

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

HEAT CONTAINMENT INDUSTRIES (REFRACTORY SPECIALTIES) AWARD.
No. 3 of 1981.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Federated Brick, Tile and Pottery Industrial Union of Australia (Union of Workers) Western Australian Branch

and

Thermal Ceramics.

No. 1227 of 1998.

Heat Containment Industries (Refractory Specialties) Award No. 3 of 1981.

CHIEF COMMISSIONER W.S. COLEMAN.

14 September 1998.

Order.

HAVING heard Mr J. Bainbridge on behalf of the Applicant and Ms J. Dowling on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Heat Containment Industries (Refractory Specialties) Award No. 3 of 1981 be varied in accordance

with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 29th July 1998.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 12.—Wages—

A. Delete paragraphs (1)(a) of this clause and insert in lieu thereof the following—

(1) (a) The following shall be the minimum rates of wages payable to employees covered by this Award—

Classification	Rate per Week $	Supplementary Payment $	Award Rate $
Plant Attendant	344.90	87.57	432.47
Casual Plant Attendant	332.80	57.02	389.82

B. Delete paragraph (1)(b)(i) of this clause and insert in lieu thereof the following—

(b) (i) The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 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.

The rates of pay in this award also include the $10 per week arbitrated safety net adjustment payable from the beginning of the first pay period on or after 14th day of November 1997. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement.

Furthermore the rates of pay in this award include the arbitrated safety net adjustment payable under the June 1998 State Wage Case Decision. This arbitrated safety net adjustments shall be offset against any equivalent amount in rates of pay received by employees whose wages and conditions are regulated by this award and which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

C. Delete subclause (2) of this clause and insert in lieu thereof the following—

(2) Leading Hand—

A leading hand as defined placed in charge of not more than ten other employees shall receive per week an additional $15.85

2. Clause 28.—Special Rates: Delete subclauses (1), (2) and (3) of this clause and insert in lieu thereof the following—

(1) (a) An employee who has been trained to render first aid and who is a current holder of an appropriate first aid qualification such as a certificate from the St. John Ambulance Association or a similar body shall be paid a weekly allowance of $5.50 if nominated by an employer to perform first aid duty.

(b) The employer shall cover any appropriate costs to enable first aid officers' qualifications to be current at all times.

(2) Meal Allowance—

The allowance to be paid in accordance with Clause 9(6) of this award shall be $5.50.

(3) Dust Money—

The sum of $1.25 per hour shall be paid to employees whilst in areas designated dusty by employer and union representatives.

INDUSTRIAL SPRAYPAINTING AND SANDBLASTING AWARD 1991.
No. A33 of 1987.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Abrasive Blasting Services Pty Ltd and Others.

No. 1173 of 1998.

Industrial Spraypainting and Sandblasting Award 1991.
No. A33 of 1987.

COMMISSIONER P E SCOTT.

2 October 1998.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and Mr K Dwyer 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 Industrial Spraypainting and Sandblasting Award 1991 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 31st day of July 1998.

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

Schedule.

1. Clause 1B.—Minimum Adult Award Wage: Delete this Clause and insert the following in lieu thereof—

(1) The rates of pay in this award include the minimum weekly wage for adult employees payable under the

June 1998 State Wage Case Decision. Any increase arising from the insertion of the adult minimum wage will be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements are not to be used to offset the adult minimum wage.

(2) The Minimum Adult Award Wage for full time adult employees is $373.40 per week payable from the beginning of the first pay period commencing on or after 31st July 1998.

(3) The Minimum Adult Award Wage of $373.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions to June 1998, including the $14.00, $12.00 and $10.00 per week arbitrated safety net adjustments from Matter No. 757 of 1998.

(4) Unless otherwise provided in this clause adults employed as casual or part time employees shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.

(5) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision to the Minimum Adult Award Wage of $373.40 per week.

(6) (a) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on traineeships or Jobskills placements, or to other categories of employees who by prescription are paid less than the minimum award rate.

(b) Liberty to apply is reserved in relation to any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.

(7) Subject to this clause the Minimum Adult Award Wage shall —

(a) apply to all work in ordinary hours.

(b) apply to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave and for all other purposes of this award.

2. Clause 8.—Rates of Pay: Delete this clause and insert the following in lieu thereof—

(1) The weekly rate of pay is as follows—

Painter, Spraypainter, Shotblaster, Sandblaster or employee performing two or more of those functions—

	$
Base Rate	458.66
First Arbitrated Safety Net Adjustment	8.00
Second Arbitrated Safety Net Adjustment	8.00
Third Arbitrated Safety Net Adjustment	8.00
Fourth Arbitrated Safety Net Adjustment	10.00
Fifth Arbitrated Safety Net Adjustment	14.00
Weekly Rate	506.66

The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreement, are not to be used to offset arbitrated safety net adjustments.

Furthermore the rates of pay in this award include the $10.00 per week arbitrated safety net adjustment payable from the beginning of the first pay period on or after 14th day of November 1997

This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement.

Increases made under State Wage Case Principles prior to November 1997, except those resulting from enterprise agreements, are not to be used to offset this arbitrated safety net adjustment of $10.00 per week.

The rates of pay in this award include the arbitrated safety net adjustment payable under the June 1998 State Wage Case Decision. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

(3) Location Allowance

Where applicable location allowances in accordance with Clause 19 will be paid.

(4) Underground Allowance

(a) (i) Subject to paragraph (b) hereof, an employee required to work underground shall be paid an allowance of $8.30 per week in addition to the allowance prescribed in subclause (3) of this clause and any other amount prescribed for such employee elsewhere in this award.

(ii) Where a shaft is to be sunk to a depth greater than six metres the payment of the underground allowance shall commence from the surface.

(b) Where an employee is required to work underground for no more than four days or shifts in any ordinary week he/she shall be paid an underground allowance in accordance with the provisions of paragraph (n) of subclause (1) of Clause 9.—Special Rates and Provisions in lieu of the allowance prescribed in paragraph (a) hereof.

(5) Leading Hands

(a) A person specifically appointed to be a leading hand shall be paid at the rate of the undermentioned additional amounts above the rate of the highest classification supervised, or his/her own rate, whichever is the highest,

in accordance with the number of persons in his/her charge—

	Weekly Base Only $	Rate Per Hour $
(i) In charge of not more than one person	10.80	0.30
(ii) In charge of two and not more than five persons	24.05	0.66
(iii) In charge of six and not more than ten persons	30.60	0.83
(iv) In charge of more than ten persons	40.70	1.11

(b) The hourly rate prescribed in paragraph (a) hereof is calculated to the nearest cent (less than half a cent to be disregarded) by multiplying the weekly base amount by 52 and dividing the result by 50.4 and by dividing the amount by 38.

(6) Casual Hands

In addition to the rate appropriate for the type of work, a casual hand shall be paid an additional 20 per cent of the rate her hour with a minimum payment as for three hours employment. The penalty rate herein prescribed shall be deemed to include, inter alia, compensation for annual leave.

3. Clause 9.—Special Rates and Provisions: Delete subclause (1) of this clause and insert the following in lieu thereof—

(1) In addition to the rates otherwise prescribed in this Award, the following rates shall be payable to employees covered by the said Award—

(a) Insulation

An employee handling charcoal, pumice, granulated cork, silicate of cotton, insulwool, slag wool, limpet fibre, vermiculite or other recognised insulating material of a like nature or working in the immediate vicinity so as to be affected by the use thereof 47 cents per hour or part thereof.

(b) Hot Work

An employee who works in a place where the temperature has been raised by artificial means to between 46 degrees and 54 degrees Celsius—39 cents per hour or part thereof, exceeding 54 degrees Celsius—47 cents per hour or part thereof.

Where such work continues for more than two hours, the employee shall be entitled to 20 minutes rest after every two hours work without loss of pay, not including the special rate provided by this paragraph.

(c) Cold Work

An employee who works in a place where the temperature is lowered by artificial means to less than zero degrees Celsius shall be paid 39 cents per hour.

Where such work continues for more than two hours, the employee shall be entitled to 20 minutes rest after every two hours work without loss of pay, not including the special rate provided by this paragraph.

(d) Confined Space

An employee required to work in a confined space shall be paid 47 cents per hour or part thereof.

("Confined Space" means a place the dimensions or nature of which necessitate working in a cramped position or without sufficient ventilation.)

(e) Swing Scaffold

(i) An employee required to work from any type of swing or any scaffold suspended by rope or cable, bosun's chair, or suspended scaffold requiring use of steel or iron hooks or angle irons shall be paid the appropriate allowance set out below corresponding to the storey level at which the anchors or bracing, from which the stage is suspended, has been erected.

Such allowance shall be paid for minimum of four hours' work or part thereof until construction work (as defined) has been completed.

Height of Bracing	First Four Hours	Each Additional Hour
0-15 storeys	2.79	0.58
16-30 storeys	3.58	0.75
31-45 storeys	4.23	0.86
46-60 storeys	6.94	1.44
Greater than 60 storeys	8.84	1.83

Provided that an apprentice with less than two years' experience shall not use a swing scaffold or bosun's chair, and further provided that solid plasterers when working off a swing scaffold shall receive an additional 12 cents per hour.

(ii) Payments contained in this subclause are in recognition of the disabilities associated with the use of swing scaffolds.

(iii) For the purpose of Clause 9(1)(e)(i) hereof—

"Completed" means the building is fully functioning and all work which was part of the principle contract is complete.

"Storeys" shall be given the same meaning as the storey level in Clause 10(2) of this Award.

(f) Wet Work

An employee working in any place where water is continually dripping on him/her so that clothing and boots become wet, or where there is water underfoot, shall be paid 39 cents per hour whilst so engaged.

(g) Dirty Work

An employee engaged on unusually dirty work shall be paid 39 cents per hour.

(h) Towers Allowance

An employee working on a chimney stack, spire, tower, radio or television mast or tower, air shaft (other than above ground in a multi-storey building), cooling tower or silo, where the construction exceeds fifteen metres in height shall be paid 39 cents per hour for all work above fifteen metres, and 39 cents per hour for work above each further fifteen metres.

Provided that any similarly constructed building, or a building not covered by Clause 10.—Multi-Storey Allowance, which exceeds 15 metres in height may be covered by this subclause, or by that clause by agreement or where agreement is not reached, by determination of the Commission.

(i) Toxic Substances

(i) An employee required to use toxic substances 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) Employees using such materials will be provided with and shall use all safeguards as are required by Clause 27.—Protection of Employees and the appropriate Government authority or in the absence of such requirement such safeguards as are defined by a competent authority or person chosen by the union and the employer.

(iii) Employees using toxic substances or materials of a like nature shall be paid 47 cents per hour. Employees working in close proximity to employees so engaged shall be paid 39 cents per hour.

(iv) For the purpose of this paragraph toxic substances shall include epoxy based materials and 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.

(j) Fumes

An employee required to work in a place where fumes of sulphur or other acid or other offensive fumes are present shall be paid such rates as are agreed upon between him/her and the employer; provided that, in default of agreement, the matter may be referred to a Board of Reference for the fixation of a special rate.

Any special rate so fixed shall apply from the date the employer is advised of the claim and thereafter shall be paid as and when the fume condition occurs.

(k) Asbestos

Employees required to use materials containing asbestos or to work in close proximity to employees using such materials shall be provided with and shall use all necessary safeguards as required by the appropriate occupational health authority and where such safeguards include the mandatory wearing of protective equipment (i.e. combination overalls and breathing equipment or similar apparatus) shall be paid 47 cents per hour extra whilst so engaged.

(l) Furnace Work

An employee required to work on the construction or alteration or repairs to boilers, flues, furnaces, retorts, kilns, ovens, ladles and similar refractory work shall be paid $1.03 per hour. This additional rate shall be regarded as part of the wage rate for all purposes.

(m) Acid Work

An employee required to work on the construction or repairs to acid furnaces, acid stills, acid towers and all other acid resisting brickwork shall be paid $1.03 per hour. This additional rate shall be regarded as part of the wage rate for all purposes.

(n) Roof Repairs

Employees engaged on repairs to roofs shall be paid 47 cents per hour.

(o) Underground Allowance

(i) An employee required to work underground for no more than four days or shifts in an ordinary week shall be paid $1.66 a day or shift in addition to any other amount prescribed for such employees elsewhere in this award.

Provided that an employee required to work underground for more than four days or shifts in an ordinary week shall be paid an underground allowance in accordance with the provisions of subclause (3) of Clause 8.—Rates of Pay.

(ii) Where a shaft is to be sunk to a depth greater than six metres the payment of the underground allowance shall commence from the surface.

(iii) This allowance shall not be payable to employees engaged upon "pot and drive" work at a depth of 3.5 metres or less.

(p) First Aid

An employee who is qualified to provide first aid and who is appointed by his/her employer to carry out first aid duties shall be paid $1.64 per day.

(q) Fireproofing Spray: An employee using a fireproof or composition spray shall be paid an additional 39 cents per hour whilst so engaged.

(r) Height Work: An employee working on any structure at a height of more than nine metres where an adequate fixed support not less than 0.75 metres wide is not provided, shall be paid 36 cents per hour in addition to ordinary rates. This subclause shall not apply to an employee working on a bosun's chair or swinging stage.

This provision shall not apply in addition to the Towers Allowance prescribed in paragraph (h) of this subclause.

(s) Brewery Cylinders—Painters

A painter in brewery cylinders or stout tuns shall be allowed 15 minutes' spell in the fresh air at the end of each hour worked by him/her.

Such 15 minutes shall be counted as working time and shall be paid for as such. The rate for working in brewery cylinders or stout tuns shall be at the rate of time and one-half. When an employee is working overtime and is required to work in brewery cylinders and stout tuns he/she shall, in addition to the overtime rates payable, be paid one half of the ordinary rate payable as provided by Clause 8.—Rates of Pay of this award.

(t) Certificate Allowance

A tradesman who is the holder of a scaffolding certificate or rigging certificate issued by the Department of Industrial Affairs and is required to act on that Certificate whilst engaged on work requiring a certificated person shall be paid an additional 39 cents per hour.

Provided that this allowance shall not be payable cumulative on the allowance for swing scaffolds.

(u) Spray Application—Painters

An employee engaged on all spray applications carried out in other than a properly constructed booth approved by the Department of Industrial Affairs shall be paid 39 cents per hour extra.

(v) Spray Painting—

(i) Lead paint shall not be applied by a spray to the interior of any building and no surface painted with lead paint shall be rubbed down or scraped by a dry process.

(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 $1.09 per day.

4. Clause 10.—Multi Storey Allowance: Delete subclause (3) of this clause and insert the following in lieu thereof—

(3) Rates For Multi-Storey Buildings

Except as provided for in subclause (4) of this clause, an allowance in accordance with the following table shall be paid to all employees on the building site. The second and subsequent allowance scales shall, where applicable, commence to apply to all employees when one of the following components of the building—structural steel, re-inforcing steel, boxing or walls, rises above the floor level first designated in each such allowance scale.

"Floor Level" means that stage of construction which in the completed building would constitute the walking surface of the particular floor level referred to in the table of payments.

From commencement of Building to Fifteenth Floor Level—30 cents per hour extra;

From Sixteenth Floor Level to Thirtieth Floor Level—38 cents per hour extra;

From Thirty-first Floor Level to Forty-fifth Floor Level—57 cents per hour extra;

From Forty-sixth Floor Level to Sixtieth Floor Level—73 cents per hour extra;

From Sixty-first Floor Level Onwards—91 cents per hour extra.

The allowance payable at the highest point of the building shall continue until completion of the building.

5. Appendix A—North West Shelf Gas Project:

A. Clause 4.—Site Disability Allowances: Delete this clause and insert the following in lieu thereof—

To compensate for conditions which exist and far exceed those conditions which are provided for within the award, including excessive dust, heat and extremes of terrain, an employee shall be entitled to a payment of $1.41 per hour for each hour worked.

B. Clause 5.—Special Rates: Delete the preamble to this clause and insert the following in lieu thereof—

Employees shall be paid an allowance at the rate of $3.02 per hour for each hour worked to compensate for disabilities associated with the following classes of work and in lieu of the relevant amounts in Clause 9.—Special Rates and Provisions of this award, whether or not such work is performed in any one hour—

6. Appendix B—Asbestos Eradication: Delete clause (5) of this Appendix an insert the following in lieu thereof—

In addition to the rates prescribed in this award, an employee engaged in asbestos eradication (as defined) shall receive $1.26 per hour worked in lieu of Special Rates prescribed in Clause 9(1) of this award with the exception of subclauses (b), (c) and (e).

LIFT INDUSTRY (ELECTRICAL AND METAL TRADES) AWARD, 1973. No. 9 of 1973.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Kone Elevators (Aust) Pty Limited and Others.

No. 1397 of 1998.

Lift Industry (Electrical and Metal Trades) Award, 1973. No. 9 of 1973.

CHIEF COMMISSIONER W.S. COLEMAN.

6 October 1998.

Order.

HAVING heard Mr W. Game on behalf of the Applicant and Ms A. 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 Lift Industry (Electrical and Metal Trades) Award, 1973 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 17th day of September 1998.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. First Schedule—Wages—

A. Delete paragraph (a) of subclause (1) of this clause and insert in lieu thereof the following—

(1) (a) The rate of wage payable to each employee covered by this award shall be set out hereunder and shall comprise the base rate and supplementary payment for each classification and in addition the special payment assigned to the class of work.

Classifications	Base Rate Per Week	Supplementary Payment Per Week	Additional Payment Per Week	Arbitrated Safety Net Adjustment	Total Rate Per Week
Lift Iindustry Employee Grade 5 Electrician—Special Class	389.80	52.10	15.60	48.00	505.50
Lift Industry Employee Grade 4 Fitter Erector	379.60	52.10	15.60	48.00	495.30
Lift Industry Employee Grade 3 Electrical Fitter Electrical Installer Fitter	364.80	52.10	15.60	48.00	480.50
Lift Industry Employee Grade 2 Tool & Material Storeperson	324.70	52.10	15.60	48.00	440.40
Lift Industry Employee Grade 1 Tradesperson's Assistant	310.90	52.10	15.60	48.00	426.60

B. At the end of paragraph (b) of subclause (1) of this clause insert the following—

The rates of pay in this award include the arbitrated safety net adjustment payable under the June 1998 State Wage Case Decision. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award, which are above the rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases 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.

LIFT INDUSTRY (ELECTRICAL AND METAL TRADES) AWARD, 1973.

No. 9 of 1973.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Kone Elevators (Aust) Pty Limited and Others

No. 1404 of 1998

Lift Industry (Electrical and Metal Trades) Award, 1973.

No. 9 of 1973.

CHIEF COMMISSIONER W.S. COLEMAN.

6 October 1998.

Order.

HAVING heard Mr W. Game on behalf of the Applicant and Ms A. 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 Lift Industry (Electrical and Metal Trades) Award, 1973 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 17th day of September 1998.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 16.—Special Rates and Provisions: Delete subclauses (5) and (6) and insert in lieu thereof the following—

(5) An Electrician Special Class, an electrical fitter and/or armature winder or an electrical installer who holds and, in the course of the employee's employment may be required to use a current "A" Grade or "B" Grade License issued pursuant to the relevant regulation in force on the 28th day of February 1979 under the Electricity Act, 1945 shall be paid an allowance of $14.40 per week.

(6) An employee holding either a First Aid Medallion of the St. John Ambulance Association or a Senior First Aid Certificate of the Australian Red Cross Society, appointed by the employer to perform first aid duties shall be paid $7.00 per week in addition to his/her ordinary rate.

2. Clause 28.—Lift Industry Allowance: Delete subclause (1) and insert in lieu thereof the following—

(1) Tradespeople and their assistants who preform work in connection with the installation, servicing, repairing and/or maintenance of lifts and escalators, other than in the employer's workshops, shall be paid an amount of $67.35 per week as a lift industry allowance in consideration of the peculiarities and disabilities associated with such work and in recognition of the fact that employees engaged in such work may be required to perform and/or assist to perform, as the case may be, any of such work.

3. First Schedule—Wages—

A. Delete subclause (3) and insert in lieu thereof the following—

(3) Leading Hands—

In addition to the appropriate total wage prescribed in this clause, a leading hand shall be paid—

	$
(a) If placed in charge of not less than three and not more than ten other employees	18.10
(b) If placed in charge of more than ten and not more than twenty other employees	27.70
(c) If placed in charge of more than twenty other employees	35.70

B. Delete subclause (6) and insert in lieu thereof the following—

(6) (a) Where an employer does not provide a tradesperson or an apprentice with the tools ordinarily required by that tradesperson or apprentice in the performance of his/her work as a tradesperson or as an apprentice the employer shall pay a tool allowance of—

(i) $10.05 per week to such tradesperson; or

(ii) in the case of an apprentice a percentage of $10.05 being the percentage which appears against his/her year of apprenticeship in Clause 3.—Leading Hands of this schedule, 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 of paragraph (a) of this clause shall be included in, and form part of, the ordinary weekly wage prescribed in this schedule.

(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 his/her employer if lost through his/her negligence.

MOTOR VEHICLE (SERVICE STATION, SALES ESTABLISHMENTS, RUST PREVENTION AND PAINT PROTECTION), INDUSTRY AWARD No. 29 of 1980.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Allpike's Honda and Peugeot and Others

No. 1952 of 1997.

Motor Vehicle (Service Station, Sales Establishments, Rust Prevention and Paint Protection), Industry Award No. 29 of 1980.

CHIEF COMMISSIONER W.S. COLEMAN.

9 October 1998.

Order.

HAVING heard Mr B. Krygsman on behalf of the Applicant and Ms J. Moss and Mr C. Keys and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Motor Vehicle (Service Station, Sales Establishments, Rust Prevention and Paint Protection), Industry Award No. 29 of 1980 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 10th day of September 1998.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 2.—Arrangement: Immediately following the number and words "30. Supported Wages" insert the following new numbers and words—

31. Introduction of Change

32. Redundancy

2. Clause 30.—Supported Wages: Immediately following the number this clause insert the following new clauses—

31.—INTRODUCTION OF CHANGE

(1) Employer's Duty to Notify.

(a) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have "significant effects" on employees, the employer shall notify the employees who may be affected by the proposed changes and their union or unions.

(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 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 the 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 employer shall discuss with the employees affected and their union or unions, 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 their unions in relation to the changes.

(b) The discussion shall commence as soon as is practicable after a definite decision has been made by the employer to make the changes referred to in subclause (1)(a) of this clause.

(c) For the purpose of such discussion, the employer shall provide in writing to the employees concerned and their union or unions, 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 employer's interest.

32.—REDUNDANCY

(1) Discussions Before Terminations

(a) Where an employer has made a definite decision that the employer 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 employer shall hold discussions with the employees directly affected and with the union.

(b) The discussions shall take place as soon as is practicable after the employer has made a definite decision that would invoke the provisions of paragraph (1)(a) hereof and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse affect of any terminations on the employees concerned.

(c) For the purpose of the discussion the employer shall, as soon as practicable, provide in writing to the employees concerned and the union, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected and the number of employees normally employed and the period over which the terminations are likely to be carried out. Provided that any employer 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 (1)(a) hereof the employee shall be entitled to the same period of notice of transfer as he or she would have been entitled to if his or her employment had been terminated, and the employer may at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary time rate of pay and the new lower ordinary time rates for the number of weeks of notice still owing.

(3) Severance Pay

(a) In addition to the period of notice prescribed for ordinary termination in Clause 7.—Contract of Service subclause (2), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in paragraph (1)(a) hereof shall be entitled to the following amount of severance pay in respect of a continuous period of service.

Period Of Continuous Service	Severance Pay
1 year or less	Nil
1 year and up to the completion of 2 years	4 weeks
2 years and up to the completion of 3 years	6 weeks
3 years and up to the completion of 4 years	7 weeks
4 years and over	8 weeks

"Week's Pay" means the rate of pay prescribed for work in ordinary time, including work on Saturdays, Sundays and Public Holidays, according to the employee's roster or projected roster.

(4) Employee Leaving During Notice

An employee whose employment is terminated for reasons set out in subclause (1)(a) hereof, may terminate his or her employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had he or she remained with the employer until the expiry of such notice.

Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

(5) Alternative Employment

An employer, in a particular redundancy case, may make application to the Commission to have the general severance pay prescription varied if the employer obtains acceptable alternative employment for an employee.

(6) Time Off During Notice Period

(a) During the period of notice of termination given by the employer an employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.

(b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or he or she 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 (1)(a) hereof, the employer shall notify the Commonwealth Employment Service thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

(8) Superannuation Benefit

Subject to an order of the Commission, where an employee who is terminated receives a benefit from a superannuation scheme, he or she shall only receive under subclause (3) hereof the difference between the severance pay specified in that subclause and the amount of the superannuation benefit he or she receives, that is attributable to employer contributions only.

If the superannuation benefit is equal to, or greater than the amount due under subclause (3) hereof then he or she shall receive no payment under that subclause.

"Superannuation Scheme" in this subclause, shall mean a scheme other than one implemented solely for purposes of compliance with Clause 15. – Superannuation of this award or an Order of the Western Australian Industrial Relations Commission.

(9) Transmission of Business

(a) Where, before or after the date of this award, a business is transmitted from an employer (in this subclause called "the transmittor") to another employer (in this subclause called "the transmittee"), an employee who at the time of such transmission was an employee of the transmittor in that business becomes an employee of the transmittee—

(i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and

(ii) the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.

(b) In this subclause "business" includes trade, process, business or occupation and includes part of any such business and "transmission" includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and "transmitted" has a corresponding meaning.

(10) 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 employers 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.

(11) Employers Exempted

Subject to an order of the Commission, in a particular redundancy case, this clause shall not apply to employers who employ less than 15 employees.

(12) Employees Exempted

This clause shall not apply where employment is terminated as a consequence of misconduct justifying instant dismissal, or in the case of casual employees, apprentices, or employees engaged for a specific period of time or for a specified task or tasks.

(13) Incapacity to Pay

An employer, in a particular redundancy case, may make application to the Commission to have the general severance pay prescription varied on the basis of the employer's incapacity to pay.

MOTOR VEHICLE (SERVICE STATION, SALES ESTABLISHMENTS, RUST PREVENTION AND PAINT PROTECTION), INDUSTRY AWARD No. 29 of 1980.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Allpike's Honda and Peugeot and Others

No. 1246 of 1998

Motor Vehicle (Service Station, Sales Establishments, Rust Prevention and Paint Protection), Industry Award No. 29 of 1980.

CHIEF COMMISSIONER W.S. COLEMAN.

24 September 1998.

Order.

HAVING heard Mr B. Krygsman on behalf of the Applicant and Ms J. Moss and Mr C. Keys and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Motor Vehicle (Service Station, Sales Establishments, Rust Prevention and Paint Protection), Industry Award No. 29 of 1980 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 10th day of September 1998.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 8.—Hours: Delete subclauses (3) of this clause and insert in lieu thereof the following—

(3) (a) The ordinary hours of work may be worked on any or all days of the week Monday to Sunday inclusive and shall be consecutive except for a meal break taken in accordance with Clause 9.—Meal Breaks.

(b) Notwitstanding any other provision of this award, working hours shall be rostered so that a worker does not commence ordinary working time of any one day or shift, without having had at least ten (10) consecutive hours off duty since the conclusion of the ordinary working time of the preceding day or shift.

(c) Provided that the provisions of paragraph (b) hereof shall not apply where shifts are changed and worked by employees making their own arrangements.

2. Clause 13.—Overtime: Immediately following subclause (3) of this clause insert the following new subclause—

(4) (a) When overtime is necessary it shall, wherever reasonably practicable, be so arranged that workers have at least ten (10) consecutive hours off duty between the work of successive days.

(b) A worker who works so much overtime between the termination of his/her ordinary time work on one day or rostered shift and the commencement of his/her ordinary time on the next day or rostered shift, that he/she has not had at least ten (10) consecutive hours off duty between those times shall, subject to this paragraph, be released after completion of such overtime until he/she has had ten (10) consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(c) If, on the instructions of his or her employer, such a worker resumes or continues work without having had such ten (10) consecutive hours off duty, he/she shall be paid at the rate of double time until he/she is released from duty for such period and he/she shall then be entitled to be absent until he/she has had ten (10) consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(d) The provisions of this subclause may be read substituting eight (8) hours for ten (10) hours where it is mutually agreed to do so by an employer and employee.

MOTOR VEHICLE (SERVICE STATION, SALES ESTABLISHMENTS, RUST PREVENTION AND PAINT PROTECTION), INDUSTRY AWARD No. 29 of 1980.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Allpikes Honda and Peugeot and Others

No. 1249 of 1998

Motor Vehicle (Service Station, Sales Establishments, Rust Prevention and Paint Protection), Industry Award No. 29 of 1980.

CHIEF COMMISSIONER W.S. COLEMAN.

2 October 1998.

Order.

HAVING heard Mr B. Krygsman on behalf of the Applicant and Ms J. Moss and Mr C. Keys and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Motor Vehicle (Service Station, Sales Establishments, Rust Prevention and Paint Protection), Industry Award No. 29 of 1980 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 10th day of September 1998.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 1B. – Minimum Adult Award Wage: Delete subclauses (2) to (6) inclusive of this clause and insert in lieu thereof the following—

(2) The Minimum Adult Award Wage for full time adult employees is $373.40 per week payable from the beginning of the first pay period commencing on or after 10th September 1998.

(3) The Minimum Adult Award Wage of $373.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions to June 1998, including the $10.00 per week arbitrated safety net adjustment from Matter No. 940 of 1997 and the $14.00 per week arbitrated safety net adjustment from matter No. 757 of 1998.

(4) Unless otherwise provided in this clause adults employed as casual or part time employees shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.

(5) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision to the Minimum Adult Award Wage of $373.40 per week.

(6) The rates of pay in this award include the minimum weekly wage for adult employees payable under the June 1998 State Wage Case Decision. Any increase arising from the insertion of the adult minimum wage will be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases under previous State Wage Case Principles or under the current Statement of Principles,

excepting those resulting from enterprise agreements, are not to be used to offset the adult minimum wage.

2. Clause 11.—Wages:

A. Delete the preamble and subclauses (1) and (2) of this clause and insert in lieu thereof the following—

(1) (a) The following shall be the minimum rate of wages payable to employees under this award from the beginning of the first pay period commencing on or after 1st July 1998.

	Minimum Weekly Rate of Pay $	Minimum Hourly Rate of Pay $
Motor Vehicle Industry Employee Level 1 (Relativity 78%)	359.40	9.4579
Motor Vehicle Industry Employee Level 2 (Relativity 82%)	376.10	9.8974
Motor Vehicle Industry Employee Level 3 (Relativity 87.4%)	398.60	10.4895
Motor Vehicle Industry Employee Level 4 (Relativity 92,4%)	419.50	11.0395

Minimum Hourly Rate of Pay does not include additional payments that may be required pursuant to Clause 12.—Additional Payments for Ordinary Hours, nor does it include any loading applicable pursuant to subclause (4) hereof.

Provided that any increase in rates of pay flowing from implementation of the Minimum Rates Adjustment principle, may be absorbed into any existing overaward payment, insofar as that overaward payment is not being used for the purposes of absorption of Arbitrated Safety Net Adjustments.

(b) The following shall be the minimum rate of wages payable to employees under this award from the beginning of the first pay period commencing on or after 1st November 1998.

	Minimum Weekly Rate of Pay $	Minimum Hourly Rate of Pay $
Motor Vehicle Industry Employee Level 1 (Relativity 78%)	373.4	9.8263
Motor Vehicle Industry Employee Level 2 (Relativity 82%)	383.10	10.0816
Motor Vehicle Industry Employee Level 3 (Relativity 87.4%)	405.60	10.6737
Motor Vehicle Industry Employee Level 4 (Relativity 92.4%)	426.50	11.2237

Minimum Hourly Rate of Pay does not include additional payments that may be required pursuant to Clause 12.—Additional Payments for Ordinary Hours, nor does it include any loading applicable pursuant to subclause (4) hereof.

(c) The following shall be the minimum rate of wages payable to employees under this award from the beginning of the first pay period commencing on or after 1st March 1999.

	Minimum Weekly Rate of Pay $	Minimum Hourly Rate of Pay $
Motor Vehicle Industry Employee Level 1 (Relativity 78%)	373.40	9.8263
Motor Vehicle Industry Employee Level 2 (Relativity 82%)	390.10	10.2658
Motor Vehicle Industry Employee Level 3 (Relativity 87.4%)	412.60	10.8579
Motor Vehicle Industry Employee Level 4 (Relativity 92,4%)	433.50	11.4079

Minimum Hourly Rate of Pay does not include additional payments that may be required pursuant to Clause 12.—Additional Payments for Ordinary Hours, nor does it include any loading applicable pursuant to subclause (4) hereof.

(2) The rates of pay in this award include the three $8.00 per week arbitrated safety net adjustments payable under the December, 1994 State Wage Decision. These $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, 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.

Furthermore, the rates of pay in this award include the $10.00 per week arbitrated safety net adjustment payable from the beginning of the first pay period commencing on or after 14th November 1997.

This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the aboveaward payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement.

The rates of pay in this award include an arbitrated safety net adjustment payable under the June 1998 State Wage Case Decision. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award, which are above the rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases under previous State Wage Case Principles prior to June 1998, except those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

PARTICLE BOARD INDUSTRY AWARD.
No. 10 of 1978.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Forrest Products, Furnishing and Allied Industries Industrial Union of Workers, W.A. Branch

and

Wesfi Limited and Others.

No. 1247 of 1998.

Particle Board Industry Award.

No. 10 of 1978.

CHIEF COMMISSIONER W. S. COLEMAN.

8 September 1998.

Order.

HAVING heard Mr M. Lourey on behalf of the Applicant and Mr J. Uphill 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 Particle Board Industry Award No. 10 of 1978 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 13th day of August 1998.

(Sgd.) W. S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 13.—Meal Money: Delete subclauses (1) and (2) of this clause and insert in lieu thereof the following—

(1) An employee required to work overtime for more than two hours Monday to Friday inclusive, without being notified on the previous day or earlier that he/she will be so required to work, shall be supplied with a meal by the employer or paid $7.10 for a meal.

(2) If the amount of overtime required to be worked necessitates a second or subsequent meal, the employer shall, unless it has notified the employee concerned on the previous day or earlier that such second or subsequent meal will also be required, provide such meal(s) or pay an amount of $4.80 for each second or subsequent meal.

2. Clause 24.—Special Rates and Conditions (Allowances): Delete subclause (3) of this clause and insert in lieu thereof the following—

(3) The employer may deduct from the wages of an employee to whom a head protective helmet or any protective clothing has been supplied, such articles as are not returned in good condition, fair wear and tear excepted.

In any plant or section of the plant where an employer has appointed an employee who holds a certificate issued by St. John Ambulance or some other similar body as a first aid attendant, an additional $7.10 per week for each week in which 3 days or more have been worked shall be paid to such employee and such amount shall be payable in addition to any amounts paid for annual leave, sick leave and public holidays provided that this allowance shall not be subject to any premiums or penalty additions.

All safety or protective equipment required by the Occupational Health, Safety and Welfare Act shall be provided.

3. Schedule 1—Rates of Pay: Delete this schedule and insert in lieu thereof the following new schedule—

SCHEDULE I—RATES OF PAY

PARTICLE BOARD INDUSTRY AWARD (S.W.L.D.)
No. 10 of 1978.

The minimum rates of wage payable to employees covered by this award shall be as follows—

(1) (a) GRADE

	Base Rate Per Week $	Asna $	Total $
Grade 1	346.45	24.00	370.45
Trainee Operator, Packing Cleaner, Factory/Yard Hand.			
Grade 2	354.35	24.00	378.35
Flaker/Knife Room Operator, Overlay Operator, Log Deck Operator, Glue Mixer Melamine Forklift			
Grade 3	366.85	24.00	390.85
Flooring and Grading Operator, Storeperson, Log Deck Loader, Paper Impregnation Operator, Log Tower Operator, Packaging Forklift			
Grade 4	380.70	24.00	404.70
Laboratory Assistant, Despatch Forklift, Logyard Loader, Panel Saw Operator, Sanding and Grading Operator.			
Grade 5	392.65	24.00	416.65
Drier Operator, Despatcher, Forming Machine Operator, Relief Operator, Press Operator, Resin Plant Operator.			
Grade 6	438.00	24.00	462.00
Senior Melamine Operator, Senior Finishing Operator, Senior Shift Operator, Quality Control Officer.			
(2) Driver of Motor Vehicles			
(a) Not exceeding 25 cwt capacity	355.10	24.00	379.10
(b) Exceeding 25 cwt but under 3 tons	358.20	24.00	382.20
(c) Exceeding 3 tons but under 6 tons	362.25	24.00	386.25
(d) Exceeding 6 tons but under 7 tons	362.95	24.00	386.95
(e) Exceeding 7 tons but under 8 tons	365.05	24.00	389.05
(f) Exceeding 8 tons but under 9 tons	365.35	24.00	389.35
(g) Exceeding 9 tons but under 10 tons	366.00	24.00	390.00
(h) Exceeding 10 tons but under 11 tons	366.65	24.00	390.65
(i) Exceeding 11 tons but under 12 tons	367.80	24.00	391.80
(j) Exceeding 12 tons but under 13 tons	368.75	24.00	392.75
(k) Exceeding 13 tons but under 14 tons	369.70	24.00	393.70
(l) Exceeding 14 tons but under 15 tons	360.65	24.00	384.65
(m) Exceeding 15 tons but under 16 tons	371.40	24.00	395.40
(n) Exceeding 16 tons but under 17 tons	371.70	24.00	395.70
(o) Exceeding 17 tons but under 18 tons	372.45	24.00	396.45

	Base Rate Per Week $	Asna $	Total $
(p) Exceeding 18 tons but under 19 tons	373.40	24.00	397.40
(q) Exceeding 19 tons but under 20 tons	374.20	24.00	398.20
(r) Exceeding 20 tons but under 21 tons	375.25	24.00	399.25
(s) Exceeding 21 tons but under 22 tons	376.20	24.00	400.20
(t) Exceeding 22 tons but under 23 tons	376.70	24.00	400.70
(u) Exceeding 23 tons and over	377.10	24.00	401.10

(v) Driver of a Motor Vehicle (not being a tractor) drawing a trailer—

(aa) For a loader single-axle trailer $1.60 per day extra

(bb) For an empty single-axle trailer $1.95 per day extra

(cc) For any other empty trailer $1.10 per day extra.

(w) An employee who in the course of his/her employment drives a vehicle with self-loading equipment which requires the possession of a certificate of competency shall be paid an extra $10.40 per week.

(3) Driver of Articulated Vehicles—

	Base Rate Per Week $	Asna $	Total $
(a) Not exceeding 9 tons capacity	370.10	24.00	394.10
(b) 9 tons and over but under 10 tons	371.30	24.00	395.30
(c) 10 tons and over but under 11 tons	371.60	24.00	395.60
(d) 11 tons and over but under 12 tons	372.20	24.00	396.20
(e) 12 tons and over but under 13 tons	372.55	24.00	396.55
(f) 13 tons and over but under 14 tons	373.60	24.00	397.60
(g) 14 tons and over but under 15 tons	375.00	24.00	399.00
(h) 15 tons and over but under 16 tons	375.40	24.00	399.40
(i) 16 tons and over but under 17 tons	376.30	24.00	400.30
(j) 17 tons and over but under 18 tons	377.00	24.00	401.00
(k) 18 tons and over but under 19 tons	378.20	24.00	402.20
(l) 19 tons and over but under 20 tons	379.00	24.00	403.00
(m) 20 tons and over but under 21 tons	379.50	24.00	403.50
(n) 21 tons and over but under 22 tons	380.30	24.00	404.30
(o) 22 tons and over but under 23 tons	381.40	24.00	405.40
(p) 23 tons and over but under 24 tons	382.30	24.00	406.30
(q) 24 tons and over but under 25 tons	382.90	24.00	406.90
(r) 25 tons and over but under 26 tons	383.30	24.00	407.30
(s) 26 tons and over but under 27 tons	384.15	24.00	408.15
(t) 27 tons and over but under 28 tons	385.25	24.00	409.25
(u) 28 tons and over but under 29 tons	385.85	24.00	409.85
(v) 29 tons and over but under 30 tons	386.60	24.00	410.60
(w) 30 tons and over but under 31 tons	387.45	24.00	411.45
(x) 31 tons and over but under 32 tons	388.50	24.00	412.50
(y) 32 tons and over but under 33 tons	389.55	24.00	413.55
(z) 33 tons and over but under 34 tons	389.85	24.00	413.85
(aa) 34 tons and over but under 35 tons	390.60	24.00	414.60
(ab) 35 tons and over but under 36 tons	391.65	24.00	415.65
(ac) 36 tons and over but under 37 tons	392.85	24.00	416.85
(ad) 37 tons and over but under 38 tons	393.55	24.00	417.55
(ae) 38 tons and over but under 39 tons	394.20	24.00	418.20
(af) 39 tons and over but under 40 tons	395.50	24.00	419.50
(ag) 40 tons and over but under 41 tons	396.40	24.00	420.40
(ah) 41 tons and over but under 42 tons	397.05	24.00	421.05
(ai) 42 tons and over but under 43 tons	398.10	24.00	422.10
(aj) 43 tons and over but under 44 tons	399.20	24.00	423.20
(ak) 44 tons and over but under 45 tons	399.90	24.00	423.90
(al) 45 tons and over but under 46 tons	400.70	24.00	424.70
(am) 46 tons and over but under 47 tons	401.70	24.00	425.70
(an) 47 tons and over but under 48 tons	402.75	24.00	426.75
(ao) 48 tons and over but under 49 tons	403.60	24.00	427.60
(ap) 49 tons and over but under 50 tons	404.30	24.00	428.30
(aq) 50 tons and over but under 51 tons	405.40	24.00	429.41
(ar) 51 tons and over but under 52 tons	406.35	24.00	430.35
(as) 52 tons and over but under 53 tons	407.20	24.00	431.20
(at) 53 tons and over but under 54 tons	408.05	24.00	432.05
(au) 54 tons and over but under 55 tons	409.05	24.00	433.05
(av) 55 tons and over	409.95	24.00	433.95

(4) Driver of Double Articulated Vehicle or Road Train—

(a) Not exceeding 31 tons capacity	392.50	24.00	416.50
(b) 31 tons and over but under 32 tons	392.95	24.00	416.95
(c) 32 tons and over but under 33 tons	393.65	24.00	417.65
(d) 33 tons and over but under 34 tons	394.30	24.00	418.30
(e) 34 tons and over but under 35 tons	395.25	24.00	419.25
(f) 35 tons and over but under 36 tons	395.70	24.00	419.70

	Base Rate Per Week $	Asna $	Total $
(g) 36 tons and over but under 37 tons	396.60	24.00	420.60
(h) 37 tons and over but under 38 tons	397.25	24.00	421.25
(i) 38 tons and over but under 39 tons	397.80	24.00	421.80
(j) 39 tons and over but under 40 tons	399.30	24.00	423.30
(k) 40 tons and over but under 41 tons	400.10	24.00	424.10
(l) 41 tons and over but under 42 tons	400.70	24.00	424.70
(m) 42 tons and over but under 43 tons	401.70	24.00	425.70
(n) 43 tons and over but under 44 tons	402.50	24.00	426.50
(o) 44 tons and over but under 45 tons	403.10	24.00	427.10
(p) 45 tons and over but under 46 tons	403.90	24.00	427.90
(q) 46 tons and over but under 47 tons	405.10	24.00	429.10
(r) 47 tons and over but under 48 tons	405.40	24.00	429.40
(s) 48 tons and over but under 49 tons	406.25	24.00	430.25
(t) 49 tons and over but under 50 tons	407.20	24.00	431.20
(u) 50 tons and over but under 51 tons	407.90	24.00	431.90
(v) 51 tons and over but under 52 tons	408.45	24.00	432.45
(w) 52 tons and over but under 53 tons	409.40	24.00	433.40
(x) 53 tons and over but under 54 tons	410.25	24.00	434.25
(y) 54 tons and over but under 55 tons	410.95	24.00	434.95
(z) 55 tons and over	411.85	24.00	435.85
(5) Tow Motor Operator	349.75	24.00	373.75
(6) Driver of Logging Tractor	355.00	24.00	379.00
(7) Crane or Fork Lift Assistant	330.95	24.00	354.95

(8) JUNIOR EMPLOYEES—

In addition to such amounts as may be prescribed by subclause (2) of Clause 7.—Junior Employees, junior employees shall receive the following percentage of a Particle Board Employee Grade 1 wage rate—

Between 16 and 17 years of age	45%
Between 17 and 18 years of age	55%

(9) LEADING HANDS—

(a) Any employee placed by the employer in charge of not less than three and not more than ten other employees shall be paid $17.30 per week extra.

(b) Any employee placed by the employer in charge of more than ten other employees shall be paid $26.10 per week extra.

(10) SUPPLEMENTARY PAYMENTS—

(a) In addition to the Base Rate Per Week prescribed in this schedule, all adult employees shall be paid a supplementary payment of $39.90 per week for all purposes of this award.

(b) The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreement, are not to be used to offset arbitrated safety net adjustments.

Furthermore, the rates of pay in this award include the $10.00 per week arbitrated safety net adjustment payable from the beginning of the first pay period on or after 14th day of November 1997.

This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement.

Increases made under State Wage Case Principles prior to November 1997, except those resulting from enterprise agreements, are not to be used to offset this arbitrated safety net adjustment of $10.00 per week.

The rates of pay in this award include the arbitrated safety net adjustment payable under the June 1998 State Wage Case Decision. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

(11) CALCULATION OF WAGE RATES—STATE WAGE CASE DECISIONS—

In circumstances where award wages are to be increased as a result of State Wage Case Decisions, unless otherwise specified in such decisions the amount of the increase shall be calculated and applied to this Schedule as follows—

(a) Where the State Wage Case Decision provides that Award wages be increased by a flat amount, that amount shall be applied to the Base Rate only.

(b) Where the State Wage Case Decision provides that Award wages be increased by a percentage amount, that amount shall be applied to that Base Rate and Supplementary Payment.

Such a percentage increase shall also apply to the Leading Hand Allowances, the Special Payment and the Disability Allowances.

(c) In the instances outlined in paragraphs (a) and (b) hereof the new wage rate shall be calculated by adding the Base Rate and the Supplementary Payment.

(d) Where the State Wage Case Decision provides for a plateau formula (that is, a combination of a percentage increase and a flat money amount), the plateau level shall be determined by reference to the Base Rate and the Award Rate and the Supplementary Payment shall be calculated by subtracting the Base Rate from the Award Rate.

4. Clause 1B.—Minimum Adult Award Wage: Delete subclauses (2), (3) and (5) of this clause and insert in lieu thereof the following—

(2) The Minimum Adult Award Wage for full time adult employees is $373.40 per week payable from the beginning of the first pay period commencing on or after 13 August 1998.

(3) The Minimum Adult Award Wage of $373.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions to June 1998, including the $10.00 per week arbitrated safety net adjustment from Matter No. 940 of 1997 and the $14.00 per week arbitrated safety net adjustment from Matter No. 757 of 1998.

(5) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision to the Minimum Adult Award Wage of $373.40 per week.

PIPE, TILE AND POTTERY MANUFACTURING INDUSTRY AWARD.

R34 of 1978.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Federated Brick, Tile and Pottery Industrial Union of Australia (Union of Workers) Western Australian Branch

and

Bristle Clay Tiles.

No. 1226 of 1998.

Pipe, Tile and Pottery Manufacturing Industry Award.

CHIEF COMMISSIONER W.S. COLEMAN.

11 September 1998.

Order.

HAVING heard Mr J. Bainbridge on behalf of the Applicant and Ms J. Dowling on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Pipe, Tile and Pottery Manufacturing Industry Award be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 29th July 1998.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 9. – Overtime: Delete paragraph (3)(a) and (b) of this clause and insert in lieu thereof the following—

(3) (a) An employee required to work overtime for more than two hours without being notified on the previous day or earlier that he/she will be so required to work, shall be supplied with a meal by the employer or paid $5.55 for a meal.

(b) If the amount of overtime to be worked necessitates a second or subsequent meal, the employer shall, unless the employer has notified the employee(s) concerned the previous day or earlier that such second of subsequent meal will also be required, provide such meals or pay an amount of $3.35 for each second or subsequent meal.

2. Clause 11.—Wages—

A. Delete paragraph (1)(a) of this clause and insert in lieu thereof the following—

(1) (a) The following shall be the minimum rates of wages payable to employees covered by this award.

Classification	Rate Per Week	Supplementary Payment	TOTAL
ADULT EMPLOYEES	$	$	$
Machine Attendant Grade A	347.00	54.70	401.70
Machine Attendant Grade B	336.20	54.50	390.70
Fork Lift Driver	357.20	48.10	405.30
Millman Mixer	343.20	54.80	398.00
Moulder	343.20	54.80	398.00
Thrower	343.20	54.80	398.00
Setter Drawer	341.40	49.30	390.70
Junction Sticker	339.80	50.90	390.70
Pipe Machine Operator	336.20	58.20	394.40
Taker Off Pipes (Fully Automatic)	336.20	50.90	387.10
Lathe Machine Operator	336.20	58.20	394.40
Panperson	336.20	54.50	390.70
Taker Off Tiles	336.20	50.90	387.10
Gang Tile Drawer (Caversham)	336.20	50.90	387.10
Pot Machine Operator (Large) and/or Vent Machine Operator	336.20	65.50	401.70
Burnt Ware Sorter (Pipe Tester)	334.40	52.70	387.10
Plant Attendant Oiler	334.40	49.00	383.40
Pipe Drawer Assistant	332.10	51.30	383.40
Forking Tiles (Caversham)	332.10	51.30	383.40
Packer (Dispatch)	332.10	51.30	383.40
Hand Colour Sprayer	332.10	55.00	387.10
Slipper	332.10	51.30	383.40
Cleaner (Flue and Oil Burner)	332.10	51.30	383.40
Ridge Maker	332.10	55.00	387.10
All Others	322.50	53.70	376.20

B. Delete paragraph (1)(b) of this clause and insert in lieu thereof the following—

(b) The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 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.

The rates of pay in this award also include the $10 per week arbitrated safety net adjustment payable from the beginning of the first pay period on or after 14th day of November 1997. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement.

Furthermore the rates of pay in this award include the arbitrated safety net adjustment payable under the June 1998 State Wage Case Decision. This arbitrated safety net adjustments shall be offset against any equivalent amount in rates of pay received by employees whose wages and conditions are regulated by this award and which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

C. Delete subclause (3) of this clause and insert in lieu thereof the following—

(3) LEADING HANDS—

In Charge of:	$
(a) Not less than three and not more than ten other employees	16.15
(b) More than ten but not more than 20 other employees	24.30
(c) More than 20 other employees	31.60

3. Clause 29.—First Aid Allowance: Delete subclauses (1) and (2) of this clause and insert in lieu thereof the following—

(1) An employee who has been trained to render first aid and who is the current holder of an appropriate first aid qualification such as a certificate from the St John Ambulance Association or a similar body shall be paid a weekly allowance of $11.10 if nominated by an employer to perform first aid duty.

(2) An employee who holds an appropriate certificate as prescribed in subclause (1) hereof who is nominated by an employer to be on stand-by to perform first aid duty shall be paid an allowance of $6.70 per week.

4. Appendix—Clause 5.—Wages—

A. Delete subclause (1)(a) of this clause and insert in lieu thereof the following—

(1) (a) The total minimum wage payable each week shall be—

Classification	Rate Per Week	Supplementary Payment	Award Rate
Adult Employees:	$	$	$
Machine Attendant Grade I	353.00	59.60	412.60
Machine Attendant Grade II	353.00	48.70	401.70
Machine Attendant Grade III	337.90	52.80	390.70
Fork Lift Driver	357.20	48.10	405.30
All Others	322.50	53.70	376.20

B. Delete subclause (3) of this clause and insert in lieu thereof the following—

(3) LEADING HANDS—

	Rate Per Week
	$
In Charge of in charge of not less than three and not more than ten other employees	$16.15

PLASTER, PLASTERGLASS AND CEMENT WORKERS' AWARD
No. A 29 of 1989.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Anderson Industries and Others

No. 2005 of 1997

Plaster, Plasterglass and Cement Workers' Award No. A 29 of 1989.

COMMISSIONER P E SCOTT.

23 September 1998.

Order.

HAVING heard Ms J Harrison on behalf of the Applicant and Mr K Dwyer 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 Plaster, Plasterglass and Cement Workers' Award No. A 29 of 1989 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 7th day of September 1998.

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

Schedule.

1. Clause 28.—Superannuation: Delete this clause and insert the following in lieu thereof—

The superannuation provisions contained herein operate subject to the requirements of the hereinafter prescribed provision titled—Compliance, Nomination and Transition.

(1) Application—

(a) Subject to the provisions of subclause (4) Exemptions of this clause, each employer to whom this Award applies shall execute an agreement to become a contributor to an approved Occupational Superannuation Scheme, within one month of the enactment of this clause.

(b) For the purpose of this Award an approved Occupational Superannuation Scheme means any scheme which complies with the standards for occupational superannuation schemes under the Occupational Superannuation Standards Act 1987 and Regulations made thereunder.

(2) Contributions—

(a) Subject to the provisions of subclause (4) Exemptions of this clause, each employer shall make monthly contributions to the fund in respect of all eligible employees at the rate of seven per cent of ordinary time earnings.

(b) Eligible employees are full-time and part-time employees to whose employment this Award applies and whose length of employment with the employer exceeds one month.

(c) Subject to the provisions of subclauses (3) Employee Entry into Fund and (4) Exemptions of this clause, contributions shall be made in respect of each current eligible employee from the date the employer executes the fund trust deed. Contributions in respect of all other eligible employees shall be made from commencement of employment with the employer but in no case prior to the date the employer executes the fund trust deed.

(d) For the purposes of this clause, ordinary time earnings shall include base rate and any other remuneration regularly received by the employee in respect to the time worked in ordinary hours.

(e) No contributions shall be made for periods of unpaid leave, or unauthorised absences in excess of 38 ordinary hours or for periods of workers' compensation in excess of 26 weeks. No contributions shall be made in respect of annual leave paid out on termination or any other payments on termination.

(3) Employee Entry into Fund—

(a) On executing the fund trust deed the employer shall provide each current employee with an application form and documentation explaining the fund.

(b) If an employee fails to return to the employer a completed application form to join the fund within two weeks of receipt, the employer shall provide a reminder notice together with an application form and documentation explaining the fund to the employee.

(c) If the employee fails to complete and return the application to join the fund within two weeks of receipt of the second form, no contribution need be made in respect of that employee until such time as a completed application form is received by the employer.

(d) It shall be the responsibility of the employer to ensure that all new employees complete an application to join the fund during the first month of employment. Provided that where an eligible employee refuses to complete an

application to join the fund the employer shall notify the union in writing of the employee's refusal to do so.

(4) Exemptions—

(a) Employers of eligible employees who are covered by a Superannuation Order or Award made pursuant to the Industrial Relations Act 1979 shall be exempted from the provisions of this clause in respect of those employees to whose employment the said Order or Award applies.

(b) Employers of eligible employees who are contributing to a Superannuation Fund in accordance with an Order or Award made pursuant to the Industrial Relations Act 1979, the Conciliation and Arbitration Act 1904 or the Industrial Relations Act 1988 for a majority of employees and, at the date of issue of this Order, make payment for eligible employees covered by this Award in accordance with that Order or Award shall be exempt from the provisions of this clause.

(c) An employer may make an application to the Western Australian Industrial Relations Commission for exemption from the provisions of this clause and until proceedings before the Western Australian Industrial Relations Commission are finalised, the provisions of this clause shall be deemed to have been complied with.

Compliance, Nomination and Transition

Notwithstanding anything contained elsewhere herein which requires that contribution be made to a superannuation fund or scheme in respect of an employee, on and from 30 June 1998—

(a) Any such fund or scheme shall no longer be a complying superannuation fund or scheme for the purposes of this clause unless—

(i) the fund or scheme is a complying fund or scheme within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; and

(ii) under the governing rules of the fund or scheme, contributions may be made by or in respect of the employee permitted to nominate a fund or scheme;

(b) The employee shall be entitled to nominate the complying superannuation fund or scheme to which contributions are to be made by or in respect of the employee;

(c) The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable;

(d) A nomination or notification of the type referred to in paragraphs (b) and (c) of this subclause shall, subject to the requirements of regulations made pursuant to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the employee to whom such is directed;

(e) The employee and employer shall be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made;

(f) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by a employee;

Provided that on and from 30 June 1998, and until an employee thereafter nominates a complying superannuation fund or scheme—

(g) if one or more complying superannuation funds or schemes to which contributions may be made be specified herein, the employer is required to make contributions to that fund or scheme, or one of those funds or schemes nominated by the employer;

or

(h) if no complying superannuation fund or scheme to which contributions may be made be specified herein, the employer is required to make contributions to a complying fund or scheme nominated by the employer.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

INDUSTRIAL RELATIONS ACT, 1979

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

and

Anderson Industries and Others

No. 2005 of 1997

Plaster, Plasterglass and Cement Workers' Award No. A 29 of 1989.

COMMISSIONER P E SCOTT.

23 September 1998.

Order.

HAVING heard Ms J Harrison on behalf of the Applicant and Mr K J Dwyer on behalf of the Respondents the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, and by consent, hereby orders:

That Application No. 2005 of 1997 be divided into two parts, to become Application No. 2005 of 1997 which shall deal with the superannuation contribution rate and Application No.2005A of 1997 which shall deal with the remainder of the matters.

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

PLASTER, PLASTERGLASS AND CEMENT WORKERS' AWARD.
No. A 29 of 1989.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Belmont Concrete Co and Others.

No. 1182 of 1998.

Plaster, Plasterglass and Cement Workers' Award.

No. A 29 of 1989.

COMMISSIONER P E SCOTT.

2 October 1998.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and Mr K Dwyer 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 Plaster, Plasterglass and Cement Workers' Award No. A 29 of 1989 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 31st day of July 1998.

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

Schedule.

1. Clause 1B.—Minimum Adult Award Wage: Delete this clause and insert the following in lieu thereof—

(1) The rates of pay in this award include the minimum weekly wage for adult employees payable under the June 1998 State Wage Case Decision. Any increase arising from the insertion of the adult minimum wage will be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements are not to be used to offset the adult minimum wage.

(2) The Minimum Adult Award Wage for full time adult employees is $373.40 per week payable from the beginning of the first pay period commencing on or after 31st July 1998.

(3) The Minimum Adult Award Wage of $373.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions to June 1998, including the $14.00, $12.00 and $10.00 per week arbitrated safety net adjustments from Matter No. 757 of 1998.

(4) Unless otherwise provided in this clause adults employed as casual or part time employees shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.

(5) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision to the Minimum Adult Award Wage of $373.40 per week.

(6) (a) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on traineeships or Jobskills placements, or to other categories of employees who by prescription are paid less than the minimum award rate.

(b) Liberty to apply is reserved in relation to any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.

(7) Subject to this clause the Minimum Adult Award Wage shall —

(a) apply to all work in ordinary hours.

(b) apply to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave and for all other purposes of this award.

2. Clause 13.—Wages: Delete this clause and insert the following in lieu thereof—

		Wage Per Week $	Arbitrated Safety Net $	Total Wage Per Week $
(1) (a)	Modeller	408.90	48.00	456.90
	Tool Allowance			1.13
(b)	Plaster Caster	386.15	48.00	434.15
(c)	Plaster Caster (Mechanical)	362.35	48.00	410.35
(d)	Labourers	342.10	48.00	390.10
(e)	Cement employee	338.25	48.00	386.25
(f)	Trainee Casters—up to 40 per cent proficiency	263.75	48.00	311.75

Thereafter, such percentage of the plaster caster's total wage as is assessed in accordance with subclause (9) of Clause 7.—

	Wage Per Week $	Arbitrated Safety Net $	Total Wage Per Week $
Adult Trainee Casters.			
(g) Plant Operator	287.10	48.00	335.10
(h) Bagger	287.10	48.00	335.10
(i) Washer	287.10	48.00	335.10
(j) Front End Loader	287.10	48.00	335.10
(k) Fork Lift Driver	287.10	48.00	335.10
(2) Junior Employees			
Under 21 years of age	269.40	34.00	303.40
Under 20 years of age	237.70	34.00	271.70
Under 19 years of age	225.00	34.00	259.00

(3) Apprentice Modellers—

Four Year Term	%
First year	42
Second year	5
Third year	75
Fourth year	88

N.B. The above percentages are of both the adult wage and the tool allowance.

(4) A "Casual Employee" being a person who is engaged or employed for a period of less than one week shall be paid for the time so engaged at the rate of 20 per cent in addition to the rates prescribed herein. Provided that this shall not apply to an employee who serves his/her contract of service or who is dismissed for misconduct.

(5) 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 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, have not 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.

Furthermore the rates of pay in this award include the $10.00 per week arbitrated safety net adjustment payable from the beginning of the first pay period on or after 14th day of November 1997

This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement.

Increases made under State Wage Case Principles prior to November 1997, except those resulting from enterprise agreements, are not to be used to offset this arbitrated safety net adjustment of $10.00 per week.

The rates of pay in this award include the arbitrated safety net adjustment payable under the June 1998 State Wage Case Decision. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

3. Clause 14.—Special Rates and Provisions: Delete subclause (1) of this clause and insert the following in lieu thereof—

(1) Leading Hands: An employee placed in charge for not less than one day of—

(a) Not less than three and not more than ten other tradesperson shall be paid $11.48 per week extra;

(b) More than ten and not more than twenty other tradesperson shall be paid $18.14 per week extra;

(c) More than twenty other tradesperson shall be paid $24.26 per week extra.

(d) The rates herein prescribed shall be deemed to form part of the ordinary rate of wage of the employees concerned for all purposes of this Award.

Where the leading hand works under the supervision of a foreperson or of the employer for the major portion of the day, the extra rates set out in this subclause shall be halved.

PORCELAIN WORKERS AWARD, 1970.

No. 1 of 1970.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Federated Brick, Tile and Pottery Industrial Union of Australia (Union of Workers) Western Australian Branch

and

Australian Fine China

No. 1228 of 1998.

Porcelain Workers Award, 1970.

CHIEF COMMISSIONER W.S. COLEMAN.

11 September 1998.

Order.

HAVING heard Mr J. Bainbridge on behalf of the Applicant and Ms J. Dowling on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Porcelain Workers Award, 1970 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 29th July 1998.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 8. – Overtime—

A. Delete paragraph (5)(a) of this clause and insert in lieu thereof the following—

(5) (a) An employee required to work overtime for more than two hours without being notified on the previous day or earlier shall be supplied with a meal by the employer or be paid $5.55 for a meal and if, owing to the amount of overtime worked, a second or subsequent meal is required then the employee shall be supplied with each such meal by the employer or be paid $3.35 for each meal so required.

B. Delete paragraph (5)(c) of this clause and insert in lieu thereof the following—

(c) If an employee as a result of receiving the notice referred to in paragraph (a) hereof has provided himself/herself with a meal and is not required to work overtime, or is required to work less than two hours' overtime, he/she shall be paid the amount of $3.35 in respect of the meal not then required.

2. Clause 13. – Wages—

A. Delete paragraph (1)(a) of this clause and insert in lieu thereof the following—

(1) (a) The total rate of pay per week for adult employees including supplementary payments shall be as follows—

	Base Rate	Supplementary Payment	Total Rate
Grade 1	364.20	48.00	412.20
Packer			
Grade 2	357.30	48.00	405.30
Fork Lift Operator			
Grade 3	331.30	62.80	394.10
Mould Makers (Blocking and Casing)			
Printer (Hand)			
Grade 4	332.30	55.00	387.30
Mould Makers			
Kiln Personnel			
Grade 5	326.40	57.40	383.80
Machine Operators (Auto and Semi)			
Kiln Personnel (Others)			
Slipmaker			
Slipmaker Personnel			
Silk Screen Maker			
Caster			
Grade 6	321.60	52.30	373.90
Production Attendants			

B. Delete paragraph (1)(b) of this clause and insert in lieu thereof the following—

(b) The rates of pay in this award include three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 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.

The rates of pay in this award also include the $10 per week arbitrated safety net adjustment payable from the beginning of the first pay period on or after 14th day of November 1997. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement.

Furthermore the rates of pay in this award include the arbitrated safety net adjustment payable under the June 1998 State Wage Case

Decision. This arbitrated safety net adjustments shall be offset against any equivalent amount in rates of pay received by employees whose wages and conditions are regulated by this award and which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements are not to be used to offset arbitrated safety net adjustments.

C. Delete subclause (3) of this clause and insert in lieu thereof the following—

(3) LEADING HANDS—

In charge of—

(a) Not less than three and not more than ten other employees	$14.90
(b) More than ten but not more than twenty other employees	$22.65
(c) More than twenty other employees	$29.70

3. Clause 32. – First Aid Allowance: Delete subclauses (1) and (2) and insert in lieu thereof the following—

(1) An employee who has been trained to render first aid and who is the current holder of an appropriate first aid qualification such as a certificate from the St John Ambulance Association or a similar body shall be paid a weekly allowance of $11.10 if nominated by an employer to perform first aid duty.

(2) An employee who holds an appropriate certificate as prescribed in subclause (1) hereof who is nominated by an employer to be on stand-by to perform first aid duty shall be paid an allowance of $6.70 per week.

AWARDS/AGREEMENTS— Application for variation of— No variation resulting—

HOSPITAL SALARIED OFFICERS (PRIVATE HOSPITALS) AWARD 1980.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Hospital Salaried Officers Association of Western Australian (Union of Workers)

and

Attadale Hospital and Others.

No. 1155 of 1995.

1 September 1998.

Order.

WHEREAS on 18 October 1995 the application cited herein was filed in the Commission pursuant to section 40 of the Industrial Relations Act, 1979 (the Act) to vary the Hospital Salaried Officers (Private Hospitals) Award 1980; and

WHEREAS on 3 October 1997 a conference was held pursuant to section 32 of the Act; and

WHEREAS on 11 May 1998 the Commission forwarded a letter to the applicant requesting advice as to the status of this matter; and

WHEREAS on 13 July 1998 the matter was listed For Mention Only whereat the Commission advised that the matter would be listed for hearing; and

WHEREAS the matter was listed for hearing on 15 September 1998;

AND WHEREAS on 28 August 1998 the Commission received a facsimile transmission from the applicant requesting that the matter be discontinued;

NOW THEREFORE the Commission, pursuant to the power conferred on it under the Act, hereby orders—

THAT this application be and is hereby wholly discontinued.

(Sgd.) C. B. PARKS,
[L.S.] Commissioner .

AWARDS/AGREEMENTS— Interpretation of—

ST JOHN OF GOD HOSPITAL SUBIACO (HSOA) CAREGIVER AGREEMENT 1995.
No. AG 209 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

St John of God Hospital Subiaco Inc.

No. 673 of 1998.

3 September 1998.

Order.

WHEREAS on 17 April 1998 the application cited herein was filed in the Commission pursuant to section s.46 of the Industrial Relations Act, 1979 (the Act) for an interpretation of the St John of God Hospital Subiaco (HSOA) Caregiver Agreement 1995 No AG 209 of 1995; and

WHEREAS on 24 July 1998 the parties were heard and agreed that the aforementioned Agreement has been replaced by Agreement No AG 381 of 1997, registered on 18 February 1998;

AND WHEREAS the Commission is satisfied that Agreement No AG 209 of 1995 is no longer in force and that the power of the Commission to declare the interpretation of an Industrial Agreement is, pursuant to section 46 of the Act, limited to an agreement which is currently in force;

NOW THEREFORE the Commission, pursuant to the power conferred on it under the Act, hereby orders—

THAT this application be and is hereby dismissed.

(Sgd.) C.B. PARKS,
[L.S.] Commissioner.

AGREEMENTS—
Industrial—Retirement from—

P&O TOWAGE SERVICES SMALL CRAFT CREWS ENTERPRISE AGREEMENT 1996.

No. AG 220 of 1996.

IN THE WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION

No. 1739 of 1998.

IN THE MATTER of the
Industrial Relations Act 1979

and

IN THE MATTER of the filing in the
office of the Registrar of the Notice
of Retirement from Industrial Agreement
in accordance with section 41(7)
of the said Act.

The Merchant Service Guild of Australia, Western Australia Branch, Union of Workers will cease to be a party to the P&O Towage Services Small Craft Crews Enterprise Agreement 1996 No. AG 220 of 1996 on and from the 17th day of October 1998.

DATED at Perth this 17th day of September 1998.

J.A. SPURLING,
Registrar.

PUBLIC SERVICE ARBITRATOR—
Matters Dealt With—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Commissioner of Police and Honourable Minister for Police

and

WA Police Union of Workers.

No. PSAC 48 of 1998.

PUBLIC SERVICE ARBITRATOR
COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 June 1998 the Commission issued orders pursuant to the powers vested in it by section 44(6) of the Industrial Relations Act, 1979 in respect to a dispute between the parties over the appeal rights of police officers who receive a notice pursuant to section 8 of the Police Act 1892 (WA); and

WHEREAS on the 12 August 1998 the Commission was advised that an agreed appeal process was endorsed by Cabinet on the 10 August 1998 and can now be implemented; and

WHEREAS as a result of this agreement the Commissioner of Police advises that he is now satisfied that the concerns listed in the schedule to his application No. PSAC 48 of 1998 have now been resolved and the Direction and Order issued on the 30 June 1998 may be cancelled; and

WHEREAS on the 14 August 1998 the Western Australian Police Union of Workers advised the Commission that it concurred that the Order be cancelled;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act 1979, the Commission hereby orders—

THAT the Direction and Order made on the 30 June 1998 be and are hereby cancelled.

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

UNFAIR DISMISSAL/
CONTRACTUAL
ENTITLEMENTS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Sally Bonn

and

Brieforth Pty Ltd trading as Collie Freightlines.

No. 631 of 1998.

COMMISSIONER P E SCOTT.

30 July 1998.

Reasons for Decision.
(Extempore)

THE COMMISSIONER: The substantive matter before the Commission is an application pursuant to section 29(l)(b)(i) of the Industrial Relations Act 1979, which was filed on 9 April 1998. The application is made against the Respondent, being named as Collie Freightlines of 11 Glenhoun Boulevard in Eaton, Western Australia. On 14 April 1998, the Applicant served the Notice of Application on Collie Freightlines at that address, and there is a declaration of service filed in the Commission on 16 April to that effect. On 24 April 1998, Collie Freightlines of 11 Glenhoun Boulevard, Eaton, Western Australia filed a Notice of Answer and Counter Proposal in this matter, and that Notice of Answer and Counter Proposal says at point 2 to the schedule A—

> "In response to the application, the respondent says that an employment agreement was entered into on a temporary basis between Mrs Bonn, the applicant, and the manager for the respondent, Mr John Bell, on or about 1 October 1997."

It then goes on to cite certain other details relating to the circumstances of the Applicant's employment and her termination of employment. On 2 June 1998, the Commission as presently constituted, convened a conference in respect of this application and the purpose of that conference was conciliation between the parties. The Respondent was represented by its agent and also by Mr Bell, who is said in the Notice of Answer and Counter Proposal to be the manager of the Respondent.

Neither the Notice of Answer and Counter Proposal of 24 April 1998 nor the conference of 2 June 1998 raised any issue of incorrect naming or mis-identification of the Respondent being the employer of the Applicant.

The matter was set down for hearing to commence on 20 July 1998 in Bunbury.

By a facsimile transmission dated 17 July 1998, sent at 3.47pm the Respondent's agent notified the Commission that the Respondent was not the employer of the Applicant. No advice of that issue was provided to the Applicant. The notification to the Commission of 17 July 1998 contained no reference to who employer might be. We were advised on 20 July that the employer of the Applicant was actually "Brieforth Pty Ltd".

It is worthy of note the Company Extract for Brieforth Pty Ltd (Exhibit 1) indicates that its registered office is 26 Spencer Street, Bunbury, Western Australia, but its principle place of business is 11 Glenhoun Boulevard, Eaton, WA. The Business Names Extract for Collie Freightlines (Exhibit 2), indicates that the corporation carrying on the business is Brieforth Pty Ltd. The company registration number there is the same as the company registration number listed in the Company Extract and is the same as the ACN, which is listed on the 1998 Group Certificate for the Applicant. The Business Names Extract indicates that Collie Freightlines, being a business carried on by Brieforth Pty Ltd, has as its principle place of business 11 Glenhoun Boulevard, Eaton, Western Australia, which is the same principle place of business as that of the corporation which carries on the business, which seems logical.

I have had an opportunity to examine the authorities dealing with an amendment to the name of a party, where there has

been a mistake in the name of the party rather than a mistake in the identity of that party, and I have also noted the reasons for decision of Commissioner Cawley in *Shirley Redgrave v Raynor Joseph Kelly trading as Kelly's Retreat (78 WAIG 2464)* and the decision of the High Court in *Bridge Shipping Pty Ltd v Grand Shipping SO (1991) 173 CLR 231*. At page 245, Dawson J said—

> "It may sometimes be difficult to determine when there is a mistake in name or a mistake in identity. When that is so, and an amendment is sought under Regulation 36.01, the question can only be resolved by asking whether, in all the circumstances, it can reasonably be said that the party whose name is sought to be amended would remain the same in all but name or description if the amendment were allowed.
>
> If so, then there is misnomer or mis-description and the rule applies notwithstanding that as a matter of formality the amendment results in the substitution of another entity. If not, and the effect of the amendment would be not to correct the name of the party but to alter the identity of the party, then that rule does not apply."

I also note the decision of the Industrial Appeal Court in *The Owners of Johnston Court and Dumancic (70 WAIG 1285)* which dealt with a similar matter. So it seems to me that the authorities would allow an amendment to the name of a party where there has been a mistake in the name rather than a mistake in the identity of that party and where the amendment would mean that the party remains the same.

The Commission has the power under section 27(l)(m) to correct, amend or waive any error, defect or irregularity, whether in substance or in form. I am satisfied that the amendment sought properly names the Respondent already identified by its trading name. The application to amend is not an application to name a different identity. It seems clear that the Respondent named is the trading identity of Brieforth Pty Ltd and it operates from the same address. There could be no confusion as to the identity of the employer.

As to whether or not an amendment ought be granted, it is clear to me that the Respondent or the employer has filed an answer dealing with the merits of the employment and termination of employment of the Applicant. It attended a conference for the purposes of conciliation and has been aware of the process of this matter all the way through to this point. So there would be no prejudice to the Respondent by the amendment.

Accordingly, the name of the Respondent will be amended to be Brieforth Pty Ltd trading as Collie Freightlines.

The background to this matter is that until 1 October 1997 the Applicant had conducted a business as a subcontract courier driver for Courier Australia operating between Bunbury and Collie. She was engaged in that business with her partner, Daniel Tomayo. The Applicant gave evidence that due to personal and family circumstances, she wished to sell the business and to work part-time to enable her to spend more time with her children. She and Mr Tomayo had been considering this matter for about a year before they reached an arrangement with Mr Bell who was seeking, on behalf of the Respondent, to become involved in such a business in the area.

Mr Bell has given evidence of his involvement in the transport industry for many years and how he is moving towards retirement. His four children established Brieforth Pty Ltd, the Respondent, and became directors of that company. Mr Bell was working on their behalf, setting up the business as well as operating a partnership with his wife. His intention is that, upon his retirement, the business will be transferred to the children for them to control.

The Commission has heard evidence of a number of inquiries or attempts at the sale of the Applicant's van, which were unsuccessful, and Mr Bell deciding to approach her about that matter. He was aware that Courier Australia was looking for an agent in Collie and he saw this as an opportunity for the business. Mr Bell put a proposal to the directors of the Respondent to become involved in this business and purchase the Applicant's van, and he pursued the matter with the Applicant and her partner.

The proposal which was discussed with the Applicant, according to Mr Bell, was that the Respondent would purchase the van from her but the Applicant would continue with the courier round until Christmas, because Mr Bell had neither the time nor the experience or the knowledge of the courier round itself to do that work himself. There was another condition attached to the purchase by the Respondent of the van, and that was that the Respondent wished to establish that the business was viable. This part of the arrangement appears to be confirmed by the Applicant's evidence where she says that Mr Bell was going to pay for the van after a period of trial to see if the business was viable, and that he paid for the van approximately 4 weeks after the arrangement commenced.

There is conflict between the evidence of the parties as to their respective intentions. Mr Bell believed that the Applicant intended to leave work completely to be with her family. However, she says she intended to work part-time and that Mr Bell and she had arranged for her to work full-time for the first month and she would later work part-time. In any event, in either November 1997 or in mid December 1997, depending on whose evidence is accepted, the Applicant rang Mr Bell and told him that she needed to cut back her hours because of a family problem. She wanted to work only the early part of the duty, which was broken into two parts. Prior to that, Mr Bell and his son had received an approach from a person, Andrew Driver, who was looking for work, and they thought he would be suitable to undertake courier driving once the Applicant departed the scene. Mr Bell told him that when the Applicant ceased work at the end of December, there would be full-time work available for him. When the Applicant said that she needed to change from full-time to part-time in December, Mr Bell enlisted Andrew Driver to take over the afternoon part of the round.

Mr Bell gave evidence that his family and he normally holiday together in January and he thought that because of the new business requirements he would not be able to go on holiday with them. However, when both the Applicant and Mr Driver were apparently working successfully, he thought his holiday might still be possible so he approached the Applicant and asked her to continue while he was away in January. He had not discussed with her specifically that she would finish work when he returned from leave. He felt that because he had talked her into working for an extra month, he was somehow obliged to her and did not want to press her into leaving.

On his return from holidays at the end of January 1998, Mr Bell was approached by Andrew Driver, asking him when he would be starting full-time work. Mr Bell said that it would be up to the Applicant and when she intended leaving. However, the evidence is that he did not raise that matter with the Applicant due to his belief that she would be wanting to leave soon and because he felt a certain obligation to her.

While he had been on holiday, Mr Bell had been formulating plans to improve the business. The Commission has heard a great deal of evidence about the changes that Mr Bell intended to implement and how that would affect the Applicant's work and the structure of that work. There is evidence about the routes taken and the deadlines that Mr Bell sought to bring into play and some of the difficulties associated with that. Having heard Mr Bell's evidence that that was not associated with the reason for dismissal of the Applicant, there is no need for me to give any detailed consideration to that matter.

There is also evidence that Mr Bell had a number of concerns regarding the Applicant's work performance and attitude after the first month of her employment. He described her performance during the first month as brilliant but said it deteriorated after that. He gave evidence of a number of problems associated with the Applicant's work performance.

As with the issue of deadlines and work routes, it is clear that that did not play a part in the decision to dismiss the Applicant. It is also clear that there were no warnings given to her in respect of any of those matters or any matters at all. The Applicant says that she was never warned that her job was in jeopardy, although she gave evidence of being aware of Mr Bell's frustration over a number of matters. It is clear from the evidence that at no time during her employment up until the very end was the Applicant's employment the subject of any counselling or review.

Mr Bell gave evidence that the reason for dismissal, from the Respondent's perspective, was that the Applicant had used and had allowed the use of the Respondent's van without

authorisation and, by doing so, had put the vehicle and the company at risk. I note that Mr Bell's evidence was in two parts in that regard. One was that from his personal point of view, the dismissal was because the Applicant had allowed Mr Tomayo to use the vehicle while it was in her care and I note the distinction that he made between his own personal view and the view of the Respondent, which appears to have been that the general unauthorised use of the vehicle was reason for dismissal.

The evidence before the Commission is that at one point, the directors of the Respondent decided that the van had to be parked up at the depot when it was not in use. Geraldine Harrington, one of the Respondent's directors, and Mr Bell's daughter, gave evidence of the reason for the policy of no private use of the vehicles and this was related to the insurance coverage of the van and the costs to the company if anything went wrong. She gave evidence of the problems her father had previously experienced because of employees using business vehicles for private use. When the van had been parked at the depot for about a week, the Applicant had a discussion with Mr Bell and, depending on whose evidence is accepted, this was either initiated by the Applicant or by Mr Bell. During that discussion, the Applicant made it clear that without a vehicle she was having difficulty getting to and from work in the early morning, particularly as winter was coming, and Mr Bell, in what appears to be typical fashion, granted her permission for its use for the purpose of going to and from work.

Ms Harrington said that in effect, her father was too soft and overly generous. She believed that no warnings had been given to the Applicant about any matters but also believed that her father had made clear to the Applicant that the van was to be used for transport to and from work. Ms Harrington gave evidence of her concern regarding that permission and the prospects for abuse of the arrangement. She also gave evidence that her father reassured her that it would be for transport to and from work. Mr Bell gave evidence that he had told the Applicant that she could use it for that purpose only.

According to Mr Bell, the decision to terminate the Applicant's employment arose when, at around 9 pm on Thursday, 12 March 1998, his son Wayne (who is also a director of the Respondent) and a friend saw a man who turned out to be Mr Tomayo driving the van allocated to the Applicant and which she had permission to drive to and from work. This van was supposed to be parked at the Applicant's home. They followed the van to the Applicant and Mr Tomayo's home. Mr Bell's son reported this matter to his father at the end of his shift the next day. Mr Bell's son expressed his dissatisfaction to Mr Bell about the situation, the inference being that he had told his father previously of concerns about unauthorised use of the vehicle when the Applicant had sought authorisation to use the vehicle to travel to and from work.

Following this discussion with his son, Mr Bell went to Bunbury where he discussed the matter with his daughter Geraldine Harrington and her husband, also a director of the Respondent. Mr Bell and Ms Harrington then went to see the Applicant and Mr Tomayo at their home at about 8 pm. Upon arrival at the Applicant's home, Mr Bell said he wanted Mr Tomayo present during their discussion.

There is a good deal of conflict between the evidence for the Applicant and the evidence for the Respondent about what occurred, but it is clear that Mr Bell commenced the discussion by asking the Applicant if she thought him to be a fair employer, to which she answered "Yes." Part of the conflict in the evidence is whether upon being asked subsequent questions, the Applicant initially denied what she was being asked, or whether she was forthright in the information she provided. According to the Applicant, she was forthright. According to Mr Bell and Ms Harrington, the Applicant initially answered his questions with simple denials but when pressed made admissions. Mr Bell asked the Applicant if she had done personal business and shopping during working hours. Her response, either initially or when pressed, was that she explained that she had done some personal shopping and she explained that this took place in circumstances where she had to wait for things to be collected, which weren't ready, or when she was waiting for customers' signatures. She gave an example of purchasing items very quickly while delivering freight to Fosseys. She also gave evidence of the purchase of shoes but needed to pay for them the next time she visited the shop, and because she wasn't going back immediately, she asked Mr Bell to pay for her. He did so and gave her the change. It is on this basis that she says there was no interference with her work and that, in any event, Mr Bell knew of and condoned that activity.

Mr Bell then asked if the Applicant or any member of her family had used the van without authority outside of working hours. Once again there is dispute as to whether the Applicant was forthright or, in Mr Ferguson's terms, whether she was seeking clarification before answering. Nonetheless, she acknowledged use of the vehicle, as did Mr Tomayo. This use had been for the purpose of going to the shop and also to shift a refrigerator for a niece. There is evidence that Mr Tomayo asked what the big deal was and noted that it had obviously upset Mr Bell. He also said that Mr Bell had given permission for them to use the van when they shifted the house, although Mr Bell denies giving this permission. There is conflict in the evidence as to the remainder of the conversation between the parties and whether Mr Bell said that certain of these admissions were not a problem, or not an issue.

In any event, Mr Bell then advised the Applicant that she was to have a week's notice. Ms Harrington says that the giving of a week's notice by her father was a demonstration of his generosity in response to the Applicant being upset and, in the circumstances, there was no need for such notice.

At the end of the meeting between the parties that night, Mr Bell drove the van away from the Applicant's home. The Applicant attended for work on the following Monday, Tuesday and Wednesday. On the Wednesday, following a discussion between Mr Bell and the Applicant, it was mutually agreed that she did not need to complete the week's work and, as I understand the evidence, the Applicant's employment actually concluded on 20 March 1998.

I have considered all of the evidence in this matter and, as I have noted, there is a good deal of conflict in the evidence. My comments regarding that evidence are this: I have observed the witnesses give their evidence. Generally, I found each witness to give their evidence in a straightforward manner. However, where there is conflict in the evidence, I prefer the evidence of Mr Bell. I believe that he did his best to answer questions frankly and honestly, even where those answers might have reflected adversely on him. I was impressed by his clear memory for detail.

The question to be asked is correctly identified by Mr Ferguson, the Applicant's representative, as being whether or not the Respondent has harshly, oppressively or unfairly exercised its lawful right to dismiss. It is not a matter of the parties' lawful rights. It is a question of the fairness of the exercise of those rights.

Having observed Mr Bell, and he being the key to this matter, I am satisfied that he is a generous and perhaps soft-hearted man, and that he would bend in favour of an employee who wanted a special consideration or flexibility and he might do so contrary to the wishes of the directors of the company he was representing. He did so by allowing the Applicant the use of the van to get to and from work. He trusted that she would not abuse the privilege given to her. He told her that it was for that purpose only. I am satisfied that the Applicant understood the privilege granted to her. For some time, she had owned a vehicle for work purposes and, as the owner, she would have had free access to that vehicle for any use. She also appears to initially have had access to the Respondent's vehicle to get to and from work. I am not sure of the timing of this, but it is quite clear that there was then a decision by the directors that the van had to be parked at the depot when it was not in use. This arrangement lasted for about a week, when the Applicant asked to use her employer's vehicle to drive to and from work, particularly as it was dark when she went to work and, as noted earlier, she was given that permission.

I also note, in dealing with the question of whether or not the Applicant understood the privilege that was granted to her and the limits placed on it, that both the Applicant and Mr Tomayo gave evidence that they sought and were granted permission to use the vehicle when they moved house. This demonstrated that they knew they needed permission to use the van for private purposes. The reasons why the Respondent did not grant free access for private use to its vehicle were made very clear particularly by Ms Harrington's evidence.

Whether the Applicant understood the reasons for that, or not, I am satisfied that she understood that permission was needed for its use.

When Mr Bell, who is known by the directors of the Respondent, his children, as a soft-hearted and generous man, was confronted by his son, a director of the company, with what appeared to be evidence of abuse of the privilege he had granted, he had to deal with that matter. He discussed it with two other directors, being Geraldine Harrington and her husband. It was decided, by consensus, to terminate the Applicant's employment for unauthorised use of the van. If, at any time, there was unfairness to the Applicant, this would have been the time, in that the decision appears to have been made before the Applicant had a chance to defend herself. This might be said to be contrary to natural justice. However, the Applicant was subsequently confronted with the allegation and she admitted unauthorised use of the vehicle on more than one occasion. I am satisfied that Mr Bell asked the question a number of times. His and Ms Harrington's evidence was clear about that. I am satisfied that she initially denied and, when pressed, admitted the use of the vehicle.

These matters need to be considered in a practical and commonsense way, in light of the relationship between an employer and employee. I note too that, particularly in small businesses, there are personal relationships involved that may cause discomfort in the circumstance of conflict. It is fair to say that given Mr Bell's acknowledgment that he was uncomfortable during the discussion on the night of giving the Applicant notice, he may not have told the Applicant that the reason for her dismissal was the unauthorised use of the vehicle. That this was not clarified for her appears to have caused her distress and a lack of confidence. It is clear from all of the evidence relating to the Applicant's performance and, given that prior to Mr Bell actually asking the Applicant about the unauthorised use of the vehicle, he had asked her other questions, there may have been confusion in the Applicant's mind about the reason for her dismissal. It is most unfortunate that she has been caused distress due to a lack of clarity in that matter. That, of itself, does not necessarily make the dismissal unfair.

During the hearing, the Applicant and Mr Tomayo acknowledged unauthorised use of the vehicle to take another employee home to Binningup. This might appear to have been a friendly and neighbourly gesture, but it constituted unauthorised use of her employer's equipment, being the van. It is clear that there was not simply one incident of unauthorised use of the vehicle. I accept that the Applicant may not have understood the implications and the potential problems that that may have caused her employer, but by her conduct the Applicant has abused the trust her employer had placed in her and abused the privilege granted to her. Accordingly, an essential element of the employment contract, being the relationship of trust, had broken down.

As to whether the conduct was misconduct justifying summary dismissal, I note that the termination was actually brought about by notice given by the Respondent and part of that notice was worked out. By mutual agreement and, once again perhaps due to Mr Bell's consideration of the Applicant's feelings, it was agreed that she not work out the remainder of that period of notice.

I have also considered that there appears to be an inconsistency in that the Applicant breached the trust of her employer and yet she was allowed to work out her notice. Ms Harrington expressed her surprise at her father having given the Applicant a week's notice when they left the Applicant's home on the night of giving the Applicant notice. I accept that once again, this situation was due to Mr Bell's consideration of the Applicant's circumstances.

I have also considered whether the unauthorised use of the Respondent's van was an offence more appropriately dealt with by a warning or whether the dismissal in the circumstances might have been a harsh punishment. It is not for the Commission to place itself in the role of the employer and decide what it would have done in the circumstances. In this case, the relationship of trust was broken by the Applicant's abuse of a privilege and by the unauthorised use of the Respondent's property. I note that that property is not a small item, but was one of the major assets of a small business.

I have also considered whether Mr Tomayo's use of the vehicle to transport a refrigerator for a niece, which caused the Respondent to challenge the Applicant and Mr Tomayo about the unauthorised use of the vehicle, was without the Applicant's knowledge. There is no evidence that the Applicant had no knowledge of the situation. On the contrary, it would appear from her own evidence that she did have knowledge of it. Further, the vehicle was in the Applicant's care. She was responsible for it. I note that Mr Tomayo's use of the vehicle was only one of a number of occasions of use without authority.

In all of those circumstances, I am not satisfied that the Respondent has harshly, oppressively or unfairly exercised its lawful right to dismiss the Applicant and accordingly the application in that respect will be dismissed.

The Applicant has raised the issue of any contractual entitlements which may be owed to the Applicant as being able to be dealt with in accordance with section 23A(l)(a). It may be that the Applicant is owed some amount in respect of annual leave should she have been other than a casual. I have no evidence before me as to whether her contractual entitlements that are said to arise in respect of annual leave arise on account of an award by which she might be covered, or arise from the Minimum Conditions of Employment Act. In those circumstances, it would appear to me that any enforcement proceedings for entitlements that are said to arise from her contract of employment are appropriately dealt with through the Industrial Magistrate's Court. In any event, I suspect that that part of Mr Ferguson's submission related really to a matter of those entitlements, if any, being included as part of consideration for compensation for unfair dismissal. In any event, I take that matter no further.

APPEARANCES: Mr G Ferguson for the Applicant.

Mr J Beedham for the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Sally Bonn

and

Collie Freightlines.

No. 631 of 1998.

COMMISSIONER P E SCOTT.

30 July 1998.

Order.

WHEREAS this is an application filed on the 9th day of April 1998 pursuant to Section 29(1)(b)(i) of the Industrial Relations Act 1979; and

WHEREAS the Applicant has sought leave to amend the name of the Respondent from "Collie Freightlines" to "Brieforth Pty Ltd trading as Collie Freightlines"; and

WHEREAS having heard from the parties in respect of this matter, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT the name of the Respondent be, and is hereby amended to "Brieforth Pty Ltd trading as Collie Freightlines".

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Sally Bonn

and

Brieforth Pty Ltd trading as Collie Freightlines.

No. 631 of 1998.

COMMISSIONER P E SCOTT.

30 July 1998.

Order.

HAVING heard Mr G Ferguson on behalf of the Applicant and Mr J Beedham 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.) P.E. SCOTT,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Bryan Burrows

and

Central Warehouse Pty Ltd.

No. 247 of 1997.

2 September 1998.

Reasons for Decision.

COMMISSIONER C.B. PARKS: The applicant had been employed by the respondent as its General Manager until 20 January 1997 when the employment was terminated in circumstances which he says constituted a dismissal which was harsh, oppressive or unfair. Hence it is that Mr Burrows instituted proceeding pursuant to s.29 of the Industrial Relations Act, 1979 (the Act) wherein he seeks remedies in the form of compensation and the payment of allegedly denied contractual benefits.

The Notice of Application states that the applicant is not seeking reinstatement in employment and claims in the alternative—

"damages to be assessed at a later date",

and in addition several claims are elsewhere listed as—

" (i) damages to be assessed
including (ii) vehicle to be taken over by company as agreed
(iii) bonuses to be paid
(iv) unpaid superanuation (sic)
(v) disputed leave payments"

Claims (iv) and (v) (supra) did not proceed before the Commission. Counsel for the applicant sought what he described as compensation in the following amounts—

"the difference in (the applicants) present wage to that of his income, had he remained employed with (the respondent)

part of the bonus for the financial year of 1996-97

that (the applicant) be reimbursed for lease payments on the motor vehicle made by him since February, 1997, at a rate of $759.32 per month

the (respondent) pay Mr Burrows, the balance between the present market value of the vehicle, and the debt which exists as of (26 November 1997)",

and finally, that –

"there be an order in favour of Mr Burrows, with respect to legal costs".

This last mentioned claim for legal costs the Commission dismissed during the course of proceeding and without hearing from the respondent thereon, the Commission being satisfied that it was a claim for the cost of the services counsel provided to the applicant which are costs the Commission is commanded not to allow under s.27(1)(c) of the Act.

The respondent denies that the applicant was harshly, oppressively or unfairly dismissed, or that he was dismissed at all, and it is on this latter ground that the respondent contends that the Commission lacks jurisdiction to deal with the matter. Furthermore, the respondent denies that the claims made in relation to a Ford station wagon motor vehicle, and that of a bonus, are benefits due to him under the contract of service that had existed.

On 20 January 1997 the Board of Management of the respondent met. This meeting was attended by the Chairman Mr E.J. McFarland, board members Messrs C.A. Connah, G.J. Clarke, J. Crawford, P.W. Horne, R. Rechichi and a Mr Mooney, together with employees of the respondent, Mr Burrows the applicant and Mr M.J. D'Costa the Finance Manager. After a lunch break and following the censure of Mr Burrows, he orally submitted his resignation from employment and departed from the meeting room. Before the Board of Management concluded the meeting, the Chairman Mr E.J. McFarland, left the meeting room and conversed with Mr Burrows on two occasions. A letter signed by Mr Burrows dated 21 January 1997, confirming his resignation (exhibit J1) was hand delivered by Mr Burrows to the office of the respondent on 23 January 1997. The letter of resignation was formally received by the Board of Management at a pre-arranged meeting held on the evening of 23 January 1997. On an undisclosed date subsequent to the termination Mr Burrows lodged a claim with the respondent under the Workers' Compensation Rehabilitation Act 1991 based on a medical diagnosis given on 18 January 1997 that he was then suffering work related stress. According to Mr Burrows he signed that claim on 4 February 1997.

Mr Burrows told the Commission that during the two or three month period prior to 20 January 1997 he had experienced health problems which caused him to seek medical advice on 18 January 1997. On this date he was diagnosed as suffering work related stress and it is said that the medical practitioner recommended he take a period of leave from work. According to Mr Clarke at the board meeting on 20 January 1997 he felt harassed, he became stressed and overcome with emotion which led him to react and orally resign from his employment. Mr Rechichi who was sitting alongside thereupon suggested that he calm down, sit down, and discuss the matter. This the applicant says he commenced to do but was unable to continue because of his emotional state which embarrassed him and he therefore departed the meeting room. Mr Burrows says he does not recollect Mr McFarland requesting that he confirm his resignation in writing and that he did subsequently confirm it at his own initiative. The applicant says that some 10 or 15 minutes later Mr McFarland came to him from the meeting room, he is said to have suggested that he return to the meeting however he, Mr Burrows, declined to do so and informed Mr McFarland that he would not be able to cope and that he had visited a doctor because he was suffering from stress. And further, he made the request to Mr McFarland that he be allowed two weeks leave to reconsider his situation. Mr McFarland is then said to have returned to the board meeting where he remained for approximately 45 minutes before returning to again speak with Mr Burrows. At this time Mr McFarland is said to have conveyed to the applicant that the Board had decided to grant him four weeks leave instead of the two, following which he stated that the Board had accepted the resignation. Mr McFarland is also said to have stated that Mr Burrows was not required to undertake any further work, that he was to take his time, and before the expiration of the four weeks he was to clean out his desk and make sure everything is tidy.

Mr McFarland's recollection of what occurred on 20 January 1997 is that Mr Burrows submitted his resignation and his actions indicated an intention to depart the meeting whereupon Mr Rechichi attempted to dissuade him from leaving and asked him to remain and discuss the matter. Mr McFarland says he then asked the applicant whether he was sure he wished to resign and Mr Burrows replied before leaving the room and

said that he did. Mr McFarland also says he asked Mr Burrows to confirm his resignation in writing. Following the departure of Mr Burrows from the meeting room the Board considered his resignation for a period of some 30-45 minutes during which time there was discussion regarding the several previous occasions Mr Burrows had threatened to resign and in light of this the Board decided to accept his resignation. Further, the Board believed Mr Burrows was due payment for two weeks leave however it was decided that he be paid for a period of four weeks. It is at the conclusion of these deliberations that Mr McFarland says he first talked with Mr Burrows outside the meeting room where he conveyed to him the decisions taken by the Board of Management. Mr Burrows, he says, responded and commented that his wife would be extremely upset with him and that he had visited a doctor but did not explain why. Mr McFarland says he returned to the meeting room and informed the Board of Management that Mr Burrows had mentioned he had been attending a doctor. After a short deliberation the earlier decision was confirmed and that then conveyed to Mr Burrows outside the meeting room and that, according to Mr McFarland, was the second conversation.

Messrs Horne and D'Costa, and Mrs C.A. Burrows the wife of the applicant, were called on behalf of the applicant to give evidence. Messrs Connah, Clarke, Crawford and Rechichi, the other members of the Board said to have been present during the meeting on 20 January 1997 from the time Mr Burrows tendered his resignation to the conclusion of the meeting, were called to give evidence by the respondent. There are some differences in the recollections of the board members but in all material respects they corroborated the testimony of Mr McFarland as to what was done, said, and concluded, within the meeting room, and the time frames within which such occurred relative to the two conversations Mr McFarland had with Mr Burrows outside the meeting room. The demeanour of Mr Burrows upon announcing his resignation, although differently described by the Board members, was not viewed by them as unusual and to their mind he did not appear to lack control.

It is the evidence of Mr D'Costa that immediately following the departure of Mr Burrows from the meeting room on 20 January 1997 he vacated the meeting room at the request of the Chairman but he remained outside, in the vicinity of the room, for approximately 30 minutes. During that time Mr D'Costa says he did not see Mr Burrows nor did Mr McFarland leave the meeting room and speak with Mr Burrows.

It is said by the applicant that not only did he inform Mr McFarland on 20 January 1997 that he was suffering from work related stress but that Mr McFarland had been notified of an earlier bout of work related stress at a meeting attended by Mr Burrows and his wife, and Mr McFarland and his wife, called by Mr McFarland to discuss his threat to resign because of difficulties he had coping with certain matters. Mr McFarland concedes that at the meeting in question Mr Burrows indicated to him he was having difficulty coping and he undertook to implement measures to assist Mr Burrows, however there was no mention made of him having been diagnosed as suffering the condition of work related stress. Mrs Burrows' recollection of that meeting is that her husband mentioned to Mr McFarland some symptoms he had experienced but she does not recollect the detail of what her husband said because she had been engaged in conversation with Mrs McFarland. Mrs Burrows expressed the belief that Mr Burrows would not have told Mr McFarland that he was suffering a stress condition because he had not accepted that to be the case himself.

The argument for the applicant is that notwithstanding he orally submitted his resignation to the Board of Management he had a conversation with Mr McFarland, the chairman of the Board, before that resignation was accepted and he made it known that he wished to reconsider what he had done. Equally the Board members ought to have recognised that he had submitted his resignation in circumstances and in a state of mind in which the soundness of the resignation was questionable. It is contended that the subsequent written confirmation of the resignation ought not be viewed as a conscious and separate confirming act as has been asserted by the respondent, but merely compliance with the request that the resignation, which by then had already been accepted, be recorded in writing.

The respondent contends that although the resignation of Mr Burrows followed his censure his conduct appeared to be deliberate and controlled. Mr Burrows did not respond to the suggestion of Mr Rechichi that he reconsider. Moreover when asked by Mr McFarland if he was sure he wished to resign he stated in the affirmative and it was following that the Board of Management considered and accepted his resignation during the meeting that was in progress. It is said that when Mr McFarland conveyed that acceptance to Mr Burrows he did not, as he suggests, indicate to Mr McFarland that resignation had not been intended and that he wished to take a period of leave because he was suffering a stress condition. Mr Burrows, it is submitted, did no more than mention to Mr McFarland that he had visited a doctor, he did not explain the significance of that, and consequently none was conveyed to the other board members when they considered that matter. During the course of the next three days Mr Burrows compiled a letter which confirmed his resignation, cites the reasons why he did so, and also states that he is suffering the effects of stress and has sought medical and professional help in relation thereto, yet none of this information is accompanied by a suggestion that the resignation had not been truly intended or that a retraction be considered. The respondent contends that the absence of any such suggestion serves to confirm that the Board of Management had been offered, and accepted, a resignation freely and purposefully given at the time and hence there were no circumstances associated with the termination of employment which brings it within the purview of one initiated by the respondent and in effect a dismissal.

It is apparent that at the time Mr Burrows resigned he had been diagnosed as suffering from stress and it follows that he likely had some difficulty coping with his job. Given this I think it most probable that the criticism and censure of him at the board meeting was the catalyst for his resignation. He also may not have been in full control of his faculties at the time. What is crucial however is whether the members of the Board recognised, or ought to have recognised, that Mr Burrows had acted in a way he did not truly intend and therefore they should not have accepted the resignation until he had the opportunity to calmly reflect upon his action.

There is no evidence that the Board of Management, or a member thereof, had any knowledge that for a period of a few months preceding the resignation of Mr Burrows he had experienced periods of functional impairment and that on 18 January 1997, he had been diagnosed as suffering a stress condition. On the evening of 19 January 1997 Mr McFarland discussed with Mr Burrows, for a period exceeding one hour, matters relating to the Board meeting to be held the next day and Mr Burrows did not inform Mr McFarland of the diagnosis nor did he indicate that he had any difficulty coping at the time. Further, the oral resignation was tendered in the afternoon session of the Board meeting and there is nothing which suggests that during the earlier part of the meeting Mr Burrows exhibited any sign of difficulty coping with his role. The manner and circumstance in which the resignation was tendered was a surprise to the Board members but the demeanour of Mr Burrows was not seen by the majority of members to be out of character for him and he appeared to act with control and a full understanding of his actions.

I am satisfied that the Board members and Mr D'Costa have shown that the resignation was considered for at least thirty minutes, and a decision taken to accept it, before Mr McFarland first spoke with the applicant outside the meeting room. Hence, it was at the time the acceptance was relayed to Mr Burrows that he mentioned to the Chairman that he had visited a doctor. I am not convinced that the applicant expressly mentioned his ailment to the Chairman. However, I think it probable that he did mention the matter of two weeks leave but the significance of that was lost because Mr McFarland responded and referred to the period of four weeks considered and adopted by the Board.

That the applicant mentioned visiting the doctor, and that Mr McFarland appraised the Board of this, obviously meant the Chairman understood Mr Burrows had done so because it had some relevance to the resignation. The Board considered the matter and confirmed its earlier decision without any apparent attempt to ascertain what significance visiting the doctor might have had for Mr Burrows and how it might be relevant to his resignation, to that extent the Board was remiss.

Three days subsequent to the resignation Mr Burrows submitted confirmation of it in writing, included therein is an explanation of why he had resigned, followed by the request that the Board finalise their relationship with account for his satisfactory service to the respondent. Nowhere does the letter of confirmation, either directly or impliedly, indicate that Mr Burrows was dissatisfied with what had occurred and he wished to remain in employment with the respondent. That letter, I find, served to confirm for the Board that Mr Burrows had resigned, that their acceptance of it was not in question, and that it simply remained to finalise the termination benefits.

Although counsel submitted that the confirmation letter was provided as no more than a response to the respondent's request, I find that was not so. Mr Burrows does not recollect receiving such a request and says he provided the letter on his own initiative. Given that Mr Burrows saw fit to explain the resignation yet did not dispute the consequential action of the Board, I believe reflects that he, being mindful of what he had done, was not aggrieved by what flowed from that. That is, Mr Burrows did not perceive any obvious unfairness on the part of the respondent at the time he confirmed his resignation. The allegation of unfairness did not arise until later and followed from views friends expressed to Mr Burrows.

It is my view the respondent would have been better served had the Board given more attention to what relevance Mr Burrows' visit to a doctor might have had, however the Board did not ignore the matter and purposefully act to end the employment of the applicant. The Board was faced with what they believed to be a genuine resignation and it was reasonable for the Board to so conclude.

The employment was not ended at the initiative of the respondent. No dismissal therefore occurred and consequently the claim identified as "damages", that is, compensation for loss or injury caused by an unfair dismissal, is groundless and will be dismissed.

I now turn to consider the claims made under the head of benefits purportedly due to Mr Burrows under his contract of employment, they not being benefits under an Award or Order of this Commission, and which he has not received.

The first such claim is that Mr Burrows be awarded a bonus payment at a value to be decided by the Commission calculated with reference to the percentage Mr Burrows had achieved of the net profit budget he had been expected to achieve for the 1996/97 financial year.

Mr Burrows commenced employment with the respondent on 6 December 1993 when it traded under the banner Homeflair (WA). The contract of employment dated 30 November 1993, and signed by Mr Burrows (exhibit M1) contains the provision—

> "4. Incentive: Incentive system to be negotiated at the appropriate time."

During the 1996/97 financial year the applicant was paid what has been described as a tax free "bonus" of $5000 because the budgeted net profit for the financial year 1995/96 was attained. Mr Burrows says he does not know how the Board arrived at the level of the bonus received. Later during the financial year 1996/97 Mr Burrows was notified that the Board had decided to increase his annual salary by $5000. According to the applicant he was also informed by Mr McFarland that other employees had been granted remuneration increases and that discussions were to continue with Mr D'Costa regarding a "bonus" proposition. In that same conversation Mr McFarland is said to have indicated that the overall remuneration package for Mr Burrows would be subsequently finalised. This Mr Burrows understood to mean that a 1996/97 bonus would be resolved for him after that for Mr D'Costa. A further indication that a bonus was to be forthcoming, Mr Burrows says, is that the sum budgeted to meet the overall remuneration costs of employees in the 1996/97 financial year was set in excess of the established remuneration costs, and that indicated additional costs were expected to flow because of bonus payments.

Mr Burrows estimates that at the date of his resignation the business had achieved in the vicinity of 85% of the net profit budget for 1996/97. On his behalf it is said that should translate into another bonus payment to him.

It is well settled that a claim made pursuant to s.29(1)(b)(ii) of the Act must be grounded upon an express term of the contract of employment, or alternatively, where the law allows, an implied term. For the reasons which follow it is not necessary to canvass the related evidence led on behalf of the respondent.

The "Incentive" provision within the written contract of employment does not promise the applicant any right to a bonus only that a payment of that nature may be subsequently negotiated. None has been negotiated either at an express level, or at a level definable by reference to the attainment of a particular result.

The quantum of the bonus paid to Mr Burrows for the 1995/96 year was not established according to any arrangement negotiated with him. He has no knowledge how the quantum of the bonus was derived. The extent of his knowledge is limited to the fact that he would receive a bonus payment in relation to the 1995/96 year should he attain the net profit budget for that year. The respondent made no promise at that time to pay the same quantum of bonus, or any other bonus, upon the attainment of net profit budgets, or upon any other basis, over future years. According to the applicant's own testimony, in relation to the year 1996/97, he was given to believe that the matter of a bonus was under consideration, he had not been told that a bonus would in fact be forthcoming, nor was he given any indication as to the basis he might qualify for such, and no quantum of bonus was mentioned.

I find that no right to the payment of a bonus was established according to, and therefore as a term of, Mr Burrows' contract of employment in relation to the 1996/97 year and hence the related claim fails and will be dismissed.

In October 1995 Mr and Mrs Burrows entered into a Hire Purchase Agreement to purchase a Ford Station Wagon motor vehicle. It is asserted that the motor vehicle, although purchased in their names, was for all intents and purposes the responsibility of the respondent and was never intended to become their liability under any circumstances.

The uncontested background to the purchase of the motor vehicle is that Mr Burrows indicated to the respondent his wish to replace the motor vehicle he owned with one more suitable to the requirements of the business. The respondent considered supplying a motor vehicle to Mr Burrows however that course was abandoned because the directors of the respondent had been required to give personal guarantees to repay the necessary finance. The directors were not prepared to undertake that liability because of an earlier experience they had had as guarantors to the financing of a motor vehicle and other equipment. At the time that discussions commenced regarding the supply of a vehicle to the applicant he received, pursuant to his contract of employment, an allowance of $5000 per annum for the use of his motor vehicle.

Mr Burrows says that he was given to understand that to overcome the need for directors to guarantee finance he ought undertake the purchase of a motor vehicle but that the respondent would treat it as a company owned vehicle and therefore meet all associated costs, to a maximum of $800 per month. According to Mr Burrows he and his wife purchased the motor vehicle upon being satisfied that the motor vehicle would be treated this way, and upon being further satisfied that they would have no liability in relation to the motor vehicle should his employment terminate. Mrs Burrows says her concern caused her to question Mr Clarke regarding the circumstance of a termination, in September 1995, before she and her husband entered into the purchase arrangement. Mr Clarke, it is said, responded and indicated that no liability would be incurred by Mr and Mrs Burrows.

Mr Clarke denies that he had any conversation with Mrs Burrows in which he indicated that she and her husband would not be liable for the purchase of the motor vehicle. It is his evidence that at a pre-budget meeting attended by Mr Burrows, and prior to the purchase of the motor vehicle he expressly indicated to Mr Burrows the respondent would assist him to purchase a motor vehicle via an increase of his motor vehicle allowance to $10,000 per annum. However, it was emphasised that the vehicle would belong to him. Mr McFarland told the Commission that he recollects being present at a meeting, although he thought it to be a Board meeting, where Mr Clarke made such a statement to Mr Burrows.

It is clearly apparent from other testimony that the Board of Management did not view the material motor vehicle as an asset of the respondent nor that it had adopted, or intended to adopt, any liability in relation to the purchase of the vehicle.

Following upon the commencement of the hire purchase arrangement, the associated repayments, the motor vehicle insurance and servicing costs were paid direct by the respondent. That, Mr D'Costa says, he arranged upon the instructions of Mr Burrows and without any independent knowledge of what entitlement Mr Burrows had, it not being necessary that he do so.

I found Mr Clarke to be open and precise with his testimony, given that and his professed religious commitment which I believe to be genuine, I prefer his evidence where it differs with that of the applicant and his wife. Mr Clarke does not appear to be a person who would deliberately mislead others in his dealings with them and he did not give me the impression that, as the Finance Director, he would have ineptly dealt with where the ultimate financial liability for the motor vehicle lay.

I do not doubt that Mr and Mrs Burrows believe that which they claim to be the assurance given in relation to the motor vehicle. However, there is not the evidence to substantiate that a term was orally introduced into the contract of employment which placed an obligation upon the respondent of the kind claimed to exist. This claim relating to the motor vehicle will be dismissed.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Stanley Bourne

and

Ivor Jones T/A Deluxe Limousines and Supreme Limousines.

No. 1965 of 1997.

COMMISSIONER J F GREGOR.

24 July 1998.

Reasons for Decision.
(Extempore)

ON the 27 October 1997, Stanley Bourne (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 on the completion of a contract of employment with Ivor Jones trading as Deluxe Limousines and Supreme Limousines (the respondent) that there was outstanding non award benefits.

The Commission has been told that Mr Bourne started work as a chauffeur with the respondent on the 2 May 1997 and that relationship continued for three months until August of that year. He was to be paid $20 an hour when he drove a limousine and $15 an hour for a sedan. He says that when the relationship eventually came to an end, he was owed the sum of $1,110.

According to his application, this sum is made up by various items of expenditure that he made, he says, on behalf of the employer. They include $30 for washing and cleaning glasses over a three month period; $100 unpaid wages for the 5 August 1997 at $20 an hour and for the 19 June 1997 at $20 an hour; $250 for panel beating and spray painting; $65 for disk pads; $50 to Toms Auto Repairs for installation of disk pads; $70 for switches and installation; $50 for cleaning and detailing the vehicle; $50 for repair of carpet; $15 for champagne, balloons and ice; $20 for phone calls; $100 receipts as held by I Jones (these relate to various expenses for spare parts); $130 for supplying, cleaning and detailing equipment and $80 for unpaid wages.

The applicant makes further other claims which he categorised as expenses incurred in pursuit of moneys owed; registration fees for this claim of $5; a personal loan, $100 interest; petrol and phone calls at $50 and what is titled "spurious claim" for $100 for window tinting, making a total of $1,435. The applicant says he thought it was part of his arrangement with the respondent that he be paid for all of these expenditures.

Concerning claims for payments for the tyres and the disk pads, the applicant says he had raised those with the office of the respondent but there had been no response. In the absence of approval he decided that he would go ahead and purchase the items. He was frank with the Commission when he said that his right to payment for the expenses I have described were not discussed when the parties entered into the employment arrangement. He thought, if I understand his evidence correctly, they were legitimate purchases. For instance, he expended $250 on panel beating to repair damage that occurred when a hard object was thrown at the vehicle on the freeway. He arranged the repairs without reference to the respondent. In fact, apart from the bald tyre and disk pads, it appears that the other expenditures occurred without reference to or the approval of the respondent.

The respondent told the Commission that the applicant came with good references. He was treated in a different way to other employees. Most of the respondent's drivers, except for one, work in a relationship of employer and employee. There is one who has a contract for service and that person supplies a vehicle. Apart from the exception every other driver is in a contract of service relationship.

Soon thereafter the applicant commenced there were discussions between him and Mr Jones on behalf of the respondent about a different sort of relationship. There was an offer made by Mr Jones that the respondent would enter into a contract for services wherein he would buy from the respondent a vehicle worth in the vicinity of $65,000. Later the price may have been reduced to $55,000. That is immaterial because the arrangement did not proceed but, nevertheless, a vehicle was to be supplied and the applicant was to buy an operator's contract for $35,000. The vehicle and the contract were to be provided by the respondent with no up front payment, the loan was to be interest free. There was a fee to be collected for both loans from the monthly earnings that the applicant would achieve as an owner operator of the vehicle. None of these arrangements were reduced to writing, however the respondent says that the applicant's conduct in spending money on the vehicle is given some sense if one understands that part of the relationship was that he was eventually to own the vehicle, so there is some logic in the expenditures. According to the respondent there would be no logic in the expenditures if there was no such arrangement.

Eventually, the applicant and respondent fell out for reasons that I do not need to explore. There are allegations that the applicant did not pay loan repayments to the respondent as he was required to do under his contract. Eventually he entered into a financing arrangement to make good his debt. Those events do not touch upon the issues for determination here.

The Commission is empowered to deal with claims of this nature under section 29(1)(b)(ii) of the Act. In *Reginald Simons v Business Computers International Pty Ltd 1985 (65 WAIG 2039)* the learned Acting President observed that—

> *"The jurisdiction which is founded by proceedings brought under section 29(b)(ii) of the Act is judicial. It is not arbitral or legislative. The Act limits the jurisdiction to ascertaining existing rights by determination of whether or not the employee has been denied a benefit which is not a benefit under an award or order to which the employee is entitled under a contract of service."*

It is further observed in the Reasons of the learned Acting President—

> *"In a situation where there are contracts which are not made under an award or order of the Commission, in most cases negotiations are not exhaustive remedies which are to apply for a resolution of every conceivable incident. Although the Commission's jurisdiction in these proceedings is judicial, there is always room to grant relief which has, at its roots, the ascertainment of rights and obligations which can be fairly implied as terms of the contract. It is not necessary for an employee to rely upon an express term, either oral or written, where the law otherwise recognises that there is room for implying that term relied upon by the applicant."*

These concepts have been discussed at length recently in the High Court *Byrne v. Australian Airlines (1995) 65 IR 32*. I have no need to comment on the conclusions reached by the Justice other than to mention that an important case for application here is *BP Refinery (Westernport) Pty Ltd v. Hastings Shire Council 1978 52ALJR 20*. The test that was established in the *BP Refinery)(Westernport)* case have not been changed by *Byrne*.

The test relies upon five basic rules; the term was so obvious that it went without saying when the parties made the contract; the term was necessary to give business efficacy to the contract; the term does not directly detract from any provision of a written or an oral contract; in other words, that the parties knew at the time the contract was formed that the term to be implied was so obvious that it went without saying.

Applied in here, these rules lead to the following conclusion. The applicant is unable to establish the fundamental terms of a contract in writing. He therefore has to rely upon establishing an oral contract. He has not been able to demonstrate, other than in the case of wages which is conceded, that all of the expenditures for which he seeks reimbursement are matters which on the day that the contract was formed, that it went without saying that the parties would have agreed them, therefore one cannot imply into the contract right to reimbursement of the expenditures that he claims.

One needs to examine the relationship to test that conclusion. Why would someone do what the applicant has done if he was an employee engaged under a contract of service. It is not normal that an employee who drives a vehicle for an employer pays for repairs on a vehicle. Often there are arrangements where drivers do simple maintenance or they wash their vehicles, but the expenditure of an employee's money on repairs to an employer's capital asset is a very rare thing, so why would such an event take place in a relationship that we are examining in this case?

If there was a normal relationship, one cannot make any sense of such an action by an employee but if the story urged by the respondent that there was an arrangement as employer and employee as a precursor to another relationship as a contractor under a contract for services, then some sense can be given to what has happened in this instance.

I have had the opportunity of seeing both the applicant and the respondent's witnesses. I am required to make a judgement about whose evidence is the most likely to reflect the true arrangements that were made. The respondent's evidence is more likely than not to be the truth and I accept it in preference to that of the applicant. On the balance of probabilities I find that the parties did have in mind some long term relationship of a different type of relationship to that of an employee and employer. This gives some sense to the applicant protecting his future investment by spending money on the vehicle. That action gives weight to the proposition that there was no need to imply terms into the contract at all. There was no thought given to reimbursement of costs for running the vehicle because in due course their relationship was going to be a different one.

On balance, I find that on the authority to be applied I cannot make a finding in favour of the applicant on those parts of the claim which he says deal with monies he expended on the vehicle. He certainly is not entitled to expenses in pursuit of the monies he claims is owed. The only heads of claim which I can find would be part of the contract deal are two items relating to unpaid wages. For the applicant to establish that those wages were unpaid, he has to do more than just say they were unpaid. He should have made a search of the respondent's records. He should have brought evidence of monies earned so that the Commission would be in a position to determine whether those moneys were paid or not. There was no evidence at all led about those matters. The only evidence I have deals with the claim for $80 which the applicant says is owing to him when he did a job with two other drivers at $80 a car and one driver collected a cheque for $240 and submitted it to the company.

The evidence of Mrs Mitchell, I must say, is disappointing in this respect. She seemed prepared to just dismiss the applicant's claim out of hand. I think a better attempt ought to be made to ensure that the money be paid to the respondent if it is due. I make no finding about that amount owing but I would expect a reputable business to ensure that proper postings of payments have been made and if they have not, that the $80 be made good.

I do not intend to issue any Orders in this matter other than an Order of dismissal and that is how the application will be decided.

Appearances: The applicant appeared on his own behalf.

The respondent appeared on his own behalf.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Stanley Bourne

and

Ivor Jones T/A Deluxe Limousines and Supreme Limousines.

No. 1965 of 1997.

COMMISSIONER J F GREGOR.

24 July 1998.

Order.

HAVING heard the applicant on his own behalf and the respondent on his own behalf, 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.

Benedicto Alexis Cardenas

and

Cervantes Electrical Engineering Pty Ltd.

No. 1516 of 1998.

COMMISSIONER J.F. GREGOR.

21 August 1998.

Order.

WHEREAS on the 11 August 1998, Benedicto Alexis Cardenas applied to the Commission for an order pursuant to Section 29 of the Industrial Relations Act, 1979; and

WHEREAS on the 21 August 1998, the Commission conducted proceedings in Port Hedland at which time the applicant was represented by Mr G McCulloch and the respondent was represented by Mr A Chilvers, of Counsel; and

WHEREAS the matter between the parties was settled on following terms—

1. The employment contract will continue until 21 October 1998;
2. The respondent will pay the applicant at the rate of $21.25 per hour for 40 hours during each week up to the 21 October 1998;
3. The respondent will waive its right to the payment of $3,500 from the applicant; and

WHEREAS the agreement is in full and final settlement of the application and on this basis the Commission has decided to discontinue the matter;

NOW THEREFORE, pursuant to the powers vested in it under the Industrial Relations Act, 1979, the Commission hereby orders by consent—

1. THAT the employment contract will continue until 21 October 1998.

2. THAT the respondent will pay the applicant at the rate of $21.25 per hour for 40 hours during each week up to the 21 October 1998.
3. THAT the respondent will waive its right to the payment of $3,500 from the applicant.
4. THAT the application be and is hereby discontinued.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.
Sonny Crawford
and
Guiseppe Nominees Pty Ltd as trustee for the Astone Unit Trust t/a Bayswater Door Centre.
No. 632 of 1997.

18 August 1998.

Reasons for Decision.

COMMISSIONER C.B. PARKS: It is the claim of Mr Crawford that he was unfairly dismissed from his employment with the respondent on 14 March 1997 and he asks that the Commission reinstate him to the position of employment he held with the respondent.

Mr Crawford commenced employment with the respondent on 20 January 1997 in the position of Administrator. On that date he countersigned a letter of appointment issued to him and dated 16 January 1997 (exhibit L1). That letter, signed by the General Manager Mr B. Milne, outlines the duties Mr Crawford was required to perform and also lists several terms that were to apply to the employment. One such term stated that his working hours were to be "8.30 am to 5.00 pm with one hour break for lunch" and there is oral evidence that Mr Crawford was required to perform his duties on each day from Monday to Friday inclusive. Hence, according to the letter of appointment, Mr Crawford was to work the period stated for each of the five days however, that does not truly reflect the arrangement upon which Mr Crawford was engaged. The Commission heard testimony from Mr B.G.A. Milne who had been the General Manager for the respondent, and Ms T.G. Muccilli who had been the Senior Sales Administrator for the respondent, both of whom corroborated the evidence of Mr Crawford that upon his expected commencement of university studies he could work the number of ordinary hours the respondent required of him in such a way so as to cease work at or about 12 noon each Friday. Mr Milne also said that the flexibility of working hours agreed with Mr Crawford was an innovative move and had been approved by him because he expected that management would be able to cope with the absence of Mr Crawford on Friday afternoons. However, given that on a Friday afternoon others in management may be called upon to perform duties which were within the scope of Mr Crawford's position it had been stated to him that a continuance of the flexible hours arrangement would depend upon it operating to the satisfaction of management.

There is no corroboration that such a caveat was established however, as Mr Milne parted with the respondent on acrimonious terms, he was called to give evidence by Mr Crawford who did not refute that the caveat existed, I accept that it did and therefore the entitlements of Mr Crawford to work reduced hours on a Friday was not absolute.

In February 1997, apparently days prior to the commencement of the university semester, Mr Milne was dismissed from his employment with the respondent and before his departure remarked to Mr Crawford that the directors of the respondent had not been made aware of the arrangement allowing him to work reduced hours on a Friday. Shortly thereafter a meeting followed between Mr O. Sorci, a director of the respondent, and Mr Crawford wherein Mr Crawford informed Mr Sorci of the arrangement allowing him to work reduced hours on a Friday when undertaking university studies. It thereafter followed that the directors of the respondent decided, and conveyed to Mr Crawford, that they required him to work each Friday the full period of hours stated in his letter of appointment. Mr Crawford maintained that it was his right to work reduced hours on a Friday and it is because of this he was dismissed upon one weeks' notice which expired on 14 March 1997.

The position of Administrator to which Mr Crawford was appointed essentially involved the performance of finance related duties and had been newly created. Prior to the creation of the position the duties involved had been performed by other employees and predominantly by Mr Milne and Ms Muccilli. According to Mr Sorci, the position of Administrator had been created so as to relieve Mr Milne and Ms Muccilli of the financial administration in order for them to focus their efforts on their respective principal roles of sales and general management. Hence, any finance related matters requiring attention after midday on a Friday would, because of the absence of Mr Crawford, have to be dealt with by other employees and in particular Ms Muccilli given that Mr Milne was no longer employed by the respondent. Further, the dismissal of Mr Milne, and here I interpolate such appears to have been summary in nature, left the respondent in the situation where his duties remained to be performed and the absence of Mr Crawford on a Friday afternoon meant he was not available to assist the respondent to cover that situation. Mr Sorci says it was made known to Mr Crawford that the respondent wished him to work Friday afternoons because of the need to cover the loss of Mr Milne's services. It is against this background that Mr Sorci says he attempted to have Mr Crawford work his weekly hours to cover Friday afternoons but when he refused to do so the decision was taken to terminate his employment.

According to the applicant it was never put to him by the respondent that his services were needed on a Friday afternoon to overcome difficulties which arose from the dismissal of Mr Milne. Mr Crawford says the only reason given to him for the demand that he work on Friday afternoons was that if he did not to do so such might cause dissatisfaction in the workplace and lead other employees to pursue flexible hours of employment which did not suit the respondent. It is said by the applicant that had the arrangement not been made with Mr Milne for him to work reduced hours on a Friday when studying at university he would not have ended his previous employment and commenced with the respondent. Further, an express oral arrangement had been entered into and the respondent sought to renege on that arrangement for a reason which, impliedly, had not prevented Mr Milne agreeing to the arrangement at first instance. In the view of Mr Crawford no justifiable reason to vary his contract of employment had been put to him and therefore his dismissal on account of his refusal to accept the unwarranted variation was therefore unfair.

The Notice of Answer, filed on behalf of the respondent in response to the application made by Mr Crawford, alleges that at the time he was dismissed he was serving a period of probation and therefore the respondent had been "…entitled to dismiss him without reason and with no more than one week's notice", and cites, as an alternative ground, that the hours Mr Crawford was required to work were those prescribed in his letter of appointment, that no alternative arrangement had been made with the General Manager, and therefore his refusal to work on Friday afternoons constituted a breach of his contract of employment which justified his dismissal upon one week's notice.

Having heard the evidence of Mr Milne and Ms Muccilli, counsel for the respondent did not pursue the second cited ground, correctly so in my view. The parties are agreed that the dismissal of Mr Crawford occurred during the period he was serving on probation in accordance with his letter of appointment (exhibit L1), however each attributes a different significance to that circumstance.

Mr Crawford put little to the Commission regarding the significance of the employment probation period he had undertaken with the respondent. According to the applicant the probationary period served only to provide a period during which management might satisfy itself that he was suited to perform the role of Administrator for which he had been selected. Although there had been dissension with the directors

regarding the hours he worked on a Friday, and intended to work for the future, the applicant emphasised that his hours of work were authorised by his contract of employment and consequently he had met the conditions of the probation. Hence the respondent had no justifiable reason to dismiss him.

Counsel for the respondent directed the Commission to the matters of Charles William Westheafer and Marriage Guidance Council of WA (65 WAIG 2311), and Karli Shuard and CDM Australia Pty Ltd (77 WAIG 988). It was submitted that in each of these matters the Commission has previously held that during a probationary period the employer is free to dismiss the employee if that employee is unable to do that which the employee held he or she could do, or if the employee did not remedy behaviour after having been provided with the opportunity to do so.

Counsel put to the Commission that Mr Crawford had been requested to work in accordance with his written terms of appointment, he refused to do so notwithstanding he had reasonable time to consider and comply, therefore his conduct was such during his probation that the respondent was free to terminate the employment.

The reason why the respondent acted to dismiss Mr Crawford is reflected in a ground contained in its Notice of Answer. That is, the respondent did not accept that an arrangement had been made with Mr Crawford which entitled him to work hours different to those contained in his letter of appointment, and consequently, his continued refusal to do so was viewed as non compliance with the terms of his employment. No apparent effort was made by the directors to enquire beyond the letter of appointment and consider the validity of Mr Crawford's claim to the arrangement with Mr Milne. The directors clearly were not amenable to the flexible hours arrangement and proceeded to deal with Mr Crawford on that basis. I am however satisfied that the directors also had a genuine concern for the administration of the business on a Friday afternoon in light of the departure of the General Manager, Mr Milne. I do not believe that concern was conveyed to Mr Crawford and he given the opportunity to review his situation with the benefit of that information. The directors acted with little consideration for the needs and rights of Mr Crawford and that was wrong.

However, the departure of Mr Milne placed the respondent in a new situation which the directors assessed would cause operational problems and that they sought to avoid. It was their obligation and right to do so. Although the caveat to Mr Crawford working reduced hours on a Friday was not known to them they are however entitled to rely upon it and hence it had been open to the respondent in the particular circumstances of this case to end the arrangement observed by Mr Crawford, and given his refusal of the alternative, to end his contract of employment during the probationary period. The application will therefore be dismissed.

Appearances: Mr S. Crawford on his own behalf.

Mr D.A. Lenhoff (of Counsel) on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Sonny Crawford

and

Guiseppe Nominees Pty Ltd as trustee for the Astone Unit Trust t/a Bayswater Door Centre.

No. 632 of 1997.

18 August 1998.

Order.

HAVING heard Mr S. Crawford on his own behalf and Mr D.A. Lenhoff (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.

Colin Jeffrey George Dyne

and

Otway Pty Ltd T/A Otway Transport.

No. 269 of 1998.

COMMISSIONER J F GREGOR.

17 August 1998.

Order.

WHEREAS on the 12 February 1998 Colin Jeffrey George Dyne filed an application seeking orders pursuant to section 29 of the Industrial Relations Act, 1979; and

WHEREAS on the 10 August 1998 the Commission conducted a conference between the parties at which the parties agreed that the matter would be settled by the respondent paying to the applicant the sum of $4,000;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act 1979, the Commission hereby orders by consent—

THAT the respondent pay to the applicant the sum of $4,000 forthwith in full and final settlement of the claim.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Scott Patrick Hernadi

and

Salmon Point Holdings Pty Ltd.
trading as O2 Bar and Club.

No. 236 of 1998.

COMMISSIONER P E SCOTT.

1 September 1998.

Reasons for Decision.

Extempore

THE COMMISSIONER: The Applicant claims that he has been unfairly dismissed from his employment with the Respondent and he seeks compensation for that unfair dismissal. He also seeks to enforce certain entitlements, which he says are owed but have not been received.

I have considered all of the evidence and the submissions in this matter. I do not intend to cover each and every aspect of those submissions and evidence in these reasons but to deal with the essence of the matter.

The background to this matter is that in approximately September 1997, the Applicant was employed as a casual employee of the Respondent. He had previously been employed by the Respondent and, having been away for some time, was approached by Kristine Dawn Early, the club manager, to work there again as a casual, and he did so.

In about mid-December 1997, at some date between the 16th and 22nd December, Early advised the Applicant and David Bruce Meek that they were to be appointed to positions of Stock Controller and Operations Manager respectively. These were to be full-time positions and their appointments to those positions were to be on a trial or probationary basis. The Applicant has given evidence of this being for a one month period. Joshua Grant Nisbet has given hearsay evidence of a conversation with Meek, indicating that the arrangement was for one month. However, the evidence of Meek is that this trial was for an unspecified period. The evidence of Early is that, although she does not recall specifically, she believes that no particular period of probation was specified.

There is evidence that after some time, when Early was on leave, the Applicant asked Meek if he had heard anything about

their trial period finishing, and Meek's response was, no, he had not heard anything.

Early has given evidence of having spoken to the Applicant in the office before she went on leave. During this discussion, she told the Applicant that he was not performing as part of the team, she expressed her concern that he was complaining about management to other staff, and advised him of the need to communicate better with management. She was to review the situation on her return from leave.

On either 26 or 27 January 1998, the Applicant's employment was terminated by Meek. The Applicant expressed to the Commission his surprise that it was Meek who terminated his employment. He would have expected Early to be the one to have done that, bearing in mind her position.

The first question to be resolved is whether the Applicant was still on probation at the time of his dismissal. I am satisfied that the Applicant knew that he was on probation. He had asked Meek if he had heard anything about the probation coming to an end and Meek said he did not know. He had not been told that the probation was over and he had reason to believe that his performance was the subject of criticism from management. He had no good reason to believe that his probationary period was over. I am not convinced that the probationary period was for only one month. I accept that the Applicant was to have his situation reviewed when Early returned from leave. If there is criticism due to the Respondent it is that the situation was not clarified in that the Applicant was not told how long the probationary period was to be.

If the Applicant were still on probation at the time of termination, the employer is able to rely on the trial period to say that it had no obligation to even objectively assess him to decide whether or not to re-engage him at the end of the probationary period, was entitled to treat the arrangement as being part of the selection process and as being distinguishable from permanent employment. I refer to the reasons for decision of Fielding SC in Westheafer v Marriage Guidance Council of WA; (65 WAIG 2311). Therefore, the Applicant could have had no reasonable expectation that his employment was other than on trial. He had no claim, then, if his employer chose not to offer him a permanent position. In these circumstances, the application should be dismissed.

However, if I am wrong and the Applicant's probationary period was for one month, then that one month expired somewhere between the 16th and the 22nd January 1997, ie a few days before the employment terminated.

During the first few weeks of his employment, the Applicant's attitude was different from that which he displayed while he was engaged as a casual. The Commission has heard evidence from a number of witnesses as to the Applicant's change of approach. He was said by a number of those witnesses to have become arrogant, egotistical and unhelpful. There were a number of examples of this unhelpful attitude. Also, he did not perform his work as stock controller as was required of him. The Applicant failed to keep the stock control system up to date because he thought he could devise a system better than that already in place. However, he was told by Early that he could try his system so long as he continued with the existing system. He did not do so and the existing system fell behind, requiring Meek to spend some time bringing it up to date again. Neither did the Applicant put forward a new system for consideration during the time he was employed.

The evidence also indicates that the Applicant was undermining the authority of Meek. I must say, though, that it appears that Meek lacked the confidence to deal with the Applicant and to some extent Meek's own conduct, his timidity and his lack of self-assurance, allowed if not encouraged this to occur. Instead of dealing with his subordinate's lack of diligence Meek simply did those tasks which the Applicant chose not to do and which he had asked the Applicant to perform, rather than confront the Applicant. The Applicant, however, took advantage of this situation.

I also note, though, that some of the evidence as to allegations or rumour that the Applicant was undermining Meek's authority were simply rumour, but there was other evidence to substantiate that situation, even if it was simply that the Applicant was not undertaking work when asked by Meek.

In all of these circumstances, if the Applicant were no longer on probation at the time of the termination of his employment, then it is clear that the employer had good reason to be dissatisfied with his performance. In light of the discussion Early had with the Applicant before she went on leave, the Applicant was made aware that his attitude and approach was not satisfactory to her. During her absence, further complaints were relayed to Hancock, one of the directors. These complaints were also raised in management meetings. Eventually, a week before the termination of employment and what would appear to be approximately 4 days after the expiry of the one month's probationary period, if such a period did apply, it was resolved in discussion between Hancock and Meek that the Applicant's employment was to terminate, and Meek was to carry this out as part of his responsibility. He delayed doing so for a week. The Applicant's employment terminated on either the 26th or 27th January 1998.

It is clear that at this point the relationship between the Applicant and other staff, and between the Applicant and his immediate superior, made the situation of his continued employment untenable and, as I noted earlier, this was still occurring even after Early's discussion with the Applicant prior to her going on leave.

In all of these circumstances, I am unable to find that the Applicant has discharged the onus which falls to him of demonstrating that the Respondent has so harshly, oppressively or unfairly abused its lawful right to terminate his employment such as to warrant the Commission's intervention in the employer's decision. It may be that the Applicant was not given a formal warning that he was required to improve or his job would be in jeopardy. However, I take into account the fact that, if he were no longer on probation, no-one had told him so but that Early had told him of her dissatisfaction with certain aspects of his performance. He could hardly have considered his position to be secure in light of those things. Further, if there has been a procedural failure in circumstances such as this I am not satisfied that it renders the dismissal unfair.

As to the contractual benefits claims, there is no evidence as to how these are said to arise, that is that they are benefits arising from the Applicant's contract of employment not being benefits arising under an award or order. It may be that they are benefits arising from the Minimum Conditions of Employment Act, although that is not clear. In these circumstances the Applicant has not discharged the onus of proving that these are benefits able to be enforced pursuant to s.29 of the Industrial Relations Act 1979.

Accordingly the application will be dismissed.

APPEARANCES: The Applicant appeared on his own behalf

Mr B Hancock appeared on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Scott Patrick Hernadi

and

Salmon Point Holdings Pty Ltd.
trading as O2 Bar and Club.

No. 236 of 1998.

COMMISSIONER P E SCOTT.

1 September 1998.

Order.

HAVING heard the Applicant on his own behalf and Mr B Hancock 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.) P. E. SCOTT,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.
Philip David Morgan
and
ORIX Australia Corporation Ltd.
No. 190 of 1998.
COMMISSIONER J F GREGOR.
3 September 1998.

Reasons for Decision.

On the 2 February 1998 Philip David Morgan (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 his employment with ORIX Australia Corporation Ltd (the respondent).

The respondent is a company which employs around 300 employees nationally in each capital city in two divisions; finance and a division which specialises in operating leases on motor vehicle fleets of passenger cars, commercial vehicles and materials handling equipment. The applicant in these proceedings applied for a position with the respondent in 1995 and on the 13 December of that year the respondent, through its State Manager, David Anderson, confirmed an offer of employment as an operations supervisor within the fleet services division in Perth. In discharging his duties the applicant was responsible for fleet control in Western Australia, he coordinated new vehicle deliveries, ensuring vehicles were received on time from the dealer and to specification and then delivered to the client. He was to provide support to the sales division for both sales and account management in this State. In addition he coordinated the vehicle sales tenders in Western Australia. This involved him organising lease replacements for the mini lease fleet. In doing so he had to supervise and support subordinate staff.

At the time of the applicant's employment the fleet services division in Perth consisted of a State Manager, the Operations Supervisor, the position occupied by the applicant in these proceedings, who for all intents and purposes was the second in charge of the division in this State. There were also two other employees, one involved in sales and the other as a vehicle controller. There were other principle responsibilities required of the applicant. He was to manage and assist after hours and breakdown service, maintain business relationship with clients, dealers and repairers by visiting them, managing and assisting in the registration of roadside membership of vehicles, the maintenance of fleet records and production of fleet reports from those records. This enabled him to attend to general fleet enquiries. Additionally he was to carry out special tasks or projects as directed by the State Manager. He was authorised to issue order numbers for vehicle maintenance and repairs to an agreed value by the regional manager. According to the information before the Commission (*Exhibit W2*) there were no authorisations which would have conferred upon him the authority to make decisions on policy matters when the State Manager was available to do so.

The letter of offer of employment (*Exhibit W1*) nominated a salary of $42,000 per year. The precise details of the package were to be agreed upon commencement but included a fleet approved motor vehicle. There were requirements for confidentiality about all aspects of the conditions of employment. The confidentiality obligation extended to information gained during the course of employment. There was a prohibition, except where required by law, against disclosure of the company's information to any unauthorised person. Under the heading 'General' the letter of offer provided that—

> General terms and conditions of employment with the Company are detailed in the Group Reference Information Manual (GRIM) (as amended from time to time) and available to you on your appointment by request.
>
> *(Exhibit W1)*

It is not challenged by the applicant that he became aware of the ORIX Australia Group Reference Information Manual (GRIM) and received, as all employees are said to, a handbook (*Exhibit W5*) which describes the personnel policy objectives of the respondent. It drew attention of the employees to the need for constant review to take account of community expectations of employers as well as statutory obligations. The handbook stated that as a responsible employer the respondent would provide a safe non-threatening workplace, worthwhile promotional opportunities and the right training for staff so that they can do their job in an environment where each employee could identify with corporate objectives and at the same time achieve their full potential. The manual dealt with general conditions of employment, staff facilities and benefits and occupational health and safety. Apart from setting out details of the contract such as hours of work, payment of wages, leave entitlements, performance management, absenteeism and lateness, it contained information concerning a code of conduct.

Great emphasis was given to the respondent's ethical approach to business in Australia. The code of conduct set out in the manual provides, amongst other things, that all employers are expected to behave responsibly and professionally and that any conduct likely to disadvantage the company or its business, employees, clients or suppliers may result in dismissal. There are specific requirements in the policy concerning conflict of interest. No staff member is to have personal business or financial interest that is incompatible with loyalty and responsibility to the respondent. A staff member or the immediate family of the staff member is not to accept any gift or gratuity or any personal financial advantage from outside parties in connection with any transaction in which the respondent might have an interest unless there has been full disclosure and consent from the respondent. Nor can a gift or gratuity or a financial advantage be given to an employee of an outside party with the intent to influence corruptly that employee's conduct. Particularly important for this case is the requirement which sets out the circumstances where there are doubts about the efficacy of a particular activity. An employee if faced with a dilemma which might result in their actions being questioned, is required to discuss the matter with his or her manager. Also of particular importance the manual, which is part of the contact of employment, provides that in the context of a code of conduct that the respondent will not tolerate misconduct, neglect of duty or efficiency and that any employee whose conduct is likely to damage the company, its business, staff, clients or suppliers may be dismissed instantly.

The manual sets out examples of unacceptable conduct which include committing a criminal offence, being under the influence of alcohol or drugs, physical abuse or other conduct which would jeopardise safety or health and again, of significance for these proceedings '… Using your position with the company for personal profit or gain. Engaging in personal conduct or possessing a reputation which adversely affects the company's business'. *(Exhibit W5)*

The manual also contains a handbook for staff with information on professional behaviour guidelines. These guidelines deal with discrimination, harassment and sexual harassment. These are not issues in this matter and it is unnecessary to record the detail of the policies.

The applicant's letter of appointment required him to indicate his acceptance of the offer of employment upon the terms that have been related in some detail above. He did so by signing the letter and returning a copy to the employer.

The applicant's dismissal came about after a series of events which in broad are as follows. The respondent allows staff to use what are described as loan cars. These are usually new models which may be in the possession of the respondent for assessment. There is an arrangement where if an employee wishes to have a vehicle for a more extended period than the few days that such an assessment would take that they enter into what is called a mini lease arrangement. This allows them to hire a motor vehicle from the respondent at an extremely reduced rate. When loan cars are used there are strict rules and policies to be met.

When the applicant commenced duties the state manager was Mr David Anderson, who gave evidence in these proceedings. Mr Anderson completed a staff performance management appraisal summary (*Exhibit W3*) on the applicant in 1997. The applicant was rated as a person fully competent to perform the position. He achieved all objectives and met requirements for effective performance. Mr Anderson

commented about the applicant that he made a valued contribution to the WA team in 1996 during a period of strong growth. It was reported '… His customer service ethics are strong'.

He was said to have learnt quickly and developed the role of operations supervisor to be more efficient and streamlined. It was noted that he had a very good year and had a strong basis for development. Later that year Mr Anderson left the company and his replacement was James Barron.

Mr Barron had been with the respondent for some time but in the financial division. He was not inexperienced in car leasing but on his own admission he had spent less time in the fleet division than he had in the financial side. Following his appointment he became aware that the applicant had organised a loan car to be used by an operations manager of a client of the respondent who was coming to WA from the Eastern States. He also made a similar arrangement for an employee of the respondent based in Sydney to use a vehicle while on annual leave in WA. These actions were drawn to his attention as inappropriate because of failure to obtain the prior approval of Mr Barron and by his contract of employment, contrary to company policy, a matter of which he should have been aware.

The same policy was pointed out to Mr Gregory Adams who was the vehicle controller employed by the respondent. Mr Adams' role was to ensure the registrations of all vehicles used in the state and the coordination and delivery of new vehicles which include making insurance arrangements. He can be described as the fourth member of the staff. Both Mr Adams and the applicant were told by Mr Barron that to organise loan cars in the way they had done was contrary to company policy, at least the way he intended to run the policy. They had both said to him what they had done had previously been the practice. Mr Barron instructed that the practice now cease. There was a meeting of staff in October 1997 at which, according to Mr Barron, these issues were raised. Mr Barron said he made it clear that the practice of organising loan cars without approval would stop. It was Mr Barron's evidence that the applicant was present at the meeting. Neither the applicant nor Mr Adams remember the meeting or what was said by Mr Barron.

There was a change of company policy during November or December 1997 when the respondent expressed an intention to devolve car purchasing to individual states rather than by head office. In Mr Barron's mind this raised additional ethical issues because it meant that the applicant would have authority to purchase cars for operations in WA. Therefore there was an essential need to ensure there was no compromise of his position in this respect, he was to act in an ethical manner at all times.

In December 1997 a series of events took place which were described by the applicant. He said that he was to have a visit over the Christmas holidays from relatives and was going to take his holidays then. He mentioned the visit to Mr Mike Henderson who is a dealer who worked with Scarboro Toyota. According to the applicant he told Mr Henderson that he did not possess a suitable vehicle to move the relatives around. Mr Henderson's response, according to the applicant, was that Scarboro Toyota might have an appropriate vehicle. The applicant said that he mentioned that he could perhaps hire a vehicle. According to him Mr Henderson said that might not be necessary, he would discuss the matter with his manager. Later the applicant was told that Scarboro Toyota would be happy to loan him a vehicle.

As the time for the visit drew close the applicant enquired if a vehicle was available for the evening of the 12 January 1998. The vehicle that the two men had discussed was not, but he was given a substitute vehicle (a Toyota Prado) to pick his relatives up from the airport. He picked up the vehicle at 5.00pm Monday 12 January 1998 and he returned it on the following day at 11.45am. Around that time he was told that Scarboro Toyota would be unable to help him with a vehicle for his holidays. That did not create much of a difficulty for him because there was a loan vehicle that the fleet division had been using for appraisals from Holden which was nearing the end of its term with the respondent. According to the applicant the sales section had exhausted clients for its use. It was his contention that the vehicle was loaned by the supplier to be used by clients and staff alike as long as the necessary paperwork was filled out on its return. It was argued on behalf of the respondent that this use was necessary to allow staff to get the feel of the vehicles so they could answer clients questions about them. Because the applicant was nearing the time he needed to move his relatives on holidays and there was no vehicle available from Scarboro Toyota, he decided to use the Holden vehicle. He took the vehicle without consulting the State Manager, Mr Barron because Mr Barron was absent from work and because he (the applicant) was second in charge. The inference being that in the absence of Mr Barron he could make that decision.

Mr Barron's recollection of the events was that he often took Friday off during January but he was always contactable by phone and could come to the office very quickly as he lived only 4-5kms away. He had a mobile with voice message on it. He said that he noticed a small Daihatsu in the yard on the 20 January 1998. On enquiries he found out it belonged to the applicant's wife. This caused him to ask questions about the vehicle. He did not get a satisfactory answer, but on that day he had to attend a driver training course for Holden. He was aware there was a Holden car in the fleet and it was appropriate that he take it. He approach Ms Michelle McKeown and asked where the vehicle was. He was told it was out. According to Mr Barron, Ms McKeown was evasive until eventually she said that the applicant had the car. Mr Barron then mentioned to her that the applicant had no right to take the car when he was on holidays. She had then told him that the reason was that Scarboro Toyota had let him down at the last minute. This caused Mr Barron to ask questions about Scarboro Toyota.

There were two issues arising from the point of view of Mr Barron. One was that a car had been taken by an employee while on holidays when he was already in possession of a vehicle supplied by the respondent, and second that he had approached a client for a favour, contrary to policy. Mr Barron sought advice from the Human Resources Director of the respondent, Mr Ray Galbriath. Acting on the advice he contacted Scarboro Toyota and discovered that it had been approached by the applicant to borrow a vehicle. He also arranged for the Holden vehicle to be returned as soon as possible. This happened on the following Thursday which meant the vehicle had been out for over 4-5 days. Mr Barron had been advised by Mr Galbraith not to enter into discussions with the applicant about the matter because he was still on leave. However the applicant was told that there were problems that would be addressed on his return concerning use of the vehicle. The applicant said to him that the only reason he had done so is because he had been let down by Scarboro Toyota. This advice triggered Mr Barron to seek clarification from Scarboro Toyota about the approaches by the applicant. When he did so the respondent had become aware of the use of a Toyota Prado by the applicant on the 12 January 1998. In Mr Barron's view this conduct gave rise to a number of breaches of policy by the applicant.

On the applicant's return from leave there was a meeting between him, Mr Barron and Mr Galbraith who had come to Perth for that purpose. It was upon his advice that Mr Barron had not immediately interviewed the applicant about the matters. As a result of the meeting, Mr Galbraith, acting upon a delegated authority, decided that serious misconduct had occurred. There had been a gross breach of company policy. He decided that the applicant's services should be terminated and advised him. Later, at the request of the applicant, a letter was sent to him setting out the allegations of serious misconduct. The relevant parts of that letter of the 11 February 1998 are—

> As stated to you on Monday 2 February, 1998, your employment with ORIX Australia Corporation Limited was terminated immediately for serious misconduct.
>
> That serious misconduct included—
>
> (a) Approaching a supplier of ORIX to obtain a motor vehicle for personal use;
>
> (b) Approaching a supplier and borrowing from that supplier a vehicle for your own private use;
>
> (c) Using a new motor vehicle which was on loan from a supplier for your personal use while on a period of annual leave.
>
> The above actions were conducted in breach of company policy.
>
> *(Exhibit M4)*

The applicant says each of these grounds is unfair and result in him receiving less than a fair go all round because in respect of the first, it was after a personal conversation about the applicant's holiday plans that Mr Henderson, without suggestion by the applicant that he should, offered the loan of a Tarago vehicle. It was also suggested that even if he did, which was denied, that would not justify dismissal in light of all of the surrounding circumstances. As to the second ground concerning the borrowing of the Prado vehicle this was done, according to the applicant, by Mr Henderson voluntarily without any pressure or unethical behaviour on the applicant's behalf. In any event in borrowing the Prado the applicant was not in breach of any company policy because at the time the respondent's staff borrowed vehicles from car dealers and manufacturers on a regular basis. Borrowing of cars by Mr Anderson for his wedding and by Ms McKeown for hers was said to be illustrative.

It was unfair of the respondent to rely upon the third ground of dismissal says the applicant because at all times it was the respondent's practice that dealers and manufacturers loan cars on a regular basis. At the time the Commodore was borrowed such vehicles were loaned to staff on a regular basis with the knowledge and approval of the respondent. When the applicant borrowed the Holden vehicle he did so when he had it in his mind that it was already arranged with Scarboro Toyota that he could borrow the Toyota for use over the weekend. He was unable to check with the State Manager, Mr Barron because he was only at work for a couple of hours that morning and for the remainder of the day he was on annual leave. This meant, according to the applicant, that he was in charge and he was able to make decisions for himself. He did this after speaking to Ms McKeown. Prior to doing so he did not know the Commodore would be available. In the circumstances the proper procedures for borrowing loan cars was carried out. That is there was permission, which the applicant gave himself and the loan was written out in the register (*see Exhibit M1*). In using the Commodore over his holidays the applicant said he was not in breach of his arrangements with the respondent because he left his company car provided to him as part of his salary packaging in Perth unused. Because he did that there was no breach of policy or any directive. In any event according to the applicant, Mr Barron had never ever directed either the respondent or any other staff, to his knowledge, not to use loan vehicles without permission.

The above is a sufficient recitation of the facts for the purposes of these reasons. In my view it is a fair summary of the evidence which was received by the Commission over two days of hearing. I have relied on the evidence that has been presented to the Commission over that time in construction of the summary and for that reason I do not need to individually recite summaries of the evidence of each of the witnesses. I will deal with my findings of credibility later in these reasons but first I need to deal upon the authorities to be applied.

The test for determining whether a dismissal is unfair or not is now well settled. The question is whether the respondent has 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 (1985) 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 unfair to the employee, is but an element in determining whether the dismissal was harsh or unjust.

I had the opportunity of hearing and observing each of the witnesses. Of the applicant I have concluded he is a man who is fundamentally honest. Evidence of that comes from the impressions of him by the ex-manager Mr Anderson and the comments Mr Anderson made about him in his performance review made in 1997. However I think the situation developed where the good intentions expressed in the respondent's GRIM manual and the procedures that it had in place to ensure ethical operation became obscured by practices that developed in Western Australia where loan vehicles were taken without the proper authorities being granted. The applicant called in aid the evidence of Mr Griffiths but even his evidence shows that when vehicles were loaned it was with authority. The applicant knew this to be the case because in his evidence he purported to grant himself the authority to approve his use of the Commodore. He was never delegated the ability to do so. Nothing in the evidence shows that his position authorised him to make decisions of the nature he claimed he could when the State Manager, Mr Barron was available to do so. It is a mere convenience to say that Mr Barron was not available on the Friday. The applicant knew he had been in the workplace, he knew that Mr Barron was contactable, he knew that he had to get authority to use the Holden vehicle and he did not. His assertion that he had permission to use the vehicle and that permission was in accordance with company policy is either disingenuous of him or is a misunderstanding which, because of high reliance on ethical conduct in the contract he had entered into with the respondent, put the continuation of that contract in jeopardy. If one views the conduct of the applicant in the light I have described, it follows that he may too be mistaken about the conversation he had with Mr Henderson about the loan of the Toyota Prado. I do no reach the conclusion urged upon me by the applicant that the loan of the Prado or the Tarago were at Mr Henderson's instance at all. In these fundamental areas I have doubts about the evidence presented by the applicant.

I have no difficulty at all with the evidence received from Mr Anderson. His memory of the issues appears to be accurate. He had clear views about the lines of authority and responsibility. Ms McKeown I am sure told the Commission the events of which she was involved to the best of her ability, but I am not so sure that she was as forthcoming with Mr Barron when she gave him information about the applicant borrowing the Commodore. I am inclinded to the view that she may have indulged in some obfuscation of the events until she under pressure she revealed what happened. The evidence given by Mr Adams concerning his involvement in the matter appears to be truthful. There is a genuine disagreement between him and Mr Barron about meetings which took place and what occurred at those meetings but they are no more than differences in recollection.

The Commission heard evidence on behalf of the respondent from Michael Stuart Henderson. His recollection of the events were clear and unshaken under cross examination. I have no reason to not accept what he said. Mr Raymond Donald Galbraith, the Human Resources Director of the respondent has been involved in personnel matter for over 20 years. His evidence showed a strong grasp of the principles involved. I have no reason not to accept his evidence. The prime witness for the respondent was Mr James Andrew Barron who was the State Manager of the respondent during the relevant time. He was subject to vigorous cross examination by counsel for the applicant. That cross examination did not disturb any of the evidence in chief. I have no reason to believe that he has not told the Commission his truthful recollection of the events. All in all the only doubt I have about the evidence comes from impressions of the story presented to the Commission by the applicant. For the reasons I have set out where the evidence of the respondent differs from that of the applicant, I accept that on behalf of the respondent.

This matter is not a complicated one. It starts from an employment contract being offered to the applicant by the respondent. That employment contract carried with it strong duties of ethical conduct. Time and again in the evidence from witnesses and for both parties the respondent's approach to policies and procedures to enable the correction of unacceptable behaviour was evident. The respondent communicated to employees that it accepted as a fundamental policy that it must take account of change in community expectations upon it as an employer as well as statutory obligations. It also wanted to ensure that its clients accepted it as a company which operated with high ethical standards and it was prepared to be

uncompromisingly ethical in an intensively competitive world. In exhibit W9 the company's business and planning development director Mr Geoffrey McLean addressed these issues in an article to all staff. In the article he commented that … 'Ethics are at the very centre of personal activity'. He discussed ethical pressures and how they bear upon front line and middle management who often have to make more decisions than senior management and often under pressure to make them more quickly. He recognised that such employees were exposed to a greater risk of censure and there are more opportunities to make mistakes. That is why the respondent had developed a framework around written code of ethics hopefully making a contribution to the creation of confidence that staff will make the right decisions and this would facilitate the process of empowering them. Mr McLean opined that the truly ethical businesses are the businesses with people knocking on their doors. Such operations have high standing in the community and they more easily attract investors, lenders and suppliers of goods. The importance of ethics, according to Mr McLean, was the damage that is done to a business in their absence. The standards and principles expressed in the code of ethics reflects the aspirations and foundations of importance sustained during business relationships for the respondent. It was hoped by the respondent's executive committee that the code would capture important key ideas that are central to achieving the highest ethical standards in business.

These sentiments about ethical behaviour come from the very senior level of the respondent and were expressed in an ORIX staff manual. That they were expressed at a time later than the applicant was employed does not detract from the fact that the applicant signed a contract of employment which provided that in the absence of ethical behaviour he could be subject to summary dismissal.

The question is, was his conduct of such a nature, particularly when Mr Anderson had said of him some two years before that he had a good approach to customer ethics. There are two key issues to consider. The first is the borrowing of the Prado from Scarboro Toyota. If the vehicle had been borrowed with the permission of the State Manager there would be no difficulty because that fits with the policies that have been adopted by the respondent. For instance, Ms McKeown had borrowed vehicles for her wedding but Mr Anderson, the then State Manager, knew about that. On a number of other occasions when there were visitors from the East and loan vehicles were arranged that too was in accordance with company policy as were vehicles supplied to Mr Anderson and Mr Barron when on interstate assignment. The question is not whether a vehicle was borrowed or loaned but how that happened. In the case of Scarboro Toyota I find that the applicant had sought cooperation from Mr Henderson to supply a vehicle. Mr Henderson had approached a senior person in the company and had received permission. It seems from the evidence from Mr Henderson that permission was not readily given. It is therefore open to conclude, and I do, that the only reason that Scarboro Toyota loaned the Prado vehicle and would have loaned the Tarago, if it had been available, was to enhance its commercial relationship with the respondent. That benefited the applicant as a person specifically. It was contrary to the ethical rules of the respondent and was a direct and wilful breach of them.

As for the loan of the Holden Commodore, the applicant drew his own conclusions about the availability of the vehicle. He concluded that the vehicle was nearing its end of the time with the respondent. There was nothing more to be done with it. What he did not know was that his State Manager required the vehicle for a commercial event, that is to go to a driving day conducted by Holden. The State Manager eventually attended in another make of vehicle and that was not commercially acceptable for the respondent. The applicant by his behaviour caused that embarrassment. He did not know the vehicle was required. He made an assumption that it was not and he was wrong. He also must have known it was wrong to remove a loan vehicle for as long as he intended over his holidays. It is not good enough to say he could have been phoned to bring it back. When he was phoned he had already returned to Perth but if the vehicle had been required earlier, as it was and he was in Margaret River or in the south west of Western Australia, the vehicle was not available on short notice. Ms McKeown cooperated with the applicant in getting the vehicle assigned to him. She completed the paperwork after the vehicle was gone. There was no permission obtained from the State Manager when it should have and could have easily been obtained. The fact of the matter is that the State Manager ultimately did not know where the vehicle was and he had not given the permission necessary. The end result of the applicant taking the vehicle was that he received a benefit to which he was not entitled. He knew that he could have taken a mini lease and had use of the vehicle or a similar vehicle for a small expenditure. He opted not to do so.

In other circumstances these may be seen as simple errors of judgement by the applicant and the ultimate sanction of dismissal should not be applied to him. However, the applicant has accepted a contract where the ethical standards are an important if not essential part. He must have known that failure to work in accordance with the standards could lead to his dismissal. Whether or not the Commission if it had to make the decision at first instance would have dismissed him summarily is not the point. The employer was entitled to make the decision that it did. That the employer did not immediately move to dismiss him while he was on holidays does amount to condonation. The fact of the matter is that on the instructions of Mr Galbraith, Mr Barron undertook enquiries with Scarboro Toyota and otherwise collected information about the events. The information collected was presented to the applicant by Mr Galbraith upon the applicant's return from leave. I accept that there is no vice in the fact that Mr Galbraith came to Western Australia with a cheque already prepared for the applicant's final pay if he was to be dismissed. That is not an unusual event when companies have national offices with centrally prepared salaries.

In all the circumstances I have concluded that the applicant has not established that on the authorities to be applied that the dismissal was harsh, unreasonable or unfair and the application will be dismissed.

Appearances: Ms K Williams, of Counsel, appeared on behalf of the applicant.

Ms E Mackey, of Counsel, and with her Mr R Galbraith appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Philip David Morgan

and

ORIX Australia Corporation Ltd.

No. 190 of 1998.

COMMISSIONER J F GREGOR.

3 September 1998.

Order.

HAVING heard Ms K Williams, of Counsel, on behalf of the applicant and Ms E Mackey, of Counsel, on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT the application be and is hereby dismissed.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.
Jill Nicholls
and
Eastern Goldfields Aboriginal Advancement Council Incorporated.
Nos. 1329 of 1997.
COMMISSIONER J F GREGOR.
30 July 1998.

Reasons for Decision.

ON the 22 July 1997 Jill Nicholls (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 employment with the Eastern Goldfields Aboriginal Advancement Council Incorporated (EGAAC). The employment contract commenced on or about the 6 January 1997 and ended in circumstances of controversy on the 27 June 1997. The relevant history is as follows.

The EGAAC placed an advertisement for the position of Director in the Kalgoorlie Miner on the 30 November 1996. The text of the advertisement is as follows—

Eastern Goldfields Aboriginal Advancement Council (Inc) require a self motivated and imaginative person to operate their Maku Conference and Stadium facility. The person will be able to present the committee with new and innovative ideas.

The applicant must be able to communicate effectively with Aboriginal and Torres Strait Islander people.

Aboriginal people are encouraged to apply under section 50D of the equal opportunities act.

Salary: L6 Y1-$31,084.

A duty statement is available from Maku Stadium, 62 Lionel Street, Kalgoorlie.

This is a full-time position and all applications should be marked "confidential".

CHAIRPERSON
EGAAC
PO BOX 10355
KALGOORLIE WA 6430

Applications close 6th December, 3.00pm.

(*Exhibit D1*)

The advertisement invited persons interested to make application and those who did were supplied with a duty statement. The duties to be performed by the applicant are important in the determination of the matter before the Commission. The Director's duty statement is incorporated in full.

DIRECTOR DUTY STATEMENT

1. Organise annual sporting, recreational and cultural events for the Eastern Goldfields region.

2. Prepare submissions as required.

3. Be accountable to the Committee and their requirements.

4. Prepare staff wages.

5. Attend all monthly Committee meetings or as required.

6. Prepare monthly Director reports.

7. Supervise and direct other staff.

8. Represent the Eastern Goldfields Aboriginal Advancement Council committee at various meetings as required.

9. Budget controlling, basic bookkeeping, computer knowledge and other duties as required.

ESSENTIAL

1. Maintain and control financial records of accounts monthly.

2. Maintain and prepare register of Committee policies and decisions.

3. Control and maintenance use of vehicles.

4. Liaise with government agencies and Aboriginal/Torres Strait Islander groups as required.

5. Be able to maintain and prepare assets register.

6. Be able to maintain vehicle log books.

7. Be able to maintain control of office equipment, sporting, equipment, building and maintenance.

8. Be able to maintain records of all incoming and outgoing correspondence.

9. Be able to maintain records of all incoming and outgoing facsimiles.

10. Be able to maintain and control filing system.

11. Public relations skills are essential.

(*Exhibit D2*)

The applicant responded to the advertisement by letter dated 4 December 1996 (*Exhibit D3*). In the letter the applicant addressed the essential criteria for selection in some detail. Concerning the requirement to maintain and control financial records of accounts monthly, she claimed that she had an acceptable awareness of financial cycles and business budget proposals. She claimed she had a demonstrated ability to operate and comply with departmental and statutory requirements with regard to available financial resources, forward planning, running costs, monitoring expenditure, operating within a tight physical environment, processing of travel arrangements and accounts processing. It was also claimed she had a basic knowledge of audit requirements. In respect of this criterion she advised the EGAAC that she had continually demonstrated her ability to readily grasp new information, relevant structures and procedures and that she could achieve maximum effectiveness quickly.

The second essential criteria; maintain and prepare register of Committee policies and decisions, was answered in similar detail to that relating to the financial records. The applicant claimed that she had been involved in ongoing complex, sensitive and at times difficult negotiations and that her involvement in these led to the release of a balanced and useful document. This document was in wide use in ATSIC among communities of indigenous women across Australia.

The applicant claimed to be able to satisfy the requirements for the use and control of vehicles and computers and other equipment on a daily basis. She had liased with government agencies and Aboriginal and Torres Strait Islander groups through a long career where she had been requested to speak at National and State conferences, community women's bush meetings and forums. In these circumstances she had been able to express her own needs and work assertively. It was also claimed by the applicant that she possessed the skills to sensitively manage and equip participants at a community level to make informed contributions and achieve workable solutions to problems. She was able to successfully deal with the maintenance and preparation of an assets register and had been required to exercise control and maintenance of vehicles, computers and other equipment. Similar claims were made about maintenance of vehicle log books and the control of office equipment, sporting equipment and building maintenance.

Concerning the maintenance of records of all incoming and outgoing correspondence the applicant claimed that she had demonstrated ability to produce written and oral communications at a high level and had done so for previous employers which included the Office of the Status of Women and the Deputy Secretary of the Department of Prime Minister and Cabinet. As the Policy Adviser on indigenous women's issues she had been responsible for preparing extensive briefing and reports for the First Assistant Secretary of the Office of the Status of Women. She claimed to have ability to satisfy the criteria to manage and control filing systems and that she met the criterion for public relation skills. To her application she attached a resumé setting out the full details of her educational qualifications and relevant work experience.

The applicant attended various interviews and on the 18 December 1996 she received a letter of offer in the following terms—

RE: DIRECTOR – MAKU STADIUM

I wish to advise you that your application for the above position was successful.

Please contact myself in regards to a starting date and terms of employment. I can be contacted on 21 8075 or 21 0421.

(*Exhibit D4*)

According to the applicant her relationship with the employer continued on what she described as a normal basis until the 13 June 1997 when she received a letter which suspended her from duty. The letter is incorporated hereunder.

The Eastern Goldfields Aboriginal Advancement Council's Committee held a Meeting on 11 June 1997, and it was been brought to our attention several complaints (both internal and external) about your performance as Director of EGAAC.

I am enclosing a copy of three complaints received, and as a direct request from the Committee you are required to respond to these allegations by cob 20 June 1997.

Due to the seriousness of these complaints, and because you are currently on probation, the Committee has no option but to suspend you as Director for a period of two weeks (leave with pay) from close of business Friday 13 June 1997 until 27 June 1997, for non-compliance of Duty Statement, and abusive behaviour towards Committee Members and Community Members.

You are required to handover today to the Chairperson (Ms. Margy Thomas) any keys you have in your possession that belongs to EGAAC, including the keys for the vehicle and postal box.

Please forward the response to the above address.

(*Exhibit D5*)

This letter contained attachments which raised serious issues concerning the applicant's conduct. These issues occurred from the 14 May through 26 May 1997 and in brief involved alleged alteration to an ATSIC Budget, Miscellaneous Line Item without explanation and on the 23 May 1997 a report to the EGAAC Committee on the conduct of the applicant towards the Chairperson, Margy Thomas. There was a complaint that on the 24 May 1997 the applicant and her husband attended a private function allegedly in the EGAAC's vehicle, which was under the control of the applicant, and were under the influence of alcohol. It was also alleged that she was abusive at that meeting towards a committee member. On the 26 May 1997 it was alleged that the applicant was insulting to the Chairperson and that she continued with rude and arrogant behaviour toward committee members at a meeting. Complaints were also raised by Charmaine Thomas who complained of a confrontation with the applicant in which Ms Thomas alleged the applicant acted in an unprofessional manner towards her using "unprofound language" (sic) during a heated argument. There were reports of other incidents involving Shirley Bonney which related to arguments about cultural matters. There was swearing and shouting which, according to Ms Bonney, drew a crowd.

According to the evidence of the applicant she was so concerned about the suspension that she sought legal advice. The thrust of that legal advice was that 'this matter is capable of resolution but if it is not capable of resolution then an application to the Industrial Commission will be made'. The letter to the EGAAC from Counsel for the applicant is before the Commission in Exhibit D7. It is relevant to note in this summary that the request to the EGAAC in the letter from Counsel was as follows—

…We require your immediate advice … our client will be permitted to return to work and carry out her duties without any undue interference or harassment forthwith.

There is nothing in the advice which indicates that the applicant was told by her lawyer that she should present for work.

It is also relevant to note that the Commission was informed though Exhibit D8 that Shirley Bonney wrote the applicant a letter in which she advised that the issues which were the subject of a dispute between them, were no longer matters that troubled Ms Bonney. For completeness the terms of this letter should be included in these reasons.

My letter of attachments to EGAAC letter of suspension dated 13/7/97, 1 would like to rescind it on the basis that I've made amends with you.

I believe we got caught up with the politics surrounding Aboriginal committees and organisations particularly since our personal argument happened prior to your commencement 6/l/97 as Director of EGAAC and my letter of complaint was dated 7/2/97.

Now that we have a grandchild between our children and have resolved our differences, I feel that this is no longer an issue between us or anyone else. (sic)

(*Exhibit D8*)

Before the suspension was completed there was a meeting of the EGAAC which resolved to inform the applicant that her services were terminated. A letter advising her of the resolution and the decision of the Council appears hereunder.

In accordance with a Motion passed by the Executive Committee of the Eastern Goldfields Aboriginal Advancement Council held on Friday 27 June 1997, 1 hereby inform you that your term of employment with this Organisation as Director is terminated as of close of business Friday 27 June 1997.

Reasons given are as follows:—

1. *Due to unsatisfactory response to our letter of suspension dated 13 June 1997.*
2. *Failure to return keys for the office and stadium and the vehicle as requested.*
3. *Non-performance as Director on numerous occasions after several requests from the Executive Committee.*
4. *Abusive behaviour towards Committee Members and Community Members on several occasions, which has given the Organisation a bad reputation.*
5. *While on suspension, directing Bob Henderson the Committee had no rights to sign a letter addressed to him in regards fuel supplies to EGAAC's vehicle.*
6. *Whilst on suspension, the Bank Manager had no alternative but to freeze all EGAAC's Bank Account after having discussions with you, which resulted in staff not being able to receive wages, and our accounts not being paid, particularly being the end of the financial year,*

You are hereby requested to return any keys for the offices and stadium of EGAAC, and the vehicle registration 8XE 053 as of Friday 27 June 1997.

(*Exhibit D9*)

These grounds for dismissal were given amplification after this application was filed in the Commission in a statement by the respondent setting out the grounds to justify the decision to terminate the applicant. During the proceedings Ms McKenzie, Counsel for the EGAAC, called evidence from Brian John Wyatt, Margaret Elizabeth Ann Thomas, Susan Rose Wyatt, Charmaine Thomas and Hazel Thomas. The evidence given by those witnesses went to issues that have been summarised in a statement filed in the Commission. The statement encapsulates which has been submitted through the witnesses identified above and is as follows.

STATEMENT BY RESPONDENT

SETTING OUT GROUNDS JUSTIFYING THE DECISION TO TERMINATE THE SERVICES OF THE APPLICANT

- *Misuse of Eastern Goldfields Aboriginal Advancement Council Inc. ("EGAAC") vehicle including unauthorised use after hours and unauthorised use of vehicle by members of the public not associated with EGAAC.*
- *Continual breaches of Aboriginal and Torres Strait Island Commission ("ATSIC") grant terms and conditions by failing to forward financial reports, performance reports and failing to reply to ATSIC correspondence by due dates causing fund releases to be withheld and interrupting EGAAC operations on many occasions.*
- *Failure to submit financial statements/performance reports to funding agencies in correct format.*
- *Failure to be available to funding bodies after five attempts were made by them to assist the Applicant in rectifying breaches so as funds could be released.*
- *Failure to monitor grant budgets causing numerous unauthorised use of and over-expenditure of grant monies.*
- *Failure to supply financial reports to ATSIC by due date on three consecutive occasions.*
- *Failure to prioritise and respond to funding agencies' correspondence after being so directed by the Committee of EGAAC with specific reference to priority issues.*

- *Disrespect towards Committee members of EGAAC.*
- *Public abuse towards Committee members of EGAAC.*
- *Refusal to comply with directions issued by the EGAAC Committee.*
- *Unauthorised entry into EGAAC building after suspension notice was served on the Applicant.*
- *Refusal to hand over keys to office and building after suspension notice was served on the Applicant.*
- *Failure to assist in the delivery of sport and recreation programs organised by EGAAC.*
- *Misuse of accommodation premises at EGAAC building provided for the caretaker by allowing the use of such premises by members of the Applicant's family.*
- *Failure to open correspondence within two days of it being received and failure to acknowledge receipt of such correspondence.*
- *Numerous verbal complaints received by members of the public, particularly Aboriginal clients of EGAAC's concerning the applicant's manner.*
- *Failure to promote and advertise EGAAC's service and activities on any occasion.*
- *Failure to provide a manager's report (financial and operational) to the Committee of EGAAC.*
- *Failure to maintain an adequate and accessible filing system at EGAAC.*
- *Submitting unprofessional, untidy documents to funding bodies and other organisations.*
- *Failure to provide EGAAC Committee with areas in which the Applicant required assistance to satisfactorily perform her duties.*
- *Leaving creditor's accounts unpaid for up to six months and thus causing legal action to be threatened against EGAAC.*

Apart from the evidence received from the applicant there were two witnesses called in her support; Mercy O'Loughlin and Robert Wall, an accountant. I do not need to summarise their evidence in this part of these Reasons other than to say that Mr Wall was an accountant who dealt with the EGAAC while the applicant was executive director. On the books that were presented to him he had no difficulties with her accounting practices. Mercy O'Loughlin in effect supported the applicant's position about the treatment of her by members of the Committee.

It was suggested to the Commission by Counsel on behalf of the applicant that the issues which were addressed in the letter of suspension do not relate to allegations, financial and other incompentencies which have been the centre piece of the argument before the Commission. Apart from the reference to the Miscellaneous Line Item in the ATSIC financial report, no where in the letter of suspension is there reference to financial incompetence. Of the six grounds mentioned in the letter of the 18 June, not one mentions financial incompetence. There is no evidence to support the contention that anything was wrong with the applicant's accounting practices. An audit report by Stanton and Partners which, according to the evidence of Mr Wyatt, supports that contention was not produced to the Commission. Even though letters from ATSIC were produced no officer of ATSIC was called to give evidence about the issues raised in them.

According to Mr Wells of Counsel, who was then appearing for the applicant, the evidence of the respondents witnesses shows different mind sets or approaches to life demonstrating individual ways of thinking about the way things ought to be done. The applicant was confronted with a committee which was active in the day to day running of the organisation. If there were problems with accounting there was financial provision for a bookkeeper but one was never engaged and the applicant was effectively left to run the office with no induction period. She called in an accountant when it became obvious she needed external help. The evidence of the accountant was that there were difficulties in the books for that particular period but they were difficulties of an ongoing nature which caused problems during the applicant's period of tenure. She did the best she could and she did so capably. This contention was supported, according to Mr Wells, by the accountant who gave evidence that the applicant did basic bookkeeping which was capably executed.

In the absence of direction and feedback the applicant had every right to believe that her administration practices were as good as was necessary. There were no warnings given during the lead up to her dismissal. She was simply suspended. The vices which the respondent attributes to the applicant were of their own making. If the committee saw urgent work that needed to be done to obtain ATSIC acquittals and having proper bookkeeping, they should have engaged a person to do so. That they did not do so after the applicant left was indicative that her attempts were no worse than theirs.

Mr Wells explained that the applicant's refusal to comply with the requests of the EGAAC concerning the period of 13-27 June 1997 were because she was stunned into disbelief about what had happened. She could not accept that her employment was at an end or that her employment could simply be terminated. She acted in good faith upon legal advice rather than precipitously out of selfish motives. The only problems she had in relation to account keeping related to some inadequacies with petty cash and record keeping. Concerning petty cash she did her best to answer from her recollection but it was fairly common for people to be given money on the spot when the cheque book was not there.

The argument on behalf of the EGAAC painted an entirely different picture of the applicant. The essential grounds for her suspension were that she was incompetent, she was unable to carry out her duties and she had a poor performance record. As Executive Director, she was responsible for various functions and activities, they were her responsibilities and not the responsibilities of the committee. The position occupied by her by its very nature and definition covered responsibilities and obligations which are not those allocated to a subservient employee. Clearly her role was above and beyond that of just to be answerable to the council or following directed tasks. For instance, her duty statement and the job advertisement made it clear that she was required to operate the Maku conference and stadium facility. This was an obligation far beyond just undertaking tasks specified. The committee were lay people and they were there to determine policy directions not to undertake the day to day running of the EGAAC or the Maku conference centre and sporting stadium.

The applicant claimed in her job application that she was able to carry out and perform all of the tasks within the duty statement. She represented that she had the capacity to perform the duties that are outlined in the duty statement. She knew that those duties were essential and they included maintenance and control of financial records, the register of committee policies and decisions and control of the maintenance and use of vehicles. It is not open for her to now claim that she only did what she was directed to do.

Clearly her performance demonstrated a high level of incompetence and inability to carry out basic duties and functions. That was what lead to the suspension with pay on the 13 June 1997. The exhibits that have been presented to the Commission (*see Exhibits M4- M10*) are clear evidence of a high level of incompetence. In fact, according to Ms McKenzie, there was evidence of a lack of the even the most basic administrative and bookkeeping skills. There is no evidence of any recording or any analysis of even a simple cash book. In reality there is no support given to the applicant by the accountant. He was only shown three records; a bank deposit book, the cheque book and the bank statements. These are books that are easy to keep. He saw no problems with them. He said he saw nothing concerning the journals which were required to be kept nor the other accounts. He never directed his mind nor indeed was his attention drawn to them when he was asked to prepare the financial accounts. He could not be critical simply because he had no knowledge.

There were no financial records for the period of January until June 1997. The applicant cannot claim that she is a victim of shoddy work from her predecessor because she had time to remedy deficiencies if she had the skills to do so. Clearly she did not. Of a key influence, according to Ms McKenzie, is an admission from the applicant under cross examination that the job was simply beyond her capabilities. It was not a situation that could be rectified or remedied by training. She was unable to comply with the ATSIC requirements for funding

because she simply did not know what to do. This is a classic case where an employee has sought a position as an executive director. Her responsibilities were clearly set out in a duty statement. She did not comply and was not undertaking duties set out in the duty statement. She readily admits that she had an inability to comply with the accounting required. She could not cope with the funding body's requirements and obligations nor could she prepare financial statements or records. Through her ignorance she could not recognise her own shortcomings so as to have something done about rectifying the problem. Her failure to do so led the organisation to be in breach of its ATSIC funding obligations, a situation which put the existence of the body at risk.

There were problems in relationships with the committee but in the total scheme of things they were minor. According to the evidence the suspension was intended to give the EGAAC the opportunity of resolving matters which were immediate and important, matters the applicant had clearly demonstrated she did not have the capacity to resolve herself. There is criticism levelled at the committee about lack of adequate warnings or notice, but they were faced with having to act quickly. According to Ms McKenzie, taken as a whole the evidence established that the applicant could not cope with the requirements of the job. There was not only a general high level of incompetency. Her relationship with the committee deteriorated to the point where she was instructed to undertake tasks and she deliberately disobeyed. After she was suspended there was a fragrant disobedience of proper and lawful directives. The applicant wilfully disobeyed lawful instructions of the employer. In doing so she displayed a lack of appreciation of the respective roles of the parties to an employment contract. She misunderstood that she was answerable to the committee. They were her employer and she was required to undertake their lawful directions.

Finally, it is relevant to note that one of the crucial aspects of the dismissal is that the applicant was not dismissed on the 13 June 1997, she was placed on suspension for two weeks. She was given a letter which directed her to surrender the keys of the vehicle, to cease coming to work and to hand over the keys to the office and the stadium. But she did not do so. This was wilful disobedience of lawful instructions and of itself justifies summary dismissal.

Before I deal with the witness evidence I will briefly discuss the law to be applied. There are no complicating issues, the matter is quite straight forward. The test for determining whether a dismissal is unfair or not is now well settled. The question is whether the respondent has 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 (1985) 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 unfair to the employee, is but an element in determining whether the dismissal was harsh or unjust.

I have had the opportunity of observing the witnesses and listing to their evidence. My impression of that evidence is crucial for the determination of this matter. It is complicated by the obvious antipathy between the various participants. The majority of that antipathy is to do with family arguments. There are cultural overlays which complicate the issue. Therefore in making choices about the credibility of the evidence I have endured to select indications which differentiate between the evidence of the parties but which at the same time focus upon the fundamental issues. I deal first with the evidence of the applicant.

I accept that the applicant is a person who has been under considerable stress during the hearing of this case and before it. There was a medical certificate to that effect which was produced before the Commission (*Exhibit D16*). However, there is nothing in her evidence to suggest her memory of the events was diminished in any way. There are two significant pieces of her evidence which assist me to make a categorisation of what she has told me. First, in cross examination she said of her application that it was not unusual for anybody to exaggerate their skills to do a job. Her position was that one would not get the job if one did not do so. This is a fundamental flaw in her evidence and in my view it taints the evidence to such an extent that I am entitled to call into question a number of the things that she says. For instance, there was evidence that the applicant was supplied an EGAAC vehicle for work purposes, she was also authorised to use it outside work hours. She seemed to take this to mean that her daughter or husband could use the vehicle as if it were her own when clearly that could not be a term of the employment and was not. Next, she had access to an account maintained by the EGAAC at Henderson Motor Service Centre (*Exhibit M3*). That account shows that there were various purchases of fuel, some for unleaded petrol and some for super. The vehicle she had used unleaded petrol. She was disingenuous when she suggested that the service station may have put super petrol in her vehicle when clearly that is physically impossible. She was also unconvincing as to how her husband may have used the account to fuel her vehicle. There are also some doubts about the role of her husband in the use of the fuel account as well, however I do not need to make findings about those doubts. There exists in my mind a distinct unease about the reliability of the applicant's evidence.

As far as Mercy O'Loughlin is concerned, her evidence does not contribute all that much to the applicant's case. Robert Wall's evidence was acceptable to me as the truth. He gave factual evidence about what he did and was entitled to pass opinions in favour of the applicant bearing in mind the books he had seen. I accept that he was not shown the accounts which were placed before the Commission and I will say more of that later.

I have no difficulty with the evidence of Brian Wyatt, Margaret Thomas, Susan Wyatt, Charmaine Thomas and Hazel Thomas. Much of the evidence does not focus upon the issues for determination here but there is enough of it that does for me to find that their evidence gives support to the contentions which I have previously recorded in these Reasons for Decision (see Statement Setting Out Grounds Justifying the Reason to Terminate the services of the applicant) detailing why the EGAAC moved to terminate the services of the applicant. In all of the circumstances, in view of my doubts about the evidence of the applicant, where the evidence of the applicant differs from that of the respondents I prefer that given by the respondents.

There was a large volume of evidence and material presented to the Commission during this case, however the matter is not a complicated one. This flows from the fundamental issue which is that the applicant applied for a position as executive director. The duty statement clearly set out the essential requirements. The applicant held herself out to be able to perform those and the reality is that she could not.

Even if the accounts of EGAAC were in a bad state before the applicant took up the job, in the time she was there if she possessed the skills she claimed she had in her application she should have been able to identify the deficiencies and bring those to the attention of the council. She did not. When she arranged the assistance of Mr Robert Wall he could have been asked to review the whole of the financial operations but he was not. The books of account which were submitted to the Commission have not been maintained in even the most rudimentary way. It is hard to understand how a proper audit could be made of the use of the funds if the books which were presented to the Commission purport to contain the originating data. The applicant worked out of a petty cash book. That was the fundamental source document for financial transactions. It is clear that cash was handed out to various members of the committee and no proper record was kept. The applicant was inclined to brush off the use of cash by members of the committee on the basis that once a member had asked for the money it was not within the remit of the executive director to insist

on proper acquittal. She was wrong in doing so. It was her job to properly account for the money. In not doing so she opened herself to claims that the account records were being improperly kept. The financial affairs of the EGAAC were in a disastrous position by the time the applicant was suspended. The funding body had suspended supports. There were serious questions about the ability of the organisation to be the recipient of funds in the future. Its obligations under the funding rules were not met. This was not the province of the committee to manage, the executive director was employed as a professional to do this but she did not do the work.

It must be noted that there were problems other than in the area of accounting. It is open to find that the applicant failed to introduce a system by which correspondence could be dealt with properly by the committee. I accept the evidence which has been given by witnesses from the respondent that a great deal of the committee's time was taken up in prioritising correspondence received. This meant that many letters which required timely answers were not dealt with in anything like acceptable timeframes. There is no evidence that the applicant provided managers reports on both financial and operational matters to the committee. Certainly none have been placed before the Commission. Nor was there an adequate and accessible filing system, but it is clear on the evidence that the administration of accounts was tardy resulting in threats of action against the EGAAC for failing to pay invoices. There were complaints by the applicant that she was excluded from a number of the committee meetings. Her presence may have assisted her in meeting some of the committee's requirements but I do not think on balance that this failure by the committee to include her in its meetings was the cause of her failure to meet the obligations she accepted when she told the EGAAC in her job application that she was competent to perform all the duties which were set out in her duty statement. In any event the Duty Statement makes it clear that the committee has a discretion whether it requires attendance at monthly committee meetings (*Exhibit D2*).

That the applicant was suspended for reasons which did not in detail go to matters effecting the accounting is not germane to the determination of this matter. Once the suspension took place and the committee was able to examine the situation it came to the conclusion that there was serious concerns. It expressed those in the termination letter. I do not accept the submissions of Mr Wells that there is no sufficient connection with financial matters in those reasons for termination. If there were any doubts about what the applicant faced in pursuing this claim those doubts ought to have been extinguished when the respondent filed the detailed justification to terminate which I have incorporated earlier in these Reasons. It is open on the evidence to conclude that the majority of those grounds have been made out by the respondent in its defence of this claim and I so find.

I need to make one final comment on these matters. There was an issued raised about the salary of the executive director who has replaced the applicant. How the organisation is run post termination and whether it meets its funding obligations or what accounting standards are maintained is not a matter for this Commission. This Commission is not empowered to make an enquiry into the management of the EGAAC. The jurisdiction is specific and that deals with the question of unfair dismissal by the applicant. I make no comment about how the organisation is currently run. If there are issues arising concerning the way that it functions, then that is a matter for the funding bodies and the administrators of the Act under which the EGAAC is constituted.

For all of the Reasons I have set out above the applicant has not established on the authorities to be applied that she was unfairly dismissed and the application will be dismissed.

Appearances: Mr G Wells, of Counsel, appeared on behalf of the applicant.

Ms C McKenzie, of Counsel, appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Jill Nicholls

and

Eastern Goldfields Aboriginal Advancement Council Incorporated.

Nos. 1329 of 1997.

COMMISSIONER J F GREGOR.

30 July 1998.

Order.

HAVING heard Mr G Wells, of Counsel, on behalf of the applicant and Ms C McKenzie, of Counsel, on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT the application be and is hereby dismissed.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Paul Thomas Roberts

and

Shire of Swan

No. 2120 of 1997

Rardi Arthur Charles Barber

and

Shire of Swan.

No. 2121 of 1997.

COMMISSIONER P E SCOTT.

11 August 1998.

Reasons for Decision.

THE COMMISSIONER: By these applications the Applicants allege that they have been harshly, oppressively and unfairly dismissed from their employment with the Respondent.

Mr Roberts had been employed by the Respondent for approximately 3 years and at the time of his dismissal was a leading hand of a concrete crew. Mr Barber had been employed for two separate periods, the most recent being for 6 years. Roberts and Barber worked as a team, sometimes with another person, constructing and repairing footpaths. Roberts was the team leader. There was evidence that in recent times, the larger footpath construction work was being undertaken by contractors, so the Respondent's employees did only smaller repair and construction jobs.

The employees of the Respondent had access to fuel for the purpose of powering small plant items used in their work, and for other work-related purposes. Each morning, the crew's leading hand, Roberts, would be allocated work. They would proceed to collect the materials and equipment they believed they needed for the work. This included filling up unleaded petrol ("ULP"), diesel, oil and water containers. ULP and diesel fuel were obtained from bowsers at the depot. "Swipe" cards were used to operate the bowsers, and there were a number of such cards kept at the store office. Employees had automatic, unchecked access to these cards, and no record appears to have been kept of each employee's or crew's access to fuel or of the quantities they used.

The Commission heard evidence from the Applicants and certain of the Respondent's employees: David James Djulbic, the Manager, Engineering and Waste Management Services; Gary Anthony Neave, a labourer; Neil Lesley Gaston, a labourer; Peter James Thompson, a bob cat operator; Peter James Gregorini, a truck driver/plant operator/labourer; Eric Tribble, a front end loader operator; Lindsay William Crooks, Operations Engineer; Ernest Neville Saunders, Maintenance

Supervisor; Douglas Harry Meadows, Manager Engineering Support Services; and Maureen Anette Williams, the Human Resources Manager.

The evidence from the Respondent's witnesses was that on some unspecified date, Gregorini spoke to Thomson, about his understanding that Roberts had been taking fuel from the Shire. Gregorini gave evidence that this was the subject of discussions between himself, Thompson and Gaston. He had seen Roberts filling a 20 litre jerrycan at the depot bowser approximately 2 to 3 times per week over the past 12 months. The information received by the Respondent was that the Applicants would fill a 20 litre jerrycan of ULP, which was normally kept on the truck which they used for their work. It was alleged that about 2 to 3 times per week, the Applicants would then transfer the jerrycan from the truck to Roberts' private car and it would be returned the next working day. It was said that this had been going on for some time.

In the week ending 10 October 1997, Thompson mentioned to Saunders that it was widely known that the Applicants had been taking fuel and that Gregorini had told him that they had been doing it for a long time. Thompson told Saunders that the only reason he had come forward was because of the length of time it had been going on and because the Applicants were taking it so often.

On 7 October 1997, Saunders reported this allegation to Crooks, who expressed to the Commission his surprise about the allegations because he was in the process of considering Roberts for promotion.

Saunders spoke with Djulbic and Williams who are said to have cautioned him about the following proper procedures, not jumping to conclusions, ensuring the shop steward was advised and documenting the matter. Djulbic also suggested that Crooks approach the police "to see what they say," or for advice.

Crooks then checked the small plant on the truck used by the Applicants and determined that the Applicants were unlikely to use more than 3 to 5 litres of ULP per day for the purpose of operating the small plant. Meadows and Saunders also worked out that the Applicants would need approximately 3 litres of fuel per day for the equipment on the truck. Crooks then arranged for two supervisors, Saunders and Poplepovic, to observe the Applicants more closely. He arranged for Meadows and the other staff members in the store to monitor the Applicants and their use of the fuel swipe card. Crooks received advice from Tribble, who at the time was relieving the depot storeman, that some weeks he had seen Roberts use the swipe card twice a week.

On Thursday, 9 October 1997, Tribble reported that the Applicants had used the swipe card to obtain 21.65 litres of ULP in a 20 litre jerrycan. At 4.05pm that day, after knock off time, Saunders checked the truck used by the Applicants and noted that there was no 20 litre jerrycan of fuel on the truck.

On Friday 10 October 1997, Saunders and Poplepovic checked the Applicants' truck while they were on the job with the truck and both observed 20 litre jerrycans as well as two 10 litre fuel containers.

That day, Crooks consulted the CIB, seeking advice but not making any formal complaint. He says he was advised that as the police lacked resources to deal with the matter, it was up to the Respondent to deal with it.

At 6.00pm that day, Saunders inspected the Applicants' truck and noted that there were no 20 litre jerrycans on the truck.

At 7.30am on Monday 13 October 1997, Meadows and Saunders observed the Applicants filling a "distinctively marked" 20 litre jerrycan with ULP, at the bowser. Meadows' evidence was that he saw "Roberts hurry from his truck to the ULP bowser with a jerrycan in his hand. Ian Page was using the ULP bowser at the time. Roberts tried to take the nozzle from Page just as Page had finished filling his container of fuel and prior to Page replacing the nozzle in the bowser socket thus switching the bowser off. Page seemed determined to hang up the nozzle and switch the bowser off and Roberts appeared just as determined to wrench the nozzle from Page before he turned the bowser off with it." Roberts filled a 20 litre jerrycan with fuel and put it in his truck.

It was noted by Meadows and Saunders that following Page having used the swipe card, the computer print out showed that 28.7 litres had been pumped. Page told Saunders that he had topped up a 10 litre container with about seven to eight litres of fuel. He had handed the nozzle over to Roberts without turning the bowser off. This meant that Roberts had put approximately 20 litres in his jerrycan.

On being advised of this, Crooks instructed Saunders to check Roberts' private car just before Roberts left for home that afternoon.

During the day, Saunders drove past the Applicants and the truck while the Applicants were working and noted that the 20 litre jerrycan was on the back of the truck where Roberts had placed it that morning. He checked Roberts' car in the staff car park several times that day and there was no jerrycan in it.

On either Friday 10 or Monday 13 October 1997, Williams, Crooks and Djulbic decided that it was appropriate to approach the Applicants and put the allegations to them, and provide them with an opportunity to respond. At about 3.00pm on Monday 13 October 1997, Crooks consulted the union shop steward, advised him of the allegations, and said that he proposed to interview the Applicants that afternoon and asked if the shop steward was available to attend. He was not available, so Crooks outlined to him what he proposed to say to the Applicants. Crooks says that the shop steward "was satisfied with the proposed procedure". When the Applicants returned to the depot and parked their truck, Saunders checked both the Applicants' truck and its trailer and could find no 20 litre jerrycan. He went to the staff car park and looked into Roberts' car and saw the jerrycan on the floor behind the driver's seat. He advised Crooks of this.

On that day, Roberts had a previously arranged appointment to meet with Crooks to discuss the question of Roberts' promotion/reclassification. At the end of the day, he was called by Saunders to Crooks' office and he was told that the purpose of the meeting was not to discuss the promotion. Both of the Applicants were then, separately, interviewed by Crooks and Saunders. There is dispute as to what occurred in those meetings.

The Respondent's witnesses' evidence is that a number of things were put to each of the Applicants by Crooks. Crooks had a pre-prepared list of comments and questions for these interviews. Exhibit 1 is that list. It contains background information, some of which may be somewhat misleading. However, it also notes that the Applicants had been witnessed filling up a 20 litre container on a number of occasions specifically that day and the previous Thursday; that on the Friday, two 20 litre containers were seen on the truck but were not there that evening; that on the Thursday, there were no 20 litre containers on the truck; that Roberts had been witnessed transferring containers from the truck to his car during working hours; and that the CIB had been advised. According to Saunders and Crooks, Crooks told Roberts that he and Barber had been seen taking ULP that very morning in a 20 litre container marked "two stroke". Crooks says that upon being asked what he had to say for himself, Roberts initially denied stealing fuel, but after Crooks said that the container of fuel was in the back of his car right now, Roberts admitted it, saying it was in small quantities; that he mixed the petrol with what was in his tank in the off pay week when he was short of fuel to get to work and was short of money; that it had not been going on for long; that Barber was not involved; that he did not mean any harm; and he apologised.

In the interview with Barber, Barber also denied any theft. Crooks told him Roberts had admitted stealing fuel and that the jerrycan was in Roberts' car. When asked if he could explain that, Barber is said to have replied that the 20 litre container was regularly carried by them for two stroke fuel for work purposes. Crooks is said to have refuted this saying that all small items on the truck used ULP, not two stroke. Crooks and Saunders say that eventually, Barber acknowledged that he knew Roberts was taking fuel but said that he did not have any active part in it.

The Applicants say that they were not given any chance to explain their situation. Roberts also said that his admission that the jerrycan was in his vehicle was taken by Saunders and Crooks as being an admission that he had stolen fuel, when in fact it was not. He says he was only borrowing the jerrycan and the fuel, that he had not used the fuel and that he would have replaced it had he used the fuel.

Both Applicants were suspended on pay until 3.30pm the next day.

At the conclusion of the meetings on 13 October 1997, it was discovered that the jerrycan which had been in the back of Roberts car had been replaced on the truck. Saunders arranged for it to be removed from the truck, tagged and put into the stores area for safe keeping, along with all other fuel containers from that truck.

Meadows' evidence was that on or about 16 October 1997, he together with Djulbic, Williams, Crooks and 2 others inspected those fuel containers. One of them was a 20 litre jerrycan marked "two stroke" and it was full of ULP.

On Tuesday 14 October 1998, the Applicants attended for the scheduled 3.30pm meeting however, it did not go ahead. They were provided with letters to say that they were to meet with investigating officers in the next few days.

On Thursday 16 October 1997, there was an interview with the Applicants at the Shire office attended by Djulbic, Williams and Fitz Gerald, from the WA Municipal Association. The Applicants had with them a solicitor. During this meeting, the Applicants alleged that they had not been given an opportunity to tell their side of the story when confronted by Crooks and Saunders on 13 October 1997 and that Crooks had made up his mind before they went in to this office. The Applicants then provided to the meeting their explanations of the circumstances which had arisen and a number of questions were put to them which they answered. The essence of Roberts' response to this meeting was that he was only borrowing the fuel, he had done so only once without approval; that he had previously had approval from Crooks who had sent Dave Hooton with some fuel one morning when Roberts had run out of fuel on the way to work. Roberts also said at this meeting that the nearest service station on his way home from work was some 20 kilometres away and he had taken the jerrycan with a little bit of fuel in it just to make sure that he did not run out on the way to picking up his son from day care. He also denied that his admission on 13 October 1997 had been anything other than an admission that the jerrycan was in the back of his car. He also indicated that Barber often loaned him $10.00 to purchase fuel when he was short of either fuel or money at the end of a pay period and that on 13 October 1997, Barber had loaned him money for fuel but that Roberts had also said that he would take a little bit of fuel with him in case he ran out on the way to the service station. In the hearing before the Commission, the Respondent questioned why this information had not been provided to Crooks and Saunders on 13 October 1997. The Applicants said that Crooks gave them no opportunity.

During this meeting on 16 October 1997, there was discussion as to the uses to which the Applicants put the fuel in the course of their daily work. This was said to be for the purpose of demonstrating that only a small amount of fuel would have been left in the jerrycan taken by Roberts at the end of 13 October 1997. Roberts and Barber explained to the meeting that they used it for cleaning up their tools and their formwork during concreting work. They said that it was better than using water for cleaning concrete off their tools and the formwork and that they used up to 20 litres of fuel per week and sometimes more. They also said that they used ULP to clean concrete splashes off a fence adjacent to work done on the previous Thursday.

The Respondent claims that during this meeting, the Applicants did not mention using ULP combined with form or mould oil sprayed through the Hudson Spray to prepare formwork, a matter dealt with in detail by the Applicants in evidence before the Commission. The Respondent says that the first occasion this use of ULP was mentioned was by Roberts in his evidence to the Commission. Djulbic's evidence before the Commission was that he did not think the Applicant's story in that meeting was credible, and he thought there were inconsistencies in their story.

Following the meeting with the Applicants and their solicitor, and as a result of the claims made by the Applicants on that day that Crooks had not given them an opportunity to tell their side of the story during their interviews on 13 October 1997, Williams initiated separate interviews with Crooks and Saunders in the presence of Djulbic and Fitz Gerald. Crooks and Saunders each gave their account of what had occurred but it appears from the evidence that they were not aware at that point that the Applicants had alleged that they had not had an opportunity to respond to the allegations made.

As Williams continued with the investigation, on or about 16 October 1997, Neave advised her that he had been working with Roberts and Barber for around two weeks in July 1997 when he was undertaking training in concreting work. Neave said that during this time he had observed the Applicants stop at the depot bowser, fill a 20 litre container marked "two stroke" with ULP and either on leaving the depot or returning to the depot, they would stop and put the full container of fuel into Roberts' private vehicle which was always parked near the car park exit. It was said by Neave that this happened every Thursday or Friday depending on when the rostered day off fell, and the empty container would then be brought back on the Monday and refilled in the same manner. Neave stated that he had questioned Roberts about putting ULP into his car instead of super grade petrol and he alleged that Roberts stated that he put half in his car and half in his wife's car and mixed super grade fuel with it. Neave also stated that he knew of four or five other employees who had warned the Applicants not to keep taking the fuel but they had been unconcerned or responded that it was not the problem of those people who raised the matter with them.

The next matter in the sequence of events was that there was an application by the Applicants' union to the Australian Industrial Relations Commission and a conciliation conference was convened on 20 October 1997, attended by the representatives of the parties. It was agreed that the investigation would continue before the Respondent drew any conclusions in the matter or made any decisions regarding the Applicants and that there would be a further meeting with the Applicants in the next few days. There was to be a report back to the Commission.

On 21 October 1997, letters were sent by the Respondent to the Applicants advising them that there would be a meeting on 22 October 1997 at 10.00am. This meeting was attended by the Applicants, two representatives of the Applicants' union and the Applicants' solicitor who was a different person from the solicitor who had attended on 17 October 1997. Williams and Fitz Gerald represented the Respondent. At the start of this meeting, Williams read from a document indicating that she and others had investigated the responses given to them by the Applicants on Thursday 16 October 1997 and would deliver their findings regarding those matters to the Industrial Commission later that day or the next depending on the Commission's availability. The continuing investigation had provided them with further serious allegations which they proposed to give the Applicants an opportunity to hear and respond to. The allegation made by Neave was put to the Applicants by Williams, as was the allegation that a number of other employees had warned the Applicants that what they were doing was not appropriate or was foolish and that Roberts had responded to those employees. The Applicants were invited to comment on these new allegations.

The Applicants' solicitor then asked for a break before the Applicants gave their responses and this was agreed to. When the meeting resumed Roberts and Barber simply stated that they totally denied the allegations and had nothing further to say. It is said that Roberts also said that "It's definitely not as it says." There was some discussion as to whether there was any need for a further conference before the Australian Industrial Relations Commission and there was to be consultation between the union and Fitz Gerald on that matter. The union secretary, who was present, said that his members had no intention of resigning their positions, and they denied all allegations made against them. Williams says that the Applicants were again offered the opportunity to offer a defence against the allegations and they both declined to make any further statement. They were advised that a decision would be made in the absence of their defences and they still declined to make any further statement. They were advised that the Respondent would deliberate on the allegations and the responses given by the Applicants, and after proper consideration of all of the material, conclusions would be drawn and decisions made.

Williams considered the matter further and in light of what she believed to be Roberts' admission that he had been stealing fuel; that fuel was found in his car on 13 October 1997; the

weight of evidence against him which his responses were said to not effectively refute; the unacceptable defence that he offered that he had not taken as much fuel as had been alleged and only took it to get to and from work when he was short of money which contrasted glaringly with more credible evidence from other employees. Williams concluded, on the balance of probabilities, that Roberts had been stealing fuel over a period of several months and had done so systematically and repeatedly, had been seen by fellow workers and warned of the likely consequences, he had ignored their warnings and continued with the theft. She thought that Robert's actions warranted dismissal for gross misconduct.

Williams then considered Barber's situation. She believed that he had admitted to having known that Roberts was engaged in stealing fuel; noted his apparent willingness to corroborate Robert's responses in such a way that it appeared that they had prepared their stories and agreed to say the same things as each other; Barber was considered to be a senior member of the outside workforce and there was an expectation that he would behave with a high degree of trust; he had an obligation to report theft where he knew it was going on; that he had aided and abetted Roberts by going along with Roberts' stories; that he had been present when warnings were given by other employees to Roberts and had gone along with the process Roberts had in place and did nothing to stop it. On this basis, Williams thought that Barber had been an accomplice to Roberts and that his conduct amounted to a serious breach of trust, and that he had repudiated his contract of employment. On this basis, she determined that his employment should also be terminated.

Before finalising the matter, Williams is said to have met with the Executive Manager Engineering Services to review the material. She reported the details of the investigation and the responses in defence offered by the Applicants and explained her conclusions. It was agreed that her conclusions and recommendations were appropriate. Accordingly, both Applicants were dismissed by letters dated 22 October 1997.

In addition to the evidence of the sequence of events leading up to the termination, the Commission heard a considerable amount of evidence of a detailed nature about the way in which the Applicants performed their work and the quantities of ULP, form or mould oil and water used by them in the their work. It became clear during the hearing that these quantities and the way the Applicants performed their work was a matter of contention. The Commission was invited to undertake inspections and view demonstrations of the equipment referred to and the work involved. As I have noted, there was dispute between the parties as to matters of a technical nature. On this basis, I indicated to the parties my intention to seek independent expert advice due to the obvious conflict between the parties as to those matters. The parties were invited to nominate such an independent expert, and did so. I considered these recommendations. However, as their recommendations were quite divergent, I accepted the recommendation of the Cement and Concrete Association of Australia, which was one of the number of organisations suggested by the Building and Construction Industry Training Council. The Cement and Concrete Association of Australia recommended Mr Stephen Ferguson who holds professional qualifications and is a member of the Australian Code Committee for Formwork. Mr Ferguson attended the demonstration and inspection with the Commission. He provided a report to the Commission, which was provided to the parties for their comment. Mr Ferguson's report and comments at the demonstration and inspection were most helpful.

I also note that during the hearing of this matter, the Respondent, having argued its case first, and having heard most of Roberts' evidence, sought to recall one of its witnesses and submit further evidence. This evidence was said to be in rebuttal of a number of matters which had arisen in Roberts' evidence, which related to quantities used, including quantities of form oil used. The Commission rejected this application. However, during the inspections of the depot, including the stores department office, the Respondent sought to have the Commission inspect its computer records of stocks and purchases of form oil. The Applicants took no objection to the Commission viewing these records. The Respondent and the Applicants' counsel agreed at that time that the record showed that at January 1996, the Respondent had 80 litres of form oil in stock, and that 20 litres had gone from stock since then.

I have considered the authorities put to me as to how a matter of dismissal for misconduct should be dealt with by the Commission. I note the following: the joint reasons for decision of His Honour, the President and the learned Chief Commissioner *in Western Mining Corporation Limited and the AWU (77 WAIG 1985)*, where the decision in *Shire of Esperance and Mouritz (71 WAIG 891)* and *Binco Pty Ltd and Hooper (1992 53 IR 224 at 229-230)* and *Byrne and Frew –v- Australian Airlines Ltd (120 ALR 274)* were cited. The essence of these decisions is that the employer is required to demonstrate that, before dismissing an employee, it conducted a full and extensive investigation, as far as was reasonable, that it gave the employee reasonable opportunity and sufficient time to answer the allegations, and had honestly and genuinely believed and had reasonable grounds to believe that the employee was guilty of the misconduct. It is also to take account of any mitigating factors.

I have observed the witnesses as they gave their evidence. There is a good deal of conflict in that evidence. Where there is conflict, I prefer the evidence of the witnesses for the Respondent. Their evidence as to matters of significance was largely unshaken. On the other hand, the evidence of the Applicants particularly related to the way they performed their work and the quantities of ULP and form oil used by them in their work was not plausible. I have taken account of their unique way of working and that Mr Ferguson reported that he had not heard of the use of ULP as a release agent in concrete work, but that it was possible.

My conclusions in this matter are these. The Respondent received an allegation that the Applicants were involved in stealing fuel. There is criticism by the Applicants that the Respondent, in investigating the allegations did not interview either Gregorini or Thompson who initiated the matter. In the scheme of things, this is not an omission which is fatal in light of what is to follow, although, this omission along with at least one other omission demonstrate that the Respondent did not conduct an investigation in the same thorough manner one would expect of the police regarding a criminal investigation. It is not required to do so. On hearing of the allegations, the Respondent did not jump to conclusions. Its officers set about observing the Applicants and making estimates of the fuel they would generally use in their work. Meadows and Saunders estimated that the Applicants would need approximately 3 litres of ULP each day. Roberts' evidence was that Saunders would have a rough idea of the equipment on their truck. Roberts' evidence was that they used 2 to 3 litres of form oil, diluted with 7 to 8 litres of ULP as a release agent in preventing concrete sticking to form work. He said they would not often pour more than 10 metres of concrete a day (transcript page 167), that they would average 5 metres of concrete per day in reinstatement jobs (transcript page 170), and that they would use a lot more than 2 litres of the mixture in the Hudson Spray to every 48 metres of formwork. He said he would use 14 litres of ULP per day to dilute form oil in the Hudson Spray (transcript page 247) and used a 20 litre drum of form oil approximately each month. Roberts' evidence of giving formwork a good spray, sometimes twice, and of spraying tools in the manner and as frequently as he said occurred appears to be without credibility.

Barber was less able to come to estimates regarding the use of fuel, but said that they used at least 20 litres of ULP per week (transcript page 269 and 306a). He said they would average two and a half cubic metres of concrete per day. The Applicants say they also used the combination of ULP and form oil to spray their hand tools. They used varying amounts of ULP to power the water pump and other small plants. They also used ULP as a cleaning agent which was said to be better than using water. Barber says they put ULP in a 20 litre jerrycan every 2 to 3 days, when the jerrycan might be empty or sometimes had a little bit still in it. (transcript page 268).

It is interesting to note that Mr Ferguson had not been aware of the use of ULP and form oil as a release agent for formwork. Both he and the contractor at the site inspection believed diesel was an appropriate release agent. Mr Ferguson acknowledged it was possible to use ULP combined with form oil but that ULP was unsuitable and ineffective to clean hand tools. He also reported that—

> "the use of petrol, either mixed with form oil or "neat" to clean tools, is "unheard of" in the industry and definitely

not recommended as it exposes the workmen to a potential fire hazard due to the volatility of petrol, particularly when under pressure and sprayed using the spray pack."

His estimate was that a "two man team would be expected to use an average of 1.5 litres per day. Further, that if this was the case, an average of 0.6 litres per day of form oil would also be consumed".

Having examined the formwork at the depot, Mr Ferguson concluded that it was unlikely that the release agent was used in the quantities recommended by the manufacturer or that it had been regularly cleaned after use. However, I note the Applicants' comments that the formwork viewed was not as clean as they kept their own formwork, and that eight months had passed since their employment terminated.

The comments of the foreman at the inspection site were that 10 litres of a mix of diesel and motor oil was applied to the edge form, using a hand held spray pack, to cover approximately 400 metres of foot path. Hand tools and formwork were cleaned using water. These comments were supported by Mr Ferguson.

The most telling piece of evidence in this regard was the estimate of form oil which Roberts said he and Barber used, ie 20 litres per month. The Respondent's records of purchases of form oil, inspected by the Commission during the inspections on Friday, 17 July 1998 show that in January 1996, the Respondent purchased 80 litres of form oil. On receiving this stock into stores, it immediately distributed 20 litres. It is said that this was due to there being no form oil left in the depot in December 1995. The remainder of the 80 litres of form oil (ie 60 litres) is still in stock. If the Applicants had used 20 litres of ULP per week for mixing with form oil as a release agent, they would have used 80 litres of ULP and 20 litres of form oil per month. This was the time frame Roberts estimated that they took to use the 20 litre drum of form oil. If so, the whole of the 20 litres of form oil released into stock in January 1996, would have been used by the Applicants in the first month. That left a period of about 20 months from the end of February 1996, when the oil was taken out of stock to October 1997 when the Applicants' employment was terminated, when no further form oil appears to have been taken out of stock.

In all of these circumstances, I find the evidence of the Applicants as to the amount of ULP they used each week and the purposes for which they used it to be exaggerated and improbable. The figure of approximately 3 litres of ULP per day estimated by Meadows and Saunders for the purpose of all of the Applicants' work is far more realistic if not generous. As noted earlier, Mr Ferguson's estimate for oiling the formwork was 1.5 litres per day.

In any event, the Respondent, having undertaken this estimate, observed Roberts obtain 21.65 litres of ULP on Thursday, 9 October 1997, and noted that at the end of that day their truck had no 20 litre jerrycan; that the jerrycan was present on Friday 10 October; and that Roberts obtained approximately 20 litres on Monday 13 October. This is consistent with the Respondent's relieving storeman saying that Roberts used the swipe card twice per week, and Gregorini gave evidence that he had seen Roberts filling a 20 litre jerrycan 2 to 3 times per week over the past 12 months. The Respondent decided to speak with the Applicants and put the allegation to them.

However, before the Respondent was able to put the allegation to the Applicants, the jerrycan of ULP was found to be in Roberts' car at the end of the working day. This jerrycan was later returned to the truck, and then removed by the Respondent. It was said by the Respondent to be a full jerrycan of ULP. Crooks put the allegations to the Applicants. Roberts gave evidence that he understood the allegation against him. (transcript page 185-6 and 188) The allegation was stealing. Barber also understood that the accusation against him was that he was involved with Roberts in the theft of fuel. (transcript page 315-316)

It may be that the interview with Crooks and Saunders was brief, and that the Applicants did not have a full opportunity to respond to the allegations. However, I prefer the evidence of Crooks and Saunders that admissions were made by Roberts, and he explained his domestic financial difficulties as mitigation for theft. I am not satisfied that he was merely acknowledging that the jerrycan was in his car, or that he was admitting to "borrowing". I am satisfied that this was the interpretation he later, with the benefit of time, decided to put forward in the hope of retrieving the situation.

Barber did his best to not disclose his knowledge of what appears to have been regular and ongoing theft by Roberts. He first denied any knowledge, then accepted that the theft was occurring. When further investigations were conducted, he continued his support of Roberts.

Even if the allegations were not clear to the Applicants on 13 October 1997, which I do not accept, or if they were not given adequate opportunity they defend themselves at that point, the Respondent gave them a full and thorough opportunity to do so on 16 October 1997. They had with them their counsel. They claimed that on 13 October 1997, they had not had an opportunity to defend themselves, that they had not admitted theft or knowledge of theft. Roberts explained his borrowing of the jerrycan and petrol to allow him to get to a particular service station on the way home from work; they explained that Barber had loaned Roberts $10.00 to purchase fuel, and they described the uses to which they put the ULP. Following this meeting, the investigation continued. No decision was made at this point. As a result of the Applicants' claims that on 13 October 1997 they were not afforded an opportunity to defend themselves, Crooks and Saunders were interviewed.

Then, further information came to the Respondent from Neave. This was first hand observation of Roberts' systematic theft of fuel, and of other employees having warned the Applicants of the consequences of theft. It appears from the evidence before the Commission that this latter aspect was somewhat over stated by Williams to the Applicants but was nonetheless true. According to Williams' evidence, Neave had stated to her that he knew of four or five other employees who had warned the Applicants not to keep taking the fuel. Neave's evidence was that Thompson had told him that he had warned the Applicants about the theft, although Thompson's evidence does not support this. However, Neave and Gaston each gave evidence of having warned the Applicants that they would be caught. Gaston also gave evidence of overhearing Barber telling Roberts that he was an idiot, and "at least I'm not blatantly stealing fuel."

On 22 October 1997, the Respondent put these latter allegations to the Applicants and gave them the opportunity to respond in the presence of their union representatives and counsel. They chose a blanket denial.

Only after the meetings with the Applicants on 13, 16 and 22 October 1997; after interviewing Saunders and Crooks, and upon consideration of all of the circumstances did the Respondent decide to terminate the Applicants' employment. The circumstances considered by the Respondent included the Applicants' respective positions and service. In Roberts' case, the consideration included that his conduct amounted to gross misconduct and a repudiation of his contract of employment, and in Barber's case that his actions amounted to gross misconduct and a repudiation of his contract, that his actions and involvement had irretrievably destroyed the Shire's trust and confidence in him.

Despite Mr Howlett's valiant efforts to put the Applicants' case in the best possible light, I conclude that the Respondent had conducted a full and extensive investigation, as far as is reasonable. It is clear that the Applicants were given reasonable opportunity and sufficient time to answer the allegations. The Respondent honestly and genuinely believed, and had reasonable grounds to believe that the Applicants' were guilty of theft and complicity in theft.

I have considered the allegations of there being, in effect, a culture of "borrowing" without authority by the Respondent's employees. I am not satisfied that these constitute any more than rumour or gossip. When challenged about their allegations against other employers, the Applicants did not know if the employees concerned had authority to "borrow". In any event, the issue before the Commission is that the Respondent, when informed of a specific allegation, investigated. There is no suggestion that it was aware of any other allegations of unauthorised "borrowing" and had condoned it. On the contrary, it would appear that previously, when Crooks was informed that Roberts had been given the loan of a jerrycan with fuel, he informed the supervisor that it was not to occur again.

In all of the circumstances, I find that the dismissals have not been demonstrated to have been unfair, and that the Respondent has discharged the onus which falls to it in the case of a dismissal for misconduct.

APPEARANCES: Mr D Howlett (of Counsel) on behalf of the Applicants.

Mr M Fitz Gerald on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Paul Thomas Roberts

and

Shire of Swan.

No. 2120 of 1997.

COMMISSIONER P E SCOTT.

11 August 1998.

Order.

HAVING heard Mr D Howlett (of Counsel) on behalf of the Applicant and Mr M Fitz Gerald 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.) P. E. SCOTT,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Rardi Arthur Charles Barber

and

Shire of Swan

No. 2121 of 1997.

COMMISSIONER P E SCOTT.

11 August 1998.

Order.

HAVING heard Mr D Howlett (of Counsel) on behalf of the Applicant and Mr M Fitz Gerald 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.) P. E. SCOTT,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Bernard F Smith

and

Nulsen Haven Association (Inc).

No. 558 of 1998.

2 September 1998.

Reasons for Decision.

COMMISSIONER S A CAWLEY: By this application Bernard F Smith claimed that he was unfairly dismissed on 13 March 1998 from employment as a residential care assistant by Nulsen Haven Association (Inc.) ("the respondent"). The respondent acknowledges that Smith's employment as a residential care assistant was terminated with payment in lieu of notice but denies that it was unfair. The grounds on which Smith relied for the claim of unfairness was that after he challenged procedures of the respondent as inappropriate the respondent found fault with his work performance resulting in a succession of baseless allegations which led to his dismissal.

The dispute was the subject of extensive conciliation proceedings but no resolution was reached and Smith requested his claim be referred for hearing. As it was clear from the detailed answers to the claim that the respondent intended to call a significant number of witnesses, the parties were not only respectively directed to produce documents for inspection but, in the interests of expedition, the respondent was requested by the Commission to put its case first and to consider filing witness statements prior to the hearing. The respondent agreed to both requests. Of course none of this went to any shifting of the onus in this matter. The onus of establishing that the termination of Smith's employment by the respondent was unfair rested with the person making that claim, Smith. This was expressly stated to the parties by the Commission at the time these requests were raised with the respondent.

Smith's claim was listed for hearing on 3 August 1998. By that date the respondent had filed witness statements in the Commission. There is no question that copies of these were provided to Smith and that he had been given access prior to the hearing to the documents in the respondent's possession and was enabled to take photocopies of anything he sought.

By the time the hearing of Smith's claim adjourned on 3 August 1998 the respondent had called six witnesses. Sworn statements of evidence by these witnesses had been tendered during the hearing. A number of other documents had been tendered through the witnesses; including a one page document carrying 11 signatures. The document states that the signatories no longer wished to work with Smith. No question that the named signatories to this statement had worked at the same premises of the respondent as had Smith was raised. Four of these signatories gave evidence at the hearing on 3 August 1998. The other two witnesses called that day by the respondent to give evidence had also worked with Smith but were not signatories to the letter. At the adjournment the respondent foreshadowed it would be calling another 13 witnesses. By way of a notice issued on 7 August 1998 the claim was listed for a further two days of hearing in September.

However, on 19 August 1998, the respondent applied to have Smith's claim dismissed pursuant to section 27(1)(a) and sought an urgent hearing of that application. The grounds for the application were stated as follows—

1. The Applicant has contacted several of the respondent's witnesses by mail and telephone, both before and after the initial hearing on 3 August 1998 and attempted by threat and duress to get those witnesses to change their evidence;
2. Applicant has written letters to the Commission and the Respondent's witnesses which indicate the Applicant is prosecuting the application for the collateral purposes of instituting proceedings in the Supreme Court against the Respondent's employees and pursuing a personal vendetta against [A] and [B];
3. Applicant has wilfully misled the Commission during the cross examination of [C] to suggest that he did not prepare the "wanted poster" of [C] having now admitted to [C] in a telephone conversation that he was responsible;
4. Course of proceedings on 3 August 1998 show that the Application has no merit and is doomed to fail.

This matter was listed for hearing on 28 August 1998. As well as pursuing this application the respondent reiterated its earlier application for costs to be awarded against Smith and supplied a statement of costs said to have been incurred by it to date in defence of Smith's claim of unfair dismissal and other costs said to have been incurred which should be awarded.

In support of its application that Smith's claim should be dismissed pursuant to section 27(1)(a) Mr Randles, for the respondent, produced a number of sworn affidavits by employees of the respondents who had either already given evidence or were intended to be called to give evidence in the

hearing of Smith's claim of unfair dismissal. Mr Randles, himself submitted an affidavit describing a conversation he says he had with a witness who was very distressed at a perceived threat by Smith raised in a letter to her. Another affidavit has attached a copy of a letter said to have been produced by that witness, in an agitated state, to the supervisor who swore the affidavit. Letters are attached to three other affidavits. Each is addressed to a witness or intended witness for the respondent. Each letter bears a date after the hearing adjourned on 3 August 1998 with Smith's claim only part heard.

Smith acknowledged at the hearing of 28 August 1998 that he had indeed sent the letters to each of the persons (witnesses or intended witnesses) named. He also acknowledged that he forwarded a document dated 4 August 1998 to the Commission shortly after the adjournment of the hearing of 3 August 1998. It is trite to observe that that letter could not have standing in Smith's claim or even be received. Accordingly my Associate had been instructed to return the unread document to Smith prior to the resumption of the hearing of his claim but the respondent's application here overtook that course of action. No regard has been had for this letter of Smith's in deciding this application. However, in the light of the respondent's references to this document in its grounds and, in the context of the other grounds, this letter is included in the record for completeness.

It is noted that on occasions prior to the hearing of Smith's claim proceeding Smith had been told by my Associate that attempts to communicate with the Commission outside proceedings was not appropriate and an earlier document he attempted to provide while conciliation proceedings were still underway had been returned to him on that basis. It was made quite clear to Smith by the Commission when conciliation proceedings resumed that such conduct was not appropriate. In this context it is nonsense for Smith to say, as he did at the hearing on 28 August 1998, that he had cause to think that his document of 4 August 1998 addressed to the Commission somehow justified his subsequently sending letters to witnesses and intended witnesses.

I turn now to the letters Smith sent to witnesses and intended witnesses. Smith says that he sent the letters with "good will" and had the interests of these former work colleagues in mind doing so. But the letters speak for themselves. They are damning to Smith's position. There is sufficient in these letters, in my view, to disclose an intent by Smith to intimidate the persons contacted for the purpose of either getting them to change evidence already given or to shape evidence to be given.

Further it is quite clear from the admittances of Smith on 28 August 1998 that his conduct of cross examination of witness C on 3 August 1998 was dishonest and misleading. Despite many exhortations from the bench to get to the point he persisted in a course of questioning which, now, is quite clear, involved veiled threats to the witness.

Smith offered no significant explanation in mitigation for his conduct. Indeed he sought to justify it. In this respect Smith's protestations that he was motivated at all times by concern for the well being of his former work colleagues in insincere and rejected.

Further, he continued to assert conspiracy by management in relation to the evidence of employees in his claim of unfair dismissal but, despite promptings from the bench and every opportunity, failed to pursue that line of questioning with any of the six witnesses called by the respondent on 3 August 1998.

So far as the evidence of those witnesses is concerned, I have no reason to conclude that any of them set out to mislead the Commission or to obscure the truth. No question hangs over them as to their credibility. By his conduct, however, Smith is demonstrably a discreditable person. If the Industrial Relations Act, 1979 ("the Act") contained the powers to deal with contempt, this case most surely would have attracted an exercise of such powers.

But that is not the end of it. Parliament has conferred a right for an individual claiming unfair dismissal to apply to the Commission to have such a claim determined. But it is not an unfettered right. Where it is demonstrably the case, as here, that the individual exercising that right has seriously abused the process then the Commission is bound by section 26 to exercise its powers in remedy. In this case it is quite clear that the Commission should exercise the power in section 27(1)(a) to dismiss Smith's claim forthwith. To do otherwise would be to condone serious abuse of the process and oppression of the respondent and its employees.

This conclusion was conveyed to the parties at the conclusion of the hearing on 28 August 1998 and they were informed then that the question of costs would be dealt with subsequently.

Before turning to that question there is another matter. Having regard for the nature of some of the threats to witnesses and an intended witnesses in the letters sent by Smith after the hearing of 3 August 1998 and a comment made by Smith early in the course of the hearing that day to the effect that he would sue the people who signed the document stating they did not want to work with him, I think there is reason to conclude that Smith always had a collateral purpose in pursuing the claim of unfair dismissal. This, it seems to me, is good reason for further action. Accordingly Smith was ordered on 28 August 1998 to surrender all documents and statements of evidence obtained by him to that date from the respondent, and/or any copies thereof to the Registrar of the Commission by 2:00pm on 31 August 1998. Those orders were made express shortly after.

A further order is warranted in the circumstances. The power pursuant to section 27 should be exercised to close the record of the proceedings on Smith's claim with immediate effect with any access to exhibits, statements of evidence and the transcript to be subject to written approval by the Registrar. This conclusion will be reflected in the final order.

I turn now to the question of the application of costs. There generally has been a reluctance in what has usually been a low cost jurisdiction to award costs in other than extreme cases. This is such a case. I am satisfied here that Smith's reckless and abusive approach to the proceedings on his claim likely has been the cause of the respondent incurring significant costs to defend itself and that further costs have been incurred as a result of his actions since 3 August 1998.

A statement of these costs was submitted to the Commission on 28 August 1998. Of these I am not minded to award the following: the cost of a counselling session for Smith provided by a Mr Lappan on 27 January 1998; the cost of security patrols; the cost of professional services said to have been provided to one of the witnesses between 5 June 1998 and 30 July 1998.

The parties are now directed to confer on the other costs claimed and advise the outcome. If no agreement is reached on the level of costs to be awarded the Commission will proceed to determine the matter. Any submissions on what the award should be should be put in writing to the Commission by no later than 4:00pm on Friday 4 September 1998. Submissions conveyed by facsimile message or e-mail will be acceptable.

15 September 1998

The issue of the amount of costs to be awarded in this matter was left open pending an opportunity for the parties to confer and/or make written submissions to the Commission. No advice has been received from either party as to the outcome of any conferring between them. As to submissions as to the amount to be awarded, the respondent has amended its claim from a total of $5,400.99 to a total of $2,940.99. No submission has been received from Smith on the matter of the amount of costs to be awarded.

A schedule of the respondent's costs now sought is before the Commission. These are expressed as follows.

- The wages costs for six employees for time absent from normal duties for the purposes of a meeting with the respondent's advocate on 4 June 1998.—$135.20
- The wages costs for fourteen employees for time absent from normal duties for the purposes of a meeting with the respondent's advocate on 16 July 1998.—$160.63
- The wages costs for eight employees for time absent from normal duties for the purposes of interviews and proofing witness statements on 16 July 1998.—$278.64
- The wages costs for eleven employees for time absent from normal duties for the purpose of proofing witness statements.—$95.56

- Wages costs associated with the attendance of named employees of the respondent for the purpose of giving evidence on behalf of the respondent in the hearing of the claim of unfair dismissal on 3 August 1998.—$1819.49
- Wages costs / loss for two ex-employees of the respondent (Wynhorst and Woodward) as a result of attendance for the purpose of giving evidence on behalf of the respondent in the hearing of the claim of unfair dismissal on 3 August 1998.—$191.47
- The cost to the respondent of the attendance of Mr S Lappan at the hearing of the claim on 3 August 1998 for the purpose of giving evidence on behalf of the respondent.—$260.00

Having regard for the issues between the parties in the claim of unfair dismissal, the witness lists provided by the respondent prior to the hearing, the number of witness statements provided by the respondent prior to the hearing and in the course of hearing, I am satisfied that the costs above have been incurred by the respondent for the purposes of defending against the claim of unfair dismissal. Indeed I think that in the circumstances these costs are likely to be a modest part of the real costs incurred by the respondent let alone any deleterious effect on the confidence and morale of the respondent's employees caught up in this sorry saga of abuse of process.

An order that Smith pay the respondent the sum of $2,940.99 for costs will be made. Minutes of orders in this matter will now issue.

Appearances: Mr B F Smith appeared on his own behalf.

Mr A Randles appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Bernard F Smith

and

Nulsen Haven Association (Inc).

No. 558 of 1998.

18 September 1998.

Order.

HAVING heard Bernard F Smith on his own behalf and Mr A Randles on behalf of the respondent, now therefore I the undersigned pursuant to the powers conferred by the Industrial Relations Act, 1979 do hereby order—

1. THAT Bernard F Smith pay Nulsen Haven Association (Inc) the sum of $2,940.99 for costs within fourteen (14) days of the 15th day of September 1998.
2. THAT the record of the proceedings on the claim of unfair dismissal on the 3rd day of August 1998 and any witness statements or records relating to those proceedings to be closed to public scrutiny unless otherwise authorised in writing by the Registrar of the Western Australian Industrial Relations Commission.
3. THAT the application of Bernard F Smith in Matter No. 558 of 1998 be dismissed.

(Sgd.) S.A. CAWLEY,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

David Gordon White

and

Bill Lamb Australind Caravan Park.

No. 704 of 1998.

COMMISSIONER P E SCOTT.

3 September 1998.

Reasons for Decision.

THE COMMISSIONER: The Applicant alleges that he was unfairly dismissed from his employment with the Respondent and further he claims certain benefits which may arise from his contract of employment.

The circumstances of the Applicant's employment and termination were the subject of dispute between the parties. The Applicant says that on 16 March 1998, he went to the Commonwealth Employment Service seeking employment and was directed to the Respondent. On 16 March 1998 the Applicant was interviewed by Gary Lamb, the son of the Respondent. Gary Lamb is said to have offered him full time work as a labourer undertaking a variety of tasks including gardening, maintenance and rubbish collection. The Applicant says that the employment was covered by the Cleaners and Caretakers (Car and Caravan Parks) Award 1975 (No. 5 of 1975) ("the Award"). The Applicant says that at no time was he advised that his employment was subject to a trial period or probation. Further, he says that the intention of the parties was that the Respondent was to receive a wage subsidy related to the Applicant's employment and that such an arrangement would not be entered into on the basis of a trial period.

The evidence of Leslie William Lamb ("Mr Lamb") is that he is the owner of the business and that his son, Gary Lamb, undertook the negotiation with the Applicant in respect of his employment. Mr Lamb says that the Applicant was employed on a trial basis. He is quite clear about this because he says that this has been the standard practice for his employees over many years and that his son was familiar with that requirement. He is adamant that his son and he would both have made clear to the Applicant that he was engaged on a trial basis. However, Mr Lamb acknowledges that he does not know for a fact that his son indicated this to the Applicant at the time of engagement, and he does not remember any specific discussion with the Applicant himself about the matter, although he believed that he did make it clear to the Applicant.

Mr Lamb says that the wage subsidy agreement was never signed between the parties and that it was his intention, as was his practice, upon being satisfied that the Applicant was a satisfactory employee, to complete the paper work necessary to arrange the subsidy. It would have been a month or so after the Applicant had commenced work that he would have "put the Applicant on the books", had he been satisfactory.

There is also dispute between the parties as to what occurred on the day of termination. The Applicant says that he arrived for work at 8.12am, being 12 minutes late. He says that he was wearing new King Gee work wear being a green pair of pants and a shirt which he had recently purchased and that he was also wearing work boots. The Applicant's evidence as to what he was wearing that day is confirmed by the evidence of Deirdre Michelle Scott, the Applicant's flat mate.

Mr Lamb's evidence is that the Applicant did not arrive for work at 8.12am but that it was more like 8.45 to 9.00am. He also says that the Applicant was inappropriately dressed for the type of work that he was required to do that day. He believed the Applicant was wearing the uniform that he usually wore as a security guard. He described the Applicant as being dressed too neatly, "immaculately" dressed and that he suspected the Applicant had come straight from his security job.

Mr Lamb says that he told the Applicant that he was late and that the Applicant said to him that he had been caught up with road works on the way to work, a statement Mr Lamb did not believe because the road works had been going on for some time and there was nothing new in that situation.

The Applicant says that upon his arrival, he was told by Mr Lamb that he was not dressed properly for work and he seemed

quite upset with the Applicant. The Applicant says that he went around the desk and reached for the keys that he needed to do his job and that Lamb asked him "what the hell I thought I was doing." He says Mr Lamb said to him "you obviously don't want to work here, you might as well get your gear and go". The Applicant left immediately.

On the other hand, Mr Lamb says that upon being challenged, the Applicant immediately changed his attitude and while slamming the keys down on the desk, said to Mr Lamb "you can stick your job" and walked out. Mr Lamb says that he never dismissed the Applicant, rather the Applicant left of his own accord. Mr Lamb says that after the Applicant had slammed the keys down and told him that he could stick his job, not another word was spoken between them.

In deciding this matter, the Commission is required to consider the evidence and where there is conflict in the evidence resolve that conflict by assessing the evidence. I have observed the witnesses as they gave their evidence and I have found it impossible to distinguish between them as to their credibility. My assessment of Mr Lamb was that he was most honest and truthful about his recollections, but he said a number of times that his memory was poor. However, his evidence as to the verbal exchange with the Applicant on the day of termination is more plausible than the Applicant's. At certain times each of the witnesses appeared to be credible and at other times their evidence lacked credibility.

Therefore, I am unable to conclude whether or not the Applicant was on probation or trial and the effect that that may have on this matter. I am also unable to conclude whether the Applicant resigned by telling Mr Lamb he could stick his job, or whether his was dismissed by Mr Lamb.

As the Applicant bears the onus of proving his case on the balance of probabilities, and as he has failed to tip the balance in his favour, that balance currently being equal between the parties, I am unable to conclude in favour of the Applicant.

In those circumstances, the application as it relates to the alleged unfair dismissal must be dismissed.

The Applicant also claims certain contractual benefits which may be owed. These are claims in respect of payment for days worked but not paid, being the Wednesday, Thursday and Friday of the week preceding his termination of employment, and a week's pay in lieu of notice. The Applicant has indicated that his employment is covered by an award. Section 29(1)(b)(ii) of the Industrial Relations Act is for the enforcement of conditions of employment which arise from the contract of employment, not those which arise from an award or agreement. As those claims appear to arise from award entitlements the Commission is not able to deal with them.

Accordingly, an order for dismissal shall issue.

Appearances: The Applicant on his own behalf.

Mr L W Lamb on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

David Gordon White

and

Bill Lamb Australind Caravan Park.

No. 704 of 1998.

COMMISSIONER P E SCOTT.

3 September 1998.

Order.

HAVING heard the Applicant on his own behalf and Mr L W Lamb 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.) P.E. SCOTT,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ivan Zovko

and

KLM Fabricators.

No. 382 of 1998.

COMMISSIONER J F GREGOR.

17 July 1998.

Reasons for Decision.
(Extempore)

On the 27 February 1998 Ivan Zovko (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, on or about 14 February 1998, unfairly dismissed from what he said was a contract of service with KLM Fabricators (the respondent).

An overview of the matter is as follows. The applicant says he entered into a relationship to supervise works which were being carried out by the respondent on the Bulong Nickel Project. The work involved the construction of an acid tank. The contract was worth in the vicinity of $740,000. It was a job of about 3500 man hours involving the welding on site of pre-rolled steel by welders. The job of the applicant was to supervise those workers.

The main issue in contention as a preliminary matter is the status of the applicant to bring these proceedings. Proceedings can only be mounted under section 29 of the Act if the person involved is an employee. Under section 29(1)(b)(i) an employee can bring a claim that he has been harshly, oppressively or unfairly dismissed from his employment. It follows that, to bring that application, there must be a relationship of employee and employer. There must be that relationship for a dismissal to have taken place. That the relationship existed is under challenge here.

The respondent says that the applicant agreed to do work on a subcontract arrangement. The respondent says that arrangements were followed which prove the nature of that arrangement was one of a contract for services. On 1 December 1997 the applicant signed an agreement titled Agreement to Contract, Conditions of Contract. That agreement contains a number of provisions. It provides that the contractor acknowledges and agrees there is no relationship of employer and employee with KLM Fabricators. That of itself does not change the true nature of the relationship if the relationship is something else.

What must be discovered is as a matter of fact, what was the true relationship. Good evidence of the true relationship is the type of contract entered into between the parties. Under the contract the respondent did not guarantee the contractor (applicant) any work and the applicant was not bound to only accept work through the respondent. The applicant was free to trade with anyone that he liked. He was to provide his own tools that were required in the practice of his trade. The respondent was only to supply special tools which may be required for the contract itself and the contractor (applicant) was, by the contract, obliged to accept full financial responsibility for the safe return of that type of equipment.

The contract expressly prohibited the respondent from making reductions in respect of PAYE taxation. In my examination in chief of the applicant, he specifically denied that. However, at the time of entering into the contract, he filled out a prescribed payments system payee declaration. The contractor agreed that he would work for an hourly rate for actual hours worked. There was an arrangement that he would submit invoices (copies of those invoices appear in Exhibit D1). The applicant agreed that the respondent had no responsibility or liability to him except in respect of payment for hours worked and that he had no claim on the respondent concerning holiday pay, long service leave, sick pay or any other similar payment. It was agreed between them that the contractor (applicant) must carry out the work that it agrees to do through the agency of the respondent in a workmanlike manner and that, in particular, faulty work was to be rectified at the expense of the applicant.

There is a provision in the contract that gives me some concern. The contractor agrees that it or its nominee must be a financial member of a trade union. This seems to sit uncomfortably with the proposition that the applicant was in truth an independent contractor. Otherwise why would one have to join a union? That provision, if the applicant is really a contractor, would obviously be at odds with provisions of the Act and could lead to prosecution of the respondent in other circumstances. However, I will not dwell on that. I note that it is a requirement which causes me some concerns about the real nature of the contract and I will examine it later in my reasons. The applicant says that he was not a contractor. On the contrary, he was an employee. He said that in the first instance the supervision part of the work was deferred. He undertook estimating work and says if he was a subcontractor then why was he not told the job had been deferred. He also said that he was paid a different rate while he did estimating work.

He claims the only time he left the site was when he was dismissed after he was assaulted in his motel room. I do not need to examine those matters. There are allegations by the respondent that the applicant did not conduct himself properly as a supervisor should and poor supervision led to errors which caused his client costs. As I said earlier, I will not examine those matters now. What I have to decide is whether it is likely or not that the applicant was a subcontractor. The Commission is required to make its decisions on the balance of probabilities. That is not a strict test as beyond reasonable doubt as one would have to apply if this were a criminal matter. There are indicia to establish whether there is a relationship of employer and employee similar to those that I used when I asked questions of the applicant during his examination in chief.

It seems to me that the situation here is a person who, with this respondent, entered into an agreement to contract. That agreement to contract has all the appearance of being a contract for services not a contract of service. I think the only indicator in the contract which detracts from that impression is the question of trade union membership. I will deal with this later. The contract does not guarantee any contractor any work; does not bind him to only accept work from the respondent. He is to provide his own tools. Special tools are supplied to him. There is a specific prohibition on the respondent to make deductions for PAYE taxation. The applicant agrees to supply his own plant and equipment, safety gear, boots and gloves or ancillary requirements and he cannot make any claim on the respondent in respect of those.

The applicant also supplied the respondent with a business card (Exhibit D1). The card has a logo and it has the caption 'Construction Supervision Services', with a subcaption 'Structural Piping Mechanical'. The applicant gave the card to the respondent on or about the time that they formed the relationship. He also filled in a prescribed payments declaration form. The form provides that the trading name of the payee be shown. In part 8 it specifies that the payee, not the employee, makes a declaration that the information given in the form is complete and correct. There is a provision on the form setting out penalties for deliberately marking a false and misleading statement. The purpose of this form is to provide for a concessionary rate of taxation. It is a lesser rate of taxation than people under PAYE taxation would pay, at least in the first instance. There are considerable penalties for filling such a form if it is not bona fide.

Additionally there is evidence before the Commission in the form of invoices. In Exhibit D2 there are photocopies of six invoices. The applicant says that he was told by the respondent how to prepare the invoices. That is denied by the respondent who says it did not supply him with an invoice book. He was told the respondent wanted invoices and he had the stationery to comply with the request. Particularly relevant is that when the Commission asked the applicant whether he had only used invoices when working for the respondent, he said no. He has used them before and he has used them since.

I need to comment on contract condition relating to financial member of a trade union. Although these provisions appear in a number of contracts I have seen, my experience in the construction industry tells me that the reason that they appear is that trade unions often insist on membership on construction sites, whether or not they have any real entitlement to sign a person into membership. In that context, the reason is not because the person is covered by a union constitutional rule, that is as an employee. The reason is a commercial one. That is, if you are not in a trade union you will not work on the property. I read the provision as meaning that. I make no comment on the efficacy of such a provision. I make comment that it would appear to be contrary to the act to have that type of provision but I think it is in there for the purposes I have described and not for the purposes of establishing whether or not the contractor is an employee or not. Taken altogether, I think the indicators which would establish a contract for services far outweigh those which might indicate that there was a contract of service. For those reasons, I find that the applicant is not authorised by the Act to bring this application and the application has to be dismissed for want of jurisdiction.

Appearances: Mr I Zovko appeared on his own behalf.

Mr D Jones appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ivan Zovko

and

KLM Fabricators.

No. 382 of 1998.

COMMISSIONER J F GREGOR.

17 July 1998.

Order.

Having heard the applicant on his own behalf and Mr D Jones 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 for want of jurisdiction.

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

SECTION 29 (b)—Notation of—

APPLICANT	RESPONDENT	NUMBER	COMMISSIONER	RESULT
Abbott WT	Peak Service Station, James Shepherd	89/1998	Cawley C.	Discontinued
Apathy LA	Ag-Ready Services	826/1998	Coleman C.C.	Dismissed
Banks MJ	Nadia Tajip t/a Peak North Perth	837/1998	Beech C.	Discontinued
Barrow GJ	George Moss Limited	2192/1997	Cawley C.	Dismissed
Bassett C	Sunlane Nominees	1117/1998	Cawley C.	Discontinued
Berry C	Floreat Meat Exporters	1252/1998	Gregor C.	Discontinued
Bonavita I	Mainsail Investments Pty Ltd	1373/1998	Scott C.	Dismissed
Buurman L	Boat Torque Cruises Pty Ltd	885/1998	Gregor C.	Discontinued

APPLICANT	RESPONDENT	NUMBER	COMMISSIONER	RESULT
Carter SJ	Philips Electronics Australia Ltd	379/1998	Scott C.	Dismissed
Collins CJ	King and Brown T/As Geraldton Retravision	1563/1998	Scott C.	Dismissed
Collins LM	Accor Asia Pacific	1308/1998	Gregor C.	Concluded
Connor J	James Hardie Building Systems	407/1998	Coleman C.C.	Discontinued
Coxe RJ	Rural Liquid Fertilisers Pty Ltd	827/1998	Coleman C.C.	Dismissed
Cryne LA	Rowena Nominees Pty Ltd T/A Jane Brook Stud	702/1998	Cawley C.	Discontinued
Czerwiec R	Philips Electronics Australia Ltd	378/1998	Scott C.	Dismissed
Dervan G	Elloise Pty Ltd	1278/1998	Fielding S.C.	Discontinued
Dufty EA	Eurokitchens & Interiors Pty Ltd	2087/1997	Beech C.	Discontinued
Ebner K	Flanders Investments Pty Ltd t/a Meads Fish Gallery	999/1998	Kenner C.	Dismissed
Fairman CF	Philips Electronics Australia	380/1998	Scott C.	Dismissed
Forrester S	John Grove, Mallee Pastoral Trust	1313/1998	Scott C.	Dismissed
Gadeke KP	Hine Motors Pty Ltd	1166/1998	Beech C.	Struck Out
Gard K	D Humfrey t/a Humfrey Land Developments Pty Ltd	1335/1998	Gregor C.	Discontinued
Glass A	Australian Mutual Provident Society	927/1997	Scott C.	Dismissed
Graham S	National Mine Management	1254/1998	Beech C.	Discontinued
Griffin GE	West Cost Acceptances T/A Mobi Tow (1988) Pty Ltd	1320/1998	Scott C.	Dismissed
Gropp T	Australian Thermal Insulations Pty Ltd	475/1998	Scott C.	Dismissed
Hankin RP	Soiland Garden Suppliers Pty Ltd	359/1998	Beech C.	Discontinued
Holsgrove J	Alan Ronald Tough, Bains Harding Industries Pty Ltd	836/1998	Scott C.	Dismissed
Huggins M	Whitfords Tavern	876/1998	Cawley C.	Discontinued
Huston N	Peter Coffey and Others—Denver City Hotel	1105/1998	Coleman C.C.	Dismissed
Isaac F	Gel Group Pty Ltd	1337/1998	Gregor C.	Discontinued
Isaac F	Swan Brewery	1338/1998	Gregor C.	Dismissed
Jones R	Sprint Couriers	1483/1997	Scott C.	Dismissed
Jones J	Sprint Couriers	1484/1997	Scott C.	Dismissed
Kempton MS	Varna Pty Limited	924/1998	Coleman C.C.	Dismissed
Kennedy JC	Muskdate Pty Ltd t/a Keymer Cottage Child Care	1190/1998	Beech C.	Struck Out
Kennedy S	Multimax (WA) Pty Ltd t/a McDonalds O'Connor	1617/1998	Beech C.	Discontinued
Kirrane AP	Waimea Holdings Pty Ltd (trading as Spartans Gym)	1552/1997	Parks C.	Discontinued
Kirwan RS	Mangolin Pty Ltd trading as The Mangrove Hotel	512/1998	Parks C.	Discontinued
Lowden SE	Marr Mooditj Foundation Inc	2377/1997	Beech C.	Discontinued
Mason A	David Renouf—Renouf Personal Training Centre	977/1998	Cawley C.	Discontinued
McDowall SR	Garrett Holdings Pty Ltd t/a Trade Winds Hotel	692/1998	Kenner C.	Dismissed
Meek RD	Noble Nominees Pty Ltd t/a Wembley Auto Care	865/1998	Beech C.	Discontinued
Menendez L	Trinity Leather Travel Goods Gifts & Souvenirs	1538/1998	Scott C.	Dismissed
Merrylees SA	Kings Park Motel	806/1998	Coleman C.C.	Dismissed
Millman J	Ellmax Pty Ltd t/a Great Southern Ag Services	899/1998	Gregor C.	Dismissed
Miraudo S	Philips Electronics Australia	377/1998	Scott C.	Dismissed
Mitchell S	Baroid Australia Pty Ltd	654/1998	Gregor C.	Discontinued
Molony KE	Glenn Philip Farrell and Elizabeth Anne Ornsby trading as Farrell's Cage	1282/1998	Parks C.	Discontinued
Mutzig AB	WP Adams Pty Ltd T/A Adams Family Chiropractic	1258/1998	Scott C.	Dismissed
Ninham PL	Alfa Enterprises (WA) Pty Ltd	738/1998	Gregor C.	Discontinued
Nuhana M	Total Corrosion Control Pty Ltd	667/1998	Parks C.	Discontinued
O'Connor BJ	Integrated Workforce WA	747/1998	Beech C.	Discontinued
Page K	Austbez Holdings Pty Ltd t/a Complete Combustion	1199/1998	Gregor C.	Consent Orders
Payet M	Clevernet Pty Ltd trading as Ozcom Car Audio & Communications (ACN 069361128)	275/1998	Cawley C.	Discontinued
Renton WG	Flanders Investments Pty Ltd Operating as Meads Fish Gallery	998/1998	Scott C.	Dismissed
Rodrigues K	Crystal Brook Dental Health Centre	581/1998	Beech C.	Dismissed
Russell B	Eye Gallery Trading Pty Ltd	1444/1998	Beech C.	Discontinued
Sadler N	Leading Edge Video Clarkson	1363/1998	Fielding S.C.	Dismissed
Sammut G	Dept of Agriculture Western Australia	1139/1998	Scott C.	Dismissed
Smith C	Advanced Corrosion Services	1012/1998	Beech C.	Discontinued
Smith D	John Brown "Johnies on the Mall" Restaurant	323/1998	Cawley C.	Discontinued

APPLICANT	RESPONDENT	NUMBER	COMMISSIONER	RESULT
Smith T	Eye Gallery Pty Ltd	1116/1998	Beech C	Discontinued
Southern MGR	Perth Montessori School	319/1998	Scott C.	Dismissed
Stallard M	Jambeen Nominees C/- Geraldton Fishermens Co-operative	922/1998	Cawley C.	Discontinued
Steedman S	McCredie Secretarial Services Pty Ltd and Another	1873/1997	Parks C.	Discontinued
Stewart RM	Opposition Shearing—Cheryl and Kevin Holland	1572/1998	Scott C.	Dismissed
Swann IR	Universal Fasteners (Division of Coventry Group Ltd)	1146/1998	Scott C.	Dismissed
Taylor R	Eric Bilston Removals and Storage Pty Limited	687/1998	Coleman C.C.	Dismissed
Thompson R	Eltin Surface Mining Pty Ltd	2066/1997	Beech C.	Discontinued
Tipper S	Craigie Cattle Transport Pty Ltd	392/1998	Cawley C.	Discontinued
Toogood JV	Midland Brick Company Pty Ltd	444/1998	Beech C.	Discontinued
Troode B	Philips Electronic Australia Ltd	376/1998	Scott C.	Dismissed
Wade N	BGC Windows	1348/1998	Beech C.	Struck Out
Wakefield B	Fremantle Boat Lifters	936/1998	Scott C.	Dismissed
Walker EE	Keran Holdings Pty Ltd	1018/1998	Cawley C.	Discontinued
Walls H	R & O Seafood Exporters	814/1998	Parks C.	Discontinued
Walsh J	Philips Electronics Australia	381/1998	Scott C.	Dismissed
Wells SGJ	Green Island Travel & Tours	20/1998	Parks C.	Discontinued
Wiggers S	D & M Drainage & Construction t/a Mandurah Quays Resort	969/1998	Gregor C.	Consent Orders
Williams PB	Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch	893/1998	Beech C.	Discontinued
Wilson BA	Marcoting Pty Ltd t/a Choice Home Loans	935/1998	Beech C.	Dismissed
Winters AIJ	Owners of Lafeyette Investments Pty Ltd trading as St Paul's Real Estate and B/B	298/1998	Scott C.	Dismissed
Woods BJ	Caesar's Café Restaurant Pty Ltd	902/1998	Gregor C.	Discontinued

CONFERENCES—
Matters arising out of—

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

Kalgoorlie Consolidated Gold Mines Pty Ltd.

No. C 281 of 1998.

Kalgoorlie Consolidated Gold Mines Award 1998.

No. A 1 of 1998.

8 October 1998.

Order.

WHEREAS pursuant to section 44 of the Industrial Relations Act 1979 the Applicant sought a conference to discuss the question of current shift arrangements for employees of the Respondent company; and

WHEREAS I, the undersigned, a Commissioner of the Western Australian Industrial Relations Commission, on 23 September 1998 presided over a conference between the parties following which agreement was reached regarding current shift arrangements;

NOW THEREFORE, pursuant to the powers conferred under the Industrial Relations Act 1979, being satisfied that the terms of the General Order of the Commission No. 757 of 1998 dated 12 June 1998 have been complied with, and by consent, I do hereby order—

THAT the Kalgoorlie Consolidated Gold Mines Award 1998 be varied only to the extent of binding the parties hereto in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 30th day of September, 1998.

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

———

Schedule.

1. Clause 8.—Contract of Employment: Delete paragraph (a) of subclause (12) and insert in lieu thereof the following—

(a) Full time: to work on a regular rostered basis for either an average of 37.5, 42 or 56 hours per week for Mt Charlotte employees, an average of 42 hours per week for continuous shift employees or an average of 40 hours per week for all other employees (excluding overtime).

2. Clause 10.—Employee Earnings: In lieu of the rates of pay prescribed under paragraph (a) of subclause (5) and placita (i) to (v) of paragraph (b) of subclause (5) of the Award, Mt Charlotte employees working in or associated with underground operations shall be entitled to the following rates of pay—

(a) Maintenance Employees

Continuous (56 hours per week)

	Annualised Base	Fortnightly Base	Hourly Base	Overtime Rate
C7	63,016	2,423.68	21.64	24.24
C8	60,599	2,330.72	20.81	23.31
C9	58,182	2,237.76	19.98	22.38
C10	55,765	2,144.80	19.15	21.45
C11	51,804	1,992.48	17.79	19.92
C12	49,679	1,910.72	17.06	19.11
C13	46,068	1,771,84	15.82	17.72

Non Continuous (42 hours per week)

	Annualised Base	Fortnightly Base	Hourly Base	Overtime Rate
C7	47,268	1,818.00	21.64	28.86
C8	45,450	1,748.08	20.81	27.75
C9	43,632	1,678.15	19.98	26.64
C10	41,814	1,608.23	19.15	25.53
C11	38,860	1,494.62	17.79	23.72
C12	37,269	1,433.42	17.06	22.75
C13	34,542	1,328.54	15.82	21.09

The overtime rate prescribed in this paragraph is payable for each hour of unrostered overtime work performed on any day of the week.

Overtime will only be paid for the actual hours worked.

(b) Mining Employees

	Annualised Base	Fortnightly Base	Hourly Base
Development			
Jumbo	113,335	4,359.04	38.92
G/Support	93,446	3,594.08	32.09
Charge Up	83,196	3,199.84	28.57
Production and Haulage			
Loader Operator	78,508	3,019,52	26.96
Truck Operator	70,645	2,717.12	24.26
Popperman	71,344	2,744.00	24.5
Mine Services			
Service/Shaft	51,251	1,971.20	17.6
Production Drilling			
Driller	88,700	3,411.52	30.46
Stope Shot Firer	77,983	2,999.36	26.78
Non Continuous (37.5 hours per week)			
Airleg Mining	52,000	2,000.00	26.67
Mine Services	37,001	1,423.12	18.98

3. Clause 13.—Hours of Work: Delete paragraph (b) of subclause (4) and insert in lieu thereof the following—

(b) All other underground employees shall work an average of 42 or 56 hours per week, either on 9 hour shifts inclusive of a 30 minute paid meal break or on 12 hour shifts inclusive of two 20 minute breaks per shift.

4. The parties have liberty to apply on giving the other not less than 48 hours' notice of intention to apply.

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

Kalgoorlie Consolidated Gold Mines Pty Ltd.

No. C 281 of 1998.

23 September 1998.

Direction.

HAVING heard Mr D. Hicks on behalf of the Applicant and Messrs Schipp, Quartermaine and Mitchell on behalf of the Respondent, subsequent to a conference on the matter, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby directs—

THAT the status quo remain until at least 1800 hours on the 24th September 1998 to enable the company to have further discussions with its workforce and Mr D. Hicks regarding proposed work practice changes.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Smales Jewellers.

No. C 224 of 1998.

10 September 1998.

Interim Order.

WHEREAS the parties reached a resolution in conciliation proceedings of all issues arising from or in relation to the contract of employment which existed between them and the schedule in the record of this matter records the resolution of the final issue between them; and

WHEREAS the parties agreed to the issue of a consent order requiring confidentiality as to issues between them but are now in dispute over the extent of the effect of such an order; and

WHEREAS it is not possible to pursue further conciliation at this time due to unavailability of relevant personnel for the respondent; and

WHEREAS being of the opinion that industrial relations may deteriorate in the meantime; and

WHEREAS having given notice to the parties of an intention to make an interim order pursuant to section 32 of the Industrial Relations Act, 1979, and its terms;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979, and by consent, do hereby order —

1. THAT the parties respectively shall keep confidential the issues which existed between them in relation to this claim and shall not disclose those issues or matters remaining to them to any other person or third party unless otherwise required by law;
2. THAT the parties shall confer within 28 days of the 10th day of September 1998 with a view to resolving the remaining issue between them for a resolution of this matter.
3. THAT this order shall have effect until cancelled or varied or replaced by order of the Commission.

(Sgd.) S. A. CAWLEY,
[L.S.] Commissioner.

CONFERENCES—
Matters referred—

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

John Holland Construction and Engineering Pty Ltd.

No. CR 315 of 1997.

COMMISSIONER P E SCOTT.

12 October 1998.

Reasons for Decision.

THE COMMISSIONER: This is a matter referred for hearing and determination in the following terms—

"On or about 22 October 1997 the Respondent dismissed Mr D T Foelmli from its employment in circumstances which the Applicant alleges were harsh, oppressive or unfair and seeks reinstatement and compensation for loss of earnings, a claim which the Respondent opposes."

At the commencement of the hearing, the Respondent submitted that delays in the prosecution of the matter would cause it prejudice. This is said to arise as a result of a number of adjournments granted at the request of the Applicant. The Respondent did not object to the respective adjournments. One particular adjournment suited the Respondent because it was seeking to locate and summons a witness, Bond, who had a significant role in the incident which lead to Foelmli's dismissal. Bond was no longer employed by the Respondent. There were a number of other witnesses who the Respondent had wished to call to give evidence but likewise, were no longer employed by the Respondent and their whereabouts unknown.

Notwithstanding the Respondent's submission that the Commission should exercise its discretion in accordance with s.27(1)(a) and (b) to dismiss the matter or refrain from further hearing, the Respondent said that it would proceed with the hearing and would not seek a determination of this preliminary matter before presenting its case. I note the Respondent's submission but I also note its preparedness to put its case, and that it did not object to any of the adjournments sought by the Applicant. This application was not seriously pursued but has drawn the Commission's attention to the prejudice the Respondent says it suffers by the delay, being that it is not able to call the evidence it wishes to call to support its case. I have also considered this matter in light of the tests which apply to claims of unfair dismissal of this nature, the particular onus which falls on the Respondent and the role of the Commission in determining the issue, matters with which I shall deal with later in these reasons. Suffice to say, at this point, the Respondent's application will not be granted as, while it may have been prejudiced in not being able to bring all the evidence it might have wished it to bring, it has been able to bring evidence from the person who made the decision to terminate Foelmli's employment, Stuart Kenneth Macaree.

Foelmli was employed by the Respondent from 28 February 1997. At the time of the termination of his employment he was a rigger/scaffolder at the HBI plant being constructed at Port Hedland. His duties included temporary bus driving.

At the commencement of his employment, Foelmli signed a letter which was an offer of employment, to indicate his acceptance of that offer. A number of conditions were contained within the letter including the requirement to abide by all site rules and safety standards, and it included a copy of the "House Rules". The letter of offer contained clause 18—Dismissal which stated, so far as it is relevant—

> "18 Dismissal
>
> The following are offences (if proven) which will result in instant dismissal—
>
> …
>
> (f) Fighting within the boundaries of the work site."

The House Rules set out conduct described as Serious Misconduct which could result in instant dismissal, and Less Serious Misconduct, which results in a warning.

Rule 3—Serious Misconduct provides—

> "For actions of conduct or performance as set out in Serious Misconduct, the disciplinary procedures can result in instant dismissal.
>
> The following list contains examples of the types of actions which constitute serious misconduct and, if proven, could result in instant dismissal.
>
> NB: The list is inclusive of, but not limited to—
>
> - Refusing to obey a lawful and reasonable instruction; this includes refusal to perform assigned work, alternative duties, or continuous refusal to work reasonable overtime as requested in accordance with the relevant Award and/or agreed Contract of Employment.
> - Falsifying, or being a party to falsification of any John Holland, or client, documents or records. This includes timesheets, wage records, accident reports, expense claims, leave records, production reports, etc.
> - Unauthorised possession and/or movement of John Holland, client or other employees' property. This includes scrap or damaged items.
> - Unauthorised use of John Holland or client equipment or vehicles, including driving John Holland vehicles while disqualified from driving.
> - Consuming alcohol on John Holland or Client premises. Consuming or being in possession of illicit drugs on John Holland property (other than personal medication prescribed by a medical practitioner).
> - Intimidating, or assaulting other employees, customers or clients on John Holland or Client property or when attending John Holland functions.
> - Sexual harassment in the work place.
> - Divulging confidential John Holland information, unauthorised possession of John Holland documents or making public statements detrimental to John Holland's operation.
> - Wilful, irresponsible or negligent acts which result, or could result, in damage to John Holland or Client property, product, or personnel.
> - Irresponsible use or misuse of fire protection, or safety equipment.
> - Being absent from the work place during a period in which a request for leave has been declined.
> - Refusing to undergo medical examination by a medical practitioner nominated by John Holland or by an independent third party.
> - Failing to wear appropriate work clothing, or to use or wear any specified clothing, footwear, or equipment provided.
> - Failing to comply with safety regulations, safety signs, equipment isolation and Plant entry procedures.
> - Sleeping on the job.
> - Breaches of security
> - Such other matters as may be advised by John Holland from time to time."

Rule 4 – Less Serious Misconduct provides—

> "The following list contains examples of the types of actions which constitute less serious misconduct and shall result in a warning being issued.
>
> Note: Warnings are not limited to the repetition of the same type of offence.
>
> - Failure to maintain good housekeeping, including failure to be ready to commence work at the scheduled time.
> - Leaving the assigned work area during the scheduled work period without the permission of supervision, unless required to do so in the performance of their duties.
> - Leaving the work station at the completion of a shift before being relieved by the oncoming shift relief, or having gained the approval of the shift supervisor.
> - Failure to advise supervision of the unavailability to attend work 30 minutes prior to scheduled start time, or as soon as practical in the case of an emergency. Shift employees must advise supervision at least two hours prior to the commencement of the next scheduled work period of their unavailability.
> - Reporting to work in such a physical condition as to be unable, in the employer's opinion, to safely perform his/her normal work. The employee will be stood down off pay for the work period (and placed on a written warning).
> - Being absent without authorisation of supervision.
> - Failing to gain the approval of supervision prior to a shift exchange occurring.
> - Failing to advise supervision of any faulty equipment, or to report the use of fire safety equipment.
> - Acting in an irresponsible manner, defacing John Holland or Client property or indulging in practical jokes which may endanger other employees.
> - Verbally abusing other employees in the work place.

- Unauthorised use of John Holland or client telephones, facsimiles or business equipment.
- Failing to perform work to the required standards or to complete schedule work within the period allocated.
- Failing to act in a courteous manner to John Holland customers or clients.
- Smoking in non-smoking area.
- Failing to maintain the work area in a clean and orderly state.
- Such other matters as may be advised by the employer from time to time."

The circumstances of Foelmli's dismissal are these. On Monday, 13 October 1997, at approximately 4.30am, at the end of the night shift, Foelmli was preparing to drive a bus which took personnel from site to the car park and the camp. Some of the employees were late on to the bus and the supervisor, Ken Craig, told Foelmli to wait for late comers. Foelmli says that this caused some aggravation as there were people waiting on the bus urging him to leave the late comers behind.

In his statement of evidence, at points 15 to 32, and in cross examination Foelmli described the incident which then occurred. It was that Foelmli told Bond, who was the last person to get on the bus, in somewhat abusive terms, to be on time the next day. At that point, Foelmli says he was seated in the driver's seat of the bus. Bond walked down the aisle of the bus and about half way down the bus responded to Foelmli in similarly abusive terms. Foelmli says that he told Bond to shut up and sit down. Bond turned around and walked towards the front of the bus. Foelmli says that he thought Bond was going to "have a go" at him and, because he felt he would have been trapped if he had remained in the driver's seat, he stood up and moved to the first step in the aisle beside the driver's seat. Foelmli says that he and Bond then had a "face to face verbal argument which was very heated" (point 22 of his statement). He described the two of them as "spitting in each other's face basically, as we were screaming at each other" (transcript page 19). He says this argument continued for a minute or two. He denies that he used threatening words, used words or made any physical gestures to indicate that he was going to strike or wanted to fight Bond, nor did he invite Bond to fight him. He says that he felt that Bond was going "to have a go" at him so he went to turn away from Bond and go back to the driver's seat. However, before he could do so, Bond head-butted him in the face, injuring his nose and splitting his lip. Foelmli says he did not retaliate.

Another person on the bus, Carlo Bertani then intervened, grabbing Bond and telling Bond not to touch him as there were foremen outside the bus. One of those foremen, Kenneth Craig, got onto the bus and told them to calm down.

Foelmli gave evidence that as everyone was on the bus, he then drove, erratically, to the car park where he noticed he had bled as a result of Bond's head-butt. He was very angry after he had seen the blood, and challenged Bond "to have a go". Others around them told him to calm down. He says that Bond abused him again, got in his car and left. Foelmli then drove the bus to the camp, then went home.

Foelmli says that he was of the view that his challenge to Bond in the car park was not on site as they were outside the site fence.

The Commission also heard evidence from Kenneth Robert Craig, the supervisor who was outside the bus, as to what he saw of what occurred between Foelmli and Bond. However, his evidence was that he saw Foelmli get out of his seat and walk down the bus after Bond, the distance of about three seats. He says that his vision of what then occurred between Foelmli and Bond was obscured by a panel in the bus and that all he saw at that point was Foelmli "flying back into the front of the bus." He had assumed that Foelmli had been pushed as he had not seen the head-butt. He says that there was a very heated argument between the two and a fair degree of aggression on both parts. He acknowledged that it would not be easy to quickly get out of the driver's seat where Foelmli had been sitting, that it would not have been unreasonable for Foelmli to get up and make a move so as to be able to get off the bus. He said that in getting out of his seat and walking down the bus, Foelmli possibly inflamed the situation. Craig did not report the incident because, at the time he had not been aware of the head-butt, and he did not think that it warranted reporting. He described it as being just another minor scuffle. However, it is notable that on a number of later occasions, including the next day, when Foelmli wanted to have the matter of the head-butt pursued, he advised Foelmli that it was best forgotten, and that if it went further, both Foelmli and Bond would probably lose their jobs.

On 17 October 1997, Foelmli approached Craig again and asked what was being done about the incident. Craig then informed the Reactor Supervisor that Foelmli wanted to pursue the matter. Craig says that he was told it was a Gas Plant issue and to keep out of it.

Foelmli continued to press for the incident to be dealt with formally. Craig again tried to convince Foelmli not to pursue it. However, Foelmli was adamant he wanted the matter pursued.

John Kennedy, the Night Shift Gas Plant Supervisor for the Respondent, gave evidence that, following the incident of the bus, it had been possible to keep Foelmli and Bond apart so that they were not working together. However, by 20 October 1997, this could no longer continue, and Foelmli refused to work with Bond on the night shift of 20 October 1997. Foelmli had approached Kennedy in an agitated and aggressive manner saying that he did not want to work with Bond. Kennedy said Foelmli was swearing and yelling that he had to do something about the situation. Kennedy and John McKay listened to Foelmli's "rather heated explanation" of the incident on the bus. Kennedy says he told Foelmli that there were no guarantees that he would not be asked to work with Bond. Kennedy placed a different interpretation on his previous advice to Foelmli that the two would not be working together than Foelmli had understood. He said that the arrangement for Foelmli and Bond to be kept apart was not indefinite. Foelmli said to Kennedy that he feared for his safety if he worked under the hook of the crane being operated by Bond. However, Kennedy says that at no stage had he any concern that Bond would work unsafely in such a manner as to put Foelmli in any danger. Kennedy says that Foelmli wanted Bond put back on the day shift so that the two of them would not have to work together. Kennedy did not believe that it was Foelmli's place to make that decision. Kennedy says that by the time Foelmli finally refused to work with Bond, he had understood that Bond was apologetic about what had occurred on the bus although, he did not know whether Bond had apologised to Foelmli. Kennedy says that he also warned Foelmli against reporting the matter and pursuing it as it was likely he would be dismissed. Kennedy says that he tries to do the right thing by all the men on the site as far as keeping their jobs is concerned. He acknowledged that even with his limited knowledge of the incident on the bus he would have reported it, however, he did not put in a report because he was not a witness to the incident. When he considered the matter later he realised he should have reported it.

Kennedy gave evidence that Foelmli was quite a good worker but "he just had a little bit of an attitude problem as far as other workers on the job … He lost his temper a little bit and he was not in control of safety when he was in an agitated state" (transcript page 50). Kennedy also described Foelmli as being loud and aggressive on the job (pages 51 and 64).

The Commission also heard evidence from Stuart Kenneth Macaree, Industrial Relations Manager for John Holland Construction and Engineering for the HBI plant. Macaree is the person who undertook an investigation of the incident, which occurred on 14 October 1997, and who decided to terminate Foelmli's employment. Macaree gave evidence that he had not been on site for a long period of time when he first became aware of the incident on the bus, and the names of people were not familiar to him. Macaree's first knowledge of the incident on the bus was at about 6.00am on Tuesday 21 October 1997 when he was told of it by Bill Boucher, the night shift safety adviser. Boucher's advice to Macaree arose out of Foelmli's refusal to work with Bond. Boucher then told him of the incident on the bus on the previous Monday. Just over an hour after Boucher had spoken to him about the matter, at about 7.05am, Macaree was approached by Foelmli who said that he would not work with Bond because of the fight and he believed that he was being set up by being asked to work with

Bond. Foelmli gave him a description of what had happened on the bus on 14 October 1997 and what had occurred subsequently. Foelmli also gave Macaree the name of two potential witnesses to the incident and Macaree told Foelmli that he would make some enquires and speak with Bond. Foelmli and Macaree discussed the situation for somewhere between half and one hour. Macaree advised Foelmli that a potential outcome was his dismissal, and accordingly, that he should be represented. From this point on, the Union became involved.

Because of his lack of familiarity with the personnel concerned, Macaree then requested the construction managers of the gas plant and the reactor to obtain written reports of the incident from those whose names he had been given. Macaree spoke with Bond at around 6.00pm that night when Bond came on to do the night shift and he received a similar account to that which Foelmli had given him. However, Bond's advice to Macaree was that he felt humiliated, and that he had head-butted Foelmli because Foelmli was extremely aggressive, he was reacting to Foelmli's aggressiveness, and he knew that Foelmli was going to hit him when Foelmli came down the bus. Bond was the older man and he wanted to get in first.

Macaree then spoke to Carlos Bertani and Matthew Giles, the two witnesses nominated by Foelmli. He says that Bertani used words to the effect that "Dean (Foelmli) had followed Chris (Bond) down the bus and there was a bit of a flare up." Giles told Macaree that "Dean (Foelmli) got out of his seat and followed him (Bond) down the bus. There was a tangle and both rushed at each other," but Giles said that he did not see any contact made between the two of them. He told Macaree that "when Chris (Bond) got on the bus and as he was going down the aisle they were both giving as good as they got". Bertani also told Macaree that he did not see any physical contact but that he believed that there was equal aggression on both sides. Bertani said that he had restrained Bond by putting his arms around his shoulders and pulling him down between the seats. Macaree's evidence was that although witnesses to the "scuffle" claim not to have seen the head-butt, he believed that having been able to describe the detail which they had seen, it was unlikely that they had not seen the head-butt. He thought they had seen it but that they would try to protect their work mates.

Macaree again spoke to Foelmli and advised him of what he had found from speaking to Bond, Bertani and Giles. Foelmli is said to have used words in response to the effect that "Well, what would you have done in the circumstance? Would you have walked away?"

Macaree says that he responded to the effect that "if I knew that my job was on the line I would not have done anything". Macaree took Foelmli's comment to mean that it was appropriate to meet aggression with aggression.

Macaree says that there were some inconsistencies in the information Foelmli gave him, that Foelmli refined or changed his version of the events during the course of the investigation. Initially, Foelmli told him that he got out of his seat and followed Bond down the bus. However, he later said that as Bond was walking back down the bus back towards him he got out of the driver's seat and stood on the first step beside the front seat (transcript page 89). Also, Foelmli did not tell Macaree the first time he spoke to him, that he got out of his seat to protect himself but said this later. This comment was made after the union had become involved. Macaree also says that at the meeting later in the investigation, Foelmli told him that he had tried to turn away from Bond.

Macaree says that the union representatives were involved on Foelmli's behalf, and he spent a number of hours discussing the matter with them, including: the detail of the incident; interpretation of the policy and House Rules; whether there was provocation, and what that term meant; about industry standards regarding fighting; other situations which had arisen on site; consistent application of the policy; and whether Foelmli's conduct warranted dismissal. During the course of the discussions, Foelmli and his representatives knew that Foelmli's future employment was being considered, and Foelmli's was receiving advice from his solicitors in Melbourne via the telephone at the time, as to whether the circumstances could justify his dismissal. Late that evening, in the presence of union representatives, Macaree advised Foelmli that his employment was to terminate for serious misconduct. Macaree says that in advising Foelmli that he was to be dismissed, he did not actually enunciate the particular aspects of the conduct which resulted in that conclusion, but says that in the context of the lengthy and detailed discussions he had had with Foelmli and his representatives, those matters had been canvassed.

Macaree gave evidence that the serious misconduct committed by Foelmli was that referred in the House Rules as "intimidating or assaulting other employees, customers or client property or when attending John Holland functions". He says that aggressive behaviour towards another employee falling short of physical contact being made would constitute intimidating behaviour. Macaree says that it was not simply that Foelmli abused Bond, that he got out of his seat and walked towards him, but it was also the manner in which it was done. Macaree says that he concluded, "absolutely", on the basis of the information provided to him by a number of witnesses, that up to the point of the head-butt there were equal levels of aggression on the part of both Bond and Foelmli. However, Macaree says that overall there were not equal levels of aggression but that it is not necessarily the person who throws the first blow who instigates or is involved in the most aggression.

Macaree's evidence was that in deciding to dismiss Foelmli, he did not specifically contemplate Foelmli's work record. Although he said that he did not specifically contemplate any alternative to dismissal, Macaree said that "given my position and the number of years that I have been involved with these sorts of things, to dismiss somebody is the last thing that I want to do. I consider all options" (page 105 transcript). In response to a question about whether he had considered warning Foelmli against such behaviour in the future, he indicated that he would never threaten an employee with dismissal if the employee behaved that way again. Rather he would tell an employee that they may be subject to disciplinary action under certain circumstances but "to threaten an employee with dismissal if anything else happens in the future is the wrong thing to do" (page 105 transcript). He was pressed by Counsel for the Applicant as to whether he could not have issued a warning to Foelmli and his response was "I have been involved in industrial relations since I was 22 years old. I look as things in a very broad context, I can assure you." When asked whether he had considered an alternative to dismissal, he said "yes, I considered all options." He did not specifically discuss those options with Foelmli or his representatives. He said that a final written warning was a consideration but because of the circumstances of this situation he believed that termination was appropriate.

As to considering any mitigation associated with Foelmli's work record, Macaree said that before conducting these types of investigations he reads the employee's personnel files. However, he found nothing in Foelmli's file in terms of previous warnings or any other useful information as the personnel file did not contain any information about whether Foelmli was a good employee or not. There was nothing in his or Bond's files to indicate any previous problems with conduct. He was not aware of any positive reference which may have been given to Foelmli by the Respondent in the past.

Macaree also gave evidence that he was concerned that the supervisors had not reported the incident to him and if they had reported it to him, the incident would have been investigated immediately. Subsequently, he advised the supervisors of the need to report such incidents.

As noted earlier, the Commission was not able to receive first hand evidence from Bond, McKay, Bertani or Giles who are no longer employed by the Respondent and their whereabouts unknown, except for Bond who was alleged to be otherwise unavailable.

In matters involving a dismissal for misconduct as this matter is, there are a number of authorities which set out the process to be followed and the tests to be applied, and I refer to the reasons for decision of His Honour the President and the learned Chief Commissioner in *Western Mining Corporation Limited and AWU (77 WAIG 1985)*. In this decision a number of other authorities were cited including *Shire of Esperance and Mouritz (71 WAIG 891)* and *Bi-Lo Pty Ltd and Hooper (1992 53 IR 224 at 229 to 230)* and *Byrne and Frew –v- Australian Airlines Ltd (120 ALR 274)*. In particular, the President and the Chief Commissioner referred to the decision of the

Industrial Commission of South Australia Commission in *Bi-Lo* (supra) where it was stated—

> "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."

It is also the case that the Commission is to have regard to all of the circumstances, not just to individual aspects of a dismissal, in considering whether there has been "a fair go all round". *(Undercliffe Nursing Home v FMWU 65 WAIG 385).* Further, such matters are to be considered in a practical, common sense way, without the rigid application of technical matters.

It is not the role of the Commission to place itself in the position of the employer and decide whether, if it had been in the employer's position, it would have taken that action. Rather it must satisfy itself, in accordance with the tests to be applied as set out in *Bi-Lo* (supra) that the employer has discharged the onus which falls to it, and for the Commission to consider whether there has been "a fair go all round".

Although the Commission has not had the benefit of hearing evidence from all of those people directly involved in the incident or who witnessed it, it is not the role of the Commission to consider all of the evidence and decide whether in the light of that evidence, it would have dismissed the employee. Rather it is to review the Respondent's conduct of the investigation and the Respondent's considerations, and decide if the Respondent has done those things as thoroughly as possible in the circumstances, and based on the information available to it at the time, come to a conclusion in a fair manner and in good faith. What is important in this case is the way in which Macaree investigated the matter, whether he gave Foelmli and his representatives a reasonable opportunity to answer the information he had gathered, whether he honestly and genuinely believed and had reasonable grounds for believing on the information available at that time that Foelmli was guilty of the misconduct alleged, and whether he took account of those other mitigating aspects.

In this particular case, I am satisfied that in so far as it was within his power, Macaree on behalf of the Respondent, conducted as full and extensive investigation into all of the relevant matters surrounding the incident as far as was reasonable in the circumstances.

The incident was first reported to Macaree by another employee and then by Foelmli. In this way, Foelmli had at least an initial opportunity to put his side of the story. Union representatives then became involved in the matter. Macaree then sought the comments of those who had witnessed the incident including those to whom he was referred by Foelmli, being Bertani and Giles. He also received a report from other supervisors including Craig. He interviewed Bond. Having done those things Macaree then spoke with Foelmli again, advising him of what he had been told by Giles, Bertani and Bond. Foelmli's response was to "refine" his version of events.

The investigation satisfied Macaree that Foelmli had misconducted himself by his aggressiveness towards Bond, such that Bond struck him. It would appear from the evidence of Craig and from the comments made by Bertani and Giles that Foelmli was not simply sitting back and then reacting to Bond and Bond's aggression. The evidence of Craig, and the information provided to Macaree by Giles, Bertani and Bond indicated that Foelmli *followed* Bond as Bond walked down the aisle of the bus. I have noted that in cross examination, Macaree said that he did not know if he had asked Bertani and Giles if Foelmli had got up and followed Bond down the bus, or whether they had volunteered that information. However, he said that his usual method of conducting interviews is to ask what happened and then ask particular questions if he did not get a full idea of what had transpired (page 94-96). I also note that in his evidence, Craig said that he saw Foelmli follow Bond down the bus. This is quite a different situation from that described to the Commission by Foelmli, of getting out of his seat in the defensive situation when Bond had come back down the bus towards him. Macaree was entitled to be satisfied that this was not simply a situation where Foelmli was acting defensively. He was acting in an aggressive, provocative and abusive manner to which Bond responded. His unnecessary, initial abusive comment to Bond, commenced the exchange, and he then continued and escalated the aggression by getting out of his seat and following Bond, and then engaging in an abusive, aggressive argument. I am aware that the language on construction sites is not delicate, and often involves the use of certain terms which may be considered bad language in other circumstances. However, the language and the conduct of Foelmli and Bond was not everyday bad conversational language usual at such a workplace. The language was used in an abusive, aggressive manner, in a heated argument. I am satisfied that Macaree had cause to believe that Foelmli conducted himself in an aggressive manner, that he was not simply reacting to Bond's aggressiveness and that he had before him advice from Bond that Bond was humiliated by Foelmli's comments and that he hit Foelmli to get in first because he believed that Foelmli was going to hit him.

In the process which then ensued, Foelmli was represented by union officials, who were involved in discussions with Macaree over a number hours. This is not a situation of an employee, without representation or advice, being confronted with an employer making allegations against him without giving him an opportunity to respond. There can be no suggestion that Foelmli or his representatives were not aware of what was in Macaree's mind and that Foelmli's case was not argued before Macaree in detail or well. In the end Macaree advised Foelmli, in the presence of his representatives, that his employment was to be terminated for serious misconduct. It may be that Macaree did not sit Foelmli down and put to him each and every aspect of his decision, to specify the basis upon which he proposed to conclude that termination was appropriate and provide Foelmli with an opportunity to respond. However, this would be an unnecessarily technical approach in circumstances in which Foelmli was represented, and where the discussions between Macaree and the union officials were conducted over a number of hours.

The next aspect of the process is for consideration of whether or not Macaree honestly and genuinely believed and had reasonable grounds for believing on the information available to him at the time that Foelmli was guilty of a misconduct alleged. I note that there was a good deal of attention paid in the hearing to the terms of the policy and the House Rules, and to the meaning of "intimidation" and "provocation". I note too, Macaree's conclusion that Foelmli's conduct fell within that described as Serious Misconduct in the House Rules, being "intimidating or assaulting other employees etc". The question is whether the conduct which Macaree concluded Foelmli had engaged in was serious misconduct. Other terms used during the hearing and arising during the evidence included "aggression" and "abuse". Others which come to mind as appropriate include "hostile" and "confrontational". These terms are defined in The Concise Oxford Dictionary as follows—

> **"aggression** *n.* **1.** the act of practice of attacking without provocation, esp. beginning a quarrel or war. **2.** an unprovoked attack. **3.** self-assertiveness; forcefulness. **4.** *Psychol.* hostile or destructive tendency or behaviour.
>
> **abusive** *adj.* **1.** using or containing insulting language. **2.** (of language) insulting.
>
> **provoke** *v.tr*. **1**. a (often foll. by *to* or to + infin.) rouse or incite *(provoked him to fury)*. **b.** (as provoking *adj*.) exasperating; irritating. **2.** call forth; instigate (indignation, as inquiry, a storm, etc.). **3.** (usu. foll. by *into* + verbal noun) irritate or stimulate (a person) *(the itch provoked him to scratching)* **4.** tempt allure. **5.** cause, given rise to (*will provoke fermentation*).

hostile *adj.* **1.** of an enemy. **2.** (often foll. by to) unfriendly, opposed.

confront *v.tr.* **1. a** face in hostility or defiance. **b** face up to and deal with (a problem, difficulty, etc.). **2** (of a difficulty etc.) present itself to (*countless obstacles confronted us*). **3.** (foll. by with) **a** bring (a person) face to face with (a circumstance), esp. by way of accusation (*confronted them with the evidence*). **b** set (a thing) face to face with (another) for comparison. **4** meet or stand facing.

intimidate *v.tr.* frighten or overawe, esp. to subdue or influence."

According to these definitions, I would describe Foelmli's conduct in his comments to Bond, in him rising from his seat and following Bond down the bus and in the heated argument in which they were engaged as aggressive, abusive, provocative, hostile and confrontational. However, Foelmli did not engage in intimidatory behaviour, in a technical sense in that he intended to frighten or overawe Bond. Rather there was mutual and equal aggression and abuse, initiated by Foelmli. Although I note that the list of examples of "Less Serious Misconduct" contains "verbal abuse of other employees in the workplace", Foelmli's conduct was more than that. It was far more serious than the other types of conduct set out in the list of examples contained in that list. It was more akin to the examples of conduct in the "Serious Misconduct" list, although it is not specifically contained within that list of examples. This does not mean that Macaree has come to a wrong conclusion. Rather he has come to a conclusion but applied the wrong label as there was no other appropriate label included in the list of examples. This is one of the problems which arises in setting up lists, even lists of examples. In any event, this mislabelling of Foelmli's conduct does not constitute an unfair dismissal. Rather Foelmli's conduct was within the type of conduct which can justify instant dismissal for serious misconduct. In that regard he has not been harshly, oppressively or unfairly treated.

Having investigated the conduct involved, having given Foelmli and his representatives every reasonable opportunity and sufficient time to answer the allegations and respond to them, and having concluded honestly and genuinely and having reasonable grounds for believing, on the information available, the Respondent was entitled to come to the conclusion that Foelmli had seriously misconducted himself.

The Commission has issued a number of decisions dealing with fighting, violence and other such incidents in employment. Fielding C, as he then was, in *United Furniture Trades Industrial Union of Workers Western Australia v. Pay-Co Products (70 WAIG 2497 at 2489)* said "in dealing with workplace differences, it is well to remember that you are dealing with men and not angels. Employees are apt to act in strange ways, especially when all does not go to plan in the workplace; and if that reaction is confined to an occasional harsh word to a fellow employee, then I suspect in most cases there ought to be no reason for despair or drastic action." I would not characterise Foelmli's conduct in that way. His conduct was far more serious. It is true that there is no absolute rule that fighting in the workplace, let alone a threat to fight, justifies dismissal, and that the Commission must have regard to the context in which the violence or the threat of violence takes place, including the extent to which there was any provocation and the nature of the violence in question. George C in *AMWSU and Osborne Metal Industries (71 WAIG 1324 at 1327)* said that if a worker become involved in a physical altercation on the job he sacks himself unless there is clear proof that he is innocent of any wrong doing. Clearly, Foelmli was not innocent of any wrong doing.

I have considered all of these authorities and the other authorities referred to me. I have considered the evidence before the Commission and in particular Macaree's evidence. Viewing this matter as a whole, I find that the investigation conducted by Macaree on behalf of the Respondent was thorough, that Mr Foelmli and/or his representatives had an opportunity to know the allegations and to respond, and in fact to debate with Macaree the situation in the context of the workplace as a whole. I am satisfied, too, that Macaree brought to bear his many years of experience in the industry in deciding the course of action to be taken.

It would appear that if there is any error on the Respondent's part it is the failure to take account of any mitigating circumstances relating to Foelmli's work performance and record, beyond that contained within his personnel file. The decision in *Bi-Lo* (supra), say that "failure to satisfactorily establish any of those matters will probably render the dismissal harsh, unjust or unreasonable." I note that that decision does not say that it "will" render the dismissal harsh, unjust or unreasonable but will "probably" do so. In this particular case, it is noted that both Craig and Kennedy, when pushed by Foelmli for the matter to be investigated, warned him that if the incident was pursued it was most likely that he would lose his job. They considered the matter to be of a very serious nature. Further, although Kennedy said that Foelmli was quite a good worker, he also said that Foelmli had an attitude problem, and that his aggressiveness and temper had been displayed before (transcript pages 51 and 64). These comments do not indicate that Foelmli's work record was such as to save his job. In the context of a remote, isolated construction site, where employees are working away from home in a harsh climate, provocation and aggression as displayed by Foelmli should not be seen to be tolerated, as it was initially by Craig. It seems that Craig and Kennedy would initially have preferred to brush this incident aside even though both recognised its seriousness, and clearly, their failure to act did not alleviate the situation. Rather it created further difficulty.

Although it is true that the Respondent may not have specifically fulfilled one particular aspect of the process in its consideration of the circumstances, nothing put before the Commission has demonstrated that this failure has resulted in Foelmli being treated harshly, oppressively or unfairly by the Respondent in its decision to terminate his employment. In all of the circumstances associated with this matter, to find that such an omission constituted an unfairness warranting a declaration that Foelmli had been harshly, oppressively or unfairly dismissed would be an overly technical, pedantic response. I would be concerned if such a finding could result, as it would send a wrong message which could easily be misinterpreted by employees on work sites, that such conduct could be condoned because of a technical failure in the process. Such work sites require employees to conduct themselves in a controlled manner, and the employer to ensure that aggression and abuse are not tolerated in the interests of all parties involved in that work. In all of these circumstances, I am not satisfied that the Respondent failed to provided Foelmli with an industrial fair go. Accordingly, the matter will be dismissed.

APPEARANCES: Mr D Howlett (of Counsel) on behalf of the Applicant

Ms S Laferla on behalf of the Respondent

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

John Holland Construction and Engineering Pty Ltd.

No. CR 315 of 1997.

COMMISSIONER P E SCOTT.

12 October 1998.

Order.

HAVING heard Mr D Howlett (of Counsel) on behalf of the Applicant 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.) P. E. SCOTT,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Midland Brick Company Pty Ltd and Others.

No's CR 113 and
CR 114 of 1998.

COMMISSIONER S.J. KENNER.

14 August 1998.

Determination.

THE COMMISSIONER: By these applications, the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch (" the Union") seeks a determination by the Commission exercising the powers of a board of reference pursuant to s 48(7) of the Industrial Relations Act, 1979 ("the Act"), that work that has been performed by members of the Union at the Midland Brick Middle Swan site in connection with the construction of a new kiln facility ("the Site") is construction work as defined in clause 5(1) of the Metal Trades (General) Award 1965 ("the Award"). The respondent companies are Midland Brick Company Pty Ltd ("Midland"), the Monadelphous Group of Companies ("Monadelphous") and Allwest Recruitment Services Pty Ltd ("Allwest") ("the respondents").

The nature and scope of the Commission's powers pursuant to s 48(7) is a matter in issue between the parties to the proceedings. The respondents have raised a number of preliminary jurisdictional issues. By consent of the parties, these matters were listed for hearing and determination as threshold issues.

The Submissions

The Union, represented by Mr Saunders and later by Mr Sturman, argued that work which has been performed at the Site in connection with the construction of a new kiln facility, is construction work as defined, for the purposes of clause 5(1) of the Award. The Union submitted that the matter is properly before the Commission constituted as a board of reference, and the Commission is able to exercise the powers of a board of reference pursuant to s 48(6) of the Act, to declare that the work in question is construction work. The Union said that there are no jurisdictional impediments to a declaration issuing. The Union submitted that the Commission is sitting effectively as a board of reference and may exercise only those powers prescribed in s 48(6) of the Act.

Midland and Monadelphous, represented by Mr Borlase, and Allwest, represented by Mr Heelan, opposed the Union's applications and raised a number of preliminary issues going jurisdiction. I should observe that Midland were later represented in these proceedings by Mr Lilburne of counsel. The primary jurisdictional issue raised by the respondents, was that the employees employed by the respondents on the Site, have been employed under workplace agreements negotiated and registered pursuant to the Workplace Agreements Act, 1993 ("the WPA"). Furthermore, it was submitted on behalf of Monadelphous, that prior to entering into workplace agreements, those working at the Site were independent contractors and not employees. It was also submitted by the respondents that the effect of the applications was to seek retrospectively, a declaration that the respondents have breached the Award, which is beyond power. At issue also, is whether the respondents were bound by the Award in any event. No concession was made by the respondents in this regard. It should be observed however, that the latter issue only arises in the event that the respondent's primary submission as to the existence and effect of registered workplace agreements fails.

The Evidence

Evidence was adduced on behalf of the respondents both by statutory declaration and oral testimony. On behalf of Allwest, Mr Mark Cheetham filed two statutory declarations declared on 17 March and 3 June 1998 respectively. Those statutory declarations were tendered as exhibits H1 and H2. Mr Cheetham is the Operations Manager of Allwest. Allwest provides a recruitment service and supplied labour to a company by the name of Ceric at the Site. He deposed in exhibit H2, that as at 5 March 1998, all employees of Allwest at the Site were engaged on workplace agreements. By his statutory declaration declared on 3 June 1998 (exhibit H1), Mr Cheetham confirmed his earlier statutory declaration and further declared that all employees of Allwest at the Site continued to be engaged under workplace agreements as at that date.

Mr Cheetham was available for and was cross-examined by the Union. He testified that Allwest supplies labour for the project at the Site to Ceric which is a company apparently engaged by Midland in relation to the construction of the kiln at the Site. He said that Allwest had been supplying labour to Ceric since in or about January 1998. He testified that the employees engaged by Allwest were mainly engaged on a daily hire basis for this work. He said that Allwest had between 5 and 7 employees on the Site. Mr Cheetham's evidence was that all of Allwest's employees on the Site were employed under workplace agreements. Mr Cheetham testified that he knew this as he was personally involved in the process of signing the workplace agreements on behalf of Allwest, prior to them being sent to the office of the Commissioner for Workplace Agreements. He said that all the workplace agreements applying to Allwest employees on the Site were registered under the WPA. Mr Cheetham testified that he was aware of this as he viewed the list of registered workplace agreements when it was returned from the office of the Commissioner of Workplace Agreements.

Mr Mark Jansen gave evidence on behalf of Monadelphous, in the form of two statutory declarations declared on 27 February and 2 June 1998 and tendered as exhibits B2 and B4 respectively. Mr Jansen was cross-examined by the Union. Evidence was also adduced on behalf of Monadelphous from Mr Woodward, the company's Recruitment Officer. He was also cross-examined by the Union.

Mr Jansen deposed the effect that he is the Regional Manager, Perth, of Monadelphous Engineering and Associates Pty Ltd. He is responsible for the personnel services division of the company. He testified that Monadelphous had approximately 20 employees at the Midland Brick location with approximatly 5 to 6 employees at the Site. As at 27 February and 2 June 1998, Mr Jansen said that employees of Monadelphous engaged in work at the Site were employed under workplace agreements in accordance with the WPA. Furthermore, in his statutory declaration declared on 2 June 1998 (exhibit B4) Mr Jansen says that prior to the existence of workplace agreements for the company personnel on the Site, labour had been provided by Monadelphous to Midland in the form of sub-contract arrangements. Annexed to exhibit B4, are copies of a sub-contractor agreement and agreement to contract. These were said by Mr Jansen to be the form of sub-contract agreements entered into at the material times, between Monadelphous and its personnel for the Site.

In cross-examination, Mr Jansen testified that from his information, which was information obtained from the Recruitment Officer, all employees on the Site engaged by Monadelphous, at least since in or about late February 1998, had been so engaged under workplace agreements registered under the WPA. I should observe, however, that the witness gave this evidence on the basis of what he had been told by another employee of the company, rather from than from his own personal knowledge.

Mr Gary Woodward was later called to give evidence on behalf of Monadelphous. Mr Woodward is the Senior Recruitment Officer in the personnel services division of Monadelphous and is the person to whom Mr Jansen spoke referred to in Mr Jansen's testimony. Mr Woodward said that to his knowledge, all employees of Monadelphous engaged in work at the Site, were engaged under registered workplace agreements and had been since on or about 23 February 1998. He testified that he had personally seen the registration documents, confirming the registration of the agreements for the employees concerned. He also said that to his knowledge, there were no employees of Monadelphous engaged on the Site prior to that date.

In respect of Midland, evidence was adduced from Mr Mark Radford, who has been the paymaster at Midland for approximately 13 years. His evidence was both by way of statutory declaration declared on 2 June 1998 (exhibit B3) and oral testimony in cross-examination. Mr Radford said that he had made inquiries as to Midland employees working on the Site from the company's Works Manager. Additionally, his evidence was that he consulted the company's payroll records and said that of the 11 metal trades employees engaged by Midland at the Site, all were working under a workplace agreement made pursuant to the WPA. This was at 2 June 1998, the date upon which Mr Radford declared to this effect. Mr Radford was not able to say however, either in his statutory declaration or when cross-examined, when the employees of Midland went onto workplace agreements. Mr Radford further testified at a later stage in the proceedings, that he had viewed correspondence from the office of the Commissioner for Workplace Agreements, confirming that the 11 employees referred to in his earlier evidence, were employed under registered individual workplace agreements as at 4 June 1998. Once again however, he could not confirm the date when the workplace agreements were operative.

The Union did not lead any evidence in the proceedings, and relied upon in its submissions, evidence adduced on behalf of the respondents.

My Findings

In relation to Midland, I am satisfied on the evidence and find, that at least as at 2 June 1998, employees of Midland engaged on work at the Site employed in *"metal trades"* classifications, were working in accordance with the terms of registered workplace agreements under the WPA. I am not able to make any findings on the evidence adduced by Midland however, as to the commencement date of such agreements. Therefore, I am not able to make any finding as to whether as at the time these applications were filed, the relevant employees were or were not covered by workplace agreements. However, it is clear that as at the time of these proceedings being heard, the relevant employees were so covered.

In relation to Monadelphous, I am satisfied on the evidence and find, that employees of Monadelphous engaged in work at the Site for and on behalf of Midland, have been working pursuant to the terms of registered workplace agreements under the WPA from approximately late February 1998. I am also satisfied on the evidence and find, that since the commencement of the employment of Monadelphous employees on the Site, employees have not been engaged otherwise than on registered workplace agreements.

In relation to the evidence from Monadelphous as to the status of personnel working on the Site prior to on or about 23 February 1998, based upon the nature of the evidence adduced in these proceedings, I am not able to make any findings that the personnel in question were independent contractors and not employees. The evidence on behalf of Monadelphous in this respect, was not direct evidence as to the specific nature of the working arrangements between the individuals concerned and the company However, for the reasons which I have set out below, it is not necessary in any event, for me to make such findings to deal with these applications.

I now turn to consider the position regarding Allwest. On the evidence adduced by Allwest, I am satisfied and find, that at least as at the dates of Mr Cheetham's statutory declarations, they being 5 March and 3 June 1998, that the relevant employees of Allwest engaged on works at the Site were so engaged pursuant to registered workplace agreements. On the evidence of Mr Cheetham, it is also open for me to find, that since approximately mid January 1998, when Allwest commenced supplying labour to Ceric at the Site, all of its employees were engaged under workplace agreements. I so find.

The Law

Section 48(7) of the Act

At issue in these proceedings, is the nature of the powers exercised pursuant to s 48 of Act. In this regard, it is necessary for me to set out the relevant provisions of the Act.

Section 48 of the Act relevantly provides as follows—

"48 (1)For each award in force under this Act there shall be a Board of Reference.

48 (2) Subject to subsection (5), each Board of Reference shall consist of a Chairman appointed by the Chief Commissioner and an equal number of employers' and employees' members nominated and appointed in the manner prescribed, not being more than 2 in number on each side unless the Chief Commissioner, in any particular case or for the purposes of a specified award, approves the appointment of a greater number.

48 (3) and (4) [repealed]

48 (5) The Chief Commissioner may appoint a person as Chairman of a Board of Reference —

(a) for the purpose of dealing with a particular matter; or

(b) for a specified period of time,

and, in the case of an appointment in accordance with paragraph (b) may terminate such appointment and make another appointment within that specified period, or may extend that specified period.

48 (6) A Board of Reference may allow, approve, fix, determine, or deal with —

(a) any matter or thing that, under the award, may require to be allowed, approved, fixed, determined, or dealt with by a Board of Reference; and

(b) any matter or thing arising under or out of the provisions of an award, not involving the interpretation of any such provision, which the Commission may at any time, by order, authorize a Board of Reference to allow, approve, fix, determine, or deal with,

in the manner and subject to the conditions specified in the award or order, as the case may be.

48 (7) The powers conferred on a Board of Reference under the provisions of this section may be exercised by the Commission constituted by a Commissioner.

48 (8) Where the nominated employers' and employees' members of a Board of Reference are equally divided in opinion on any matter before the Board of Reference the decision of the Board of Reference shall be in accordance with the opinion of the Chairman.

48 (9) The Chairman shall, after consultation with the nominated members, record in a memorandum signed by him —

(a) all facts found by the Board of Reference; and

(b) the decision of the Board of Reference,

and shall forward that memorandum to the Registrar for filing in his office.

48 (10) Subject to subsection (11), the decision referred to in subsection (9) is upon being filed as prescribed therein, enforceable under this Act as if it were an award.

48 (11) Subject to subsection (12), any organization, association, or employer affected by a decision of a Board of Reference may, within 21 days from the date of that decision appeal against that decision to the Commission in Court Session in the manner prescribed.

48 (12) An appeal under subsection (11) shall be heard and determined on the facts referred to in subsection (9) (a) and the Commission in Court Session may, if it upholds the appeal, rescind or vary the decision in such manner as it sees fit or may remit the matter to the Board of Reference for further hearing and determination."

It can be seen from the terms of s 48(1) that for each award *in force* under the Act, there is established a board of reference. In my view, a board a reference owes it's existence not to the terms of an award made under the Act, but to the terms of the statute itself. A board of reference will be established for an award, irrespective as to whether or not there is any reference to the constitution and powers of a board of reference in a relevant award.

By s 48(2), a process for the composition of a board of reference to be established is prescribed. Additionally, the process

of the constitution of boards of reference and appeals therefrom, is prescribed in Part V of the Industrial Relations Commission Regulations 1985.

By s 48(6) of the Act, the powers of a board of reference are set out. It can be readily seen that the powers prescribed in s 48(6), are limited powers and are confined specifically to what the relevant award says may be dealt with by a board of reference or alternatively, those matters prescribed in an order of Commission, which may arise under an award, not being an interpretation of such an award. For the purposes of these proceedings, the key provision is s 48(7). Section 48(7) provides that the powers *conferred on* a board of reference *under the provisions of this section,* may be exercised by the Commission constituted by a Commissioner. It is notable that sub-section (7) is silent as to any other powers which may be exercised by the Commission.

By the terms of s 48(9), a method of setting out the findings and decision of a board of reference is prescribed. Also, by s 48(10), the decision of a board of reference is enforceable *as if it were an award* for the purposes of the Act. However, it is clear that s 49(10) creates a mechanism for enforcement, in that an award for the purposes of s 7 of the Act, only means an award made by the Commission under the Act. A decision of a board of reference under s 48(9) is clearly not an award so defined. By the terms of ss 48(11) and (12), a mechanism for an appeal from a decision of a board of reference is set out. An appeal from a decision of a board reference is to a Commission in Court Session and is to be heard and determined on the facts as found by the board of reference.

It has trite to observe that in the interpretation of a statute, a provision in an Act of Parliament must be read consistent with the statute as a whole. It has often been said that every passage in an Act must be read and not divorced from but as a part of the whole instrument: *Metropolitan Gas Co v Federated Gas Employees' Industrial Union* (1924) 35 CLR 449 per Isaacs and Rich JJ at 455; *Scott v FCT* (1966) 117 CLR 514 per Windeyer J at 524. In *K & S Lake City Freighters Pty Ltd v Gordon & Gotch Ltd* (1985) 60 ALR 509 Mason J observed at 514—

> "*…to read the section in isolation from the enactment of which it forms a part is to offend against the cardinal rule of statutory interpretation which requires the words of the statute to be read in their context (Cooper Brookes (Wollongong) Pty Ltd v FCT* (1981) 35 ALR 151 at 156 – 7, 169; *Attorney-General v Prince Ernest Augustus of Hanover* (1957) AC 436 at 461, 473). *Problems of legal interpretation are not solved satisfactorily by ritual incantations which emphasise the clarity of meaning of which words have when viewed in isolation, divorced from their context. The modern approach to interpretation insists that the context be considered in the first insistence, especially in the case of general words, and not merely at some later stage when ambiguity might be thought to arise"*
>
> (see also *Busby v The Australian Telecommunications Commission* (1988) 83 ALR 67 at 71).

Additionally, contemporary approaches to the interpretation of legislation favour an approach consistent with the purpose and object of the statute in question: *Interpretation Act 1984 (WA) s18.*

Applying these principles of construction, by s 6(c) a principal object of the Act is to provide means of preventing and settling industrial disputes not resolved by amicable agreement with the maximum of expedition and the minimum of legal form and technicality. Furthermore, by s 23(1), the Commission has cognisance of and authority to inquire into and deal with any industrial matter. Clearly, for the purposes of s 23(1), the Commission means as s 7 of the Act makes clear, "*the body continued and constituted under this Act under the name of the Western Australian Industrial Relations Commission"*. In terms of s 48, a board of reference is not the Commission as defined. Moreover, from the statutory scheme of the Act when read as a whole, it is apparent in my opinion, that the terms of s 48 provide for the constitution of a discrete tribunal, constituted in the manner prescribed by s 48 (2), for the purposes of allowing, approving, fixing, determining or dealing with matters prescribed in s 48(6). Boards of reference so constituted are independent tribunals, acting under specific powers, not as delegates or agents of the Commission, charged with specific functions, which functions are largely of a domestic character: *Fire Brigade Officers' Award Board of Reference Appeal Case* (1975) SAIR 750; *Bursey & Anor v Undercliffe Nursing Home* (1985) 12 IR 293

For the purposes of these proceedings, in my opinion, the construction of s 48(7) to be preferred when read in the context of the section and the Act as a whole, is that the board of reference constituted by a Commissioner, may exercise only those powers which are conferred on a board of reference pursuant to s 48(6). In my view, the subsection is not to be read as conferring upon the Commission the powers of a board reference in addition to all of the general powers available to the Commission provided for in the Act. This construction is consistent with the discrete and independent nature of a board of reference established pursuant to s 48(1), and the specific issues with which a board of reference may deal as prescribed in s 48(6) of the Act. Given the terms of s 48 when read in the context of the Act as a whole, in my opinion, for the legislature to have intended the Commission to have available to it all of its powers as generally prescribed in the Act, one would have thought that plain words to this effect would be needed in s 48(7).

This construction of s 48(7) is consistent with providing a mechanism in relation to the operation of boards of reference, whereby matters can be determined without the need for the employer and employee parties to the relevant award to nominate, and have appointed in the manner prescribed, members of a board of reference. Section 48(7) is an expeditious means of enabling a matter that is able to be determined by a board of reference, to be so determined. This construction is also in my view, consistent with the principal objects of the Act, in particular, to provide means for preventing and settling disputes with a maximum of expedition and the minimum of legal form and technicality which I have already referred to. Moreover, to construe s 48(7) as not confining the powers to be exercised by the Commission to those set out in s 48(6), would be, as argued by Mr Lilburne, effectively to render the provisions of s 48 superfluous in that the Commission could, in the exercise of its general jurisdiction pursuant to s 23(1) of the Act, inquire into and deal with any such matter. I therefore conclude that the powers to be exercised in this matter are confined to those powers prescribed in s 48(6) and therefore, provisions of the Act raised by Mr Borlase and Mr Heelan, at least in their initial submissions, in particular ss 26A and 27, have no application to these proceedings.

The Nature Functions and Powers of a Board of Reference

Both Mr Borlase and Mr Heelan in their submissions**,** argued that a board of reference may only be constituted in the manner prescribed by clause 28 – Board of Reference of the Award to be valid. I do not accept that submission. In my opinion, the source of the constitution and powers of a board of reference is s 48 of the Act. Clause 28 – Board of Reference of the Award, reproduces the terms of ss 48 (2) and (6) of the Act concerning the composition and powers of a board of reference. It is also clear by the terms of clause 28(1) of the Award, that a board of reference for the purposes of the Award shall be appointed pursuant to s 48 of the Act. In my view, clause 28(1) of the Award must be read with the terms of s 48 as a whole, including the ability of the Commission to exercise the powers conferred on a board in accordance with s 48(7). To hold otherwise, would be to effectively read down s 48(7) when there is no basis either in the Act or the Award to do so. The terms of the Award must give way to the Act in the event of a conflict, in my view.

It was further submitted by the respondents, that the effect of the applications was to seek the exercise of judicial power to create rights and obligations retrospectively and not for the future. Additionally, it was submitted that the effect of the applications was tantamount to enforcement of the Award.

In support of these issues, Mr Borlase relied upon a number of authorities as to the powers of a board of reference. These included a number of decisions of the High Court relating to the exercise of powers by boards of reference and tribunals in the Commonwealth jurisdiction. In *R v Darling Island Stevedoring & Lighterage Company Limited; ex parte Halliday & Sullivan* (1938) 60 CLR 601, Latham CJ, Rich, Starke, Dixon

and McTiernan JJ, considered an application to make an order nisi for prohibition absolute against the informant and a magistrate who convicted two employees of the informant for breaching an award following a determination of a board of reference. In issue in the case, was the nature, functions and powers of a board of reference appointed under the relevant award, pursuant to s 40A of the then Conciliation and Arbitration Act, 1904 (Cth). It was held by the Court (McTiernan J dissenting) that the defendants were rightly convicted. In dealing with the issue of the functions and powers of the board of reference in this case, Latham CJ observed at 611:

> "*It is, I think, clearly intended that the board of reference should give general decisions which should bind the parties until set aside upon appeal, and not that the board should merely decide particular cases which have arisen in the past for the purpose of determining whether or not undue strain had been involved in a particular order in relation to a particular loading or unloading from a particular ship, but without laying down any rules for future conduct. The requirement that the decision should be acted on shows that it is intended that the board should lay down such rules by its decisions*"

And further he said at 612 – 613—

> "*If the only decision of the board in the present case had been a decision given after the occurrence of the events upon which a prosecution was founded there would perhaps be room for argument as to whether a decision was judicial or arbitral in character. But a decision which, in my opinion, prescribed a relevant general rule binding upon the parties (subject to approval) was given before the alleged offence was committed. Accordingly, this question does not, in my view, arise in the present case…. It may be pointed out that the view contended for by the appellant would deprive the provisions of the award relating to questions of undue strain of all practical significance. The board of reference would be confined to an investigation of particular orders which had been actually given in particular cases. The board would therefore necessarily act after the event in every case, and its decisions would not be binding upon the parties in relation to any future controversy that might arise upon the same subject but on a different occasion. The decisions would, upon the view presented by the appellant, have no effect at all. They could not be accepted as effective retrospective determinations in relation to particular orders given, because to give an affect to them would, it is said, deprive the Court of jurisdiction to decide in all respects whether an instruction was reasonable. Nor would the decisions have any operation in the future because they would be decisions given in respect of, and applying only to, past particular cases. The decisions would, therefore, have no effect at all in determining any rights or obligations of the parties"*.

Reference was also made by Mr Borlase to a number of other authorities dealing generally with the exercise of judicial power by boards of reference and tribunals in the Commonwealth jurisdiction: *R v Mancini & Ors; ex parte the Brisbane City Council* (1966) AILR 359: *R v Austin & Or; ex parte Farmers & Graziers Co-operative Company Limited & Ors* (1964) 12 CLR 619; *R v Hegarty & Ors; ex parte Salisbury City Corporation* (1981) 36 ALR 275.

It is important to observe however, that the above decisions and others relating to the Commonwealth jurisdiction, are of limited assistance in the resolution of the present matter. Whilst some general guidance can be taken from them as to the operation of boards of reference, tribunals and boards of reference in the Commonwealth jurisdiction are subject to the limits imposed by s 71 of the Commonwealth Constitution. The judicial power of the Commonwealth by reason of s 71 may only be conferred on three types of court, they being the High Court, federal courts created by the Parliament and State and Territory courts vested by the Parliament with federal jurisdiction. As was observed in *R v Kirby; ex parte Boilermakers Society of Australia* (1956) 94 CLR 254 at 269—

> "*It is beyond the competence of the Parliament to invest with any part of the judicial power any body or person except a court created pursuant to s 71 and constituted in accordance with s 72 or a court brought into existence by a State*".

The nature and role of a board of reference was the subject of proceedings in the South Australian Industrial Commission in *Fire Brigade Officers' Award Board of Reference (Appeal) Case* (supra). In this matter, a dispute occurred between the Fire Fighters Association of South Australia and the Fire Brigades Board as to the accelerated promotion of two officers. By application of the union, a board of reference was convened in accordance of the terms of the Fire Brigades Officer's Award to consider the promotions issue. After initial proceedings in the Industrial Court dealing with jurisdictional issues, the matter was returned to the board of reference for determination. The board of reference held that the promotions were not justified on merit and the employer appealed that decision. In the course of his judgment, Olsson J made a number of observations as to the nature and operations of boards of reference in South Australia. His Honour considered the position regarding the operation of boards of reference in the Commonwealth jurisdiction compared with those of the States and observed at 768—

> "*The first point which must be made, is that although somewhat similar provisions exists within the Commonwealth legislation, the ever present spectre of the provisions of the Constitution vesting judicial functions solely in the judiciary, coupled with the limitation of "industrial matters" to interstate disputes, effectively operate to emasculate the potential of such bodies to discharge a very meaningful function. They also render many of the federal authorities inapplicable to the position under the legislation of this State*".

Further at 769, he said—

> "*However, assistance can, nevertheless, be gleaned from the authorities dealing with the Commonwealth legislation. In areas in which bodies akin to boards of reference have been held to exercise a function which is jurisdictionally permissible (eg making a decision on criteria that are substantially non-factual or subjective cf Queen Victoria Memorial Hospital v Thornton (1953) 87 CLR 144) it must act in a judicial manner; it must not take account of extraneous material; it must not exclude relevant material and its conclusion must be one that is reasonably open on the material before it (vide Stanhouse v Coleman 69 CLR 457, especially per Starke J at p.467)…. When one considers the State legislation it immediately becomes apparent that the role and status of a board of reference is not subject to constitutional limitations and is restricted only by the combined effect of the Industrial Conciliation & Arbitration Act and the particular Award under which it is established…. It is trite law that a statutory tribunal such as the Industrial Commission may not delegate any facets of its jurisdiction or invest other jurisdiction or powers in some person or body outside of that tribunal unless the statute expressly authorises it so to do*".

Olsson J further held in this case, that the legislation may create a subsidiary tribunal having the power of final decision on issues which may be arbitral or decisive of rights. He also considered that the latter function may be tantamount to a judicial process. In his concluding observations on these issues, Olsson J said at 771—

> "*I construe these prescriptions as meaning that the board may make final decisions as to any disputes occurring as to rights of parties occurring under the award (given its proper interpretation) in given factual circumstances as found, or as what ought to be done to implement the award (again given its proper interpretation) in particular situations*".

In my opinion, the observations Olsson J in *Fire Brigade Officer's Award* have equal application to the operation of a board of reference under the Act. The constitution, operation and powers of a board of reference under the Act in this State, are not confined, at least in a constitutional sense, to the exercise of only arbitral or legislative functions. Indeed, as observed by Olssen J above, there may well be circumstances in which a board of reference is called upon to determine what in essence would involve a declaration as to existing rights or entitlements under a relevant award. Accordingly, I do not accept the proposition advanced by the respondents, that as a matter of jurisdiction, a board of reference is precluded from

examining a factual circumstance arising under an award, that may involve a retrospective element. There is no warrant in my opinion, either from the terms of clause 5 (1) of the Award or from s 48 of the Act, to confine the functions and powers of a board of reference to only matters which are to occur in the future.

Reference was made in the proceedings, to a decision of the Full Bench of the Commission *Crewe & Sons Pty Ltd v AMWSU* (1989) 69 WAIG 2623. In that case, the Full Bench considered the functions and powers of the Commission pursuant to s 44 of the Act. In issue, was whether there was power under s 44 to hear and determine proceedings which were essentially for the enforcement of an award. It was held that the Commission acted beyond power pursuant to s 44 of the Act in this case. It was observed by the Full Bench, that the dispute notified to the Commission in this case, involved no element of future conduct but rather a claim for the payment of monies arising out of employee's contracts of employment and under relevant awards (at 2627).

In my opinion the decision *Crewe* is distinguishable on the basis that a board of reference is not the Commission, nor does it exercise the powers of the Commission. A board of reference is, as was observed by Olsson J in *Fire Brigade Officers' Award*, not a delegate of the Commission but is an independent tribunal with its own functions and powers as prescribed by s 48 of the Act and the relevant award. The operation of boards of reference under the statutory scheme in the Act, is not subject to the same general separation of arbitral and judicial functions as applicable to the Commission in the exercise of its functions and powers under the Act.

Accordingly, I am not able to conclude that on this basis alone, the proceedings are beyond jurisdiction.

Effect of Workplace Agreements

The next jurisdictional question posed in these proceedings, is the effect of my findings that as at the date of the institution of these proceedings, alternatively when they were heard, the relevant employees of the respondents were parties to registered workplace agreements under the WPA.

In order to deal with this issue, it is necessary for me to set out the relevant provisions of the WPA. Section 4 provides—

> "*4. This Act has effect despite any provision of the Industrial Relations Act, 1979*".

By s 6 of the WPA it is provided as follows—

> "*6 (1) Where a workplace agreement –*
>
> *(a) has been made between –*
>
> *(i) an employer and employee under a contract of employment; or*
>
> *(ii) an employer or employees under contracts of employment;*
>
> *(b) and has come into force,*
>
> *no award, whether existing or future, applies to—*
>
> *(c) that contract or those contracts of employment; or*
>
> *(d) the employer or any such employee as a party to any such contract,*
>
> *so long as the workplace agreement remains in force.*
>
> *(2) Where a workplace agreement has been made as mentioned in sub-section (1)(a) in relation to any contract of employment, and has come into force, any award provision that applied to that contract immediately before that coming into force is not to be implied into, or in any way read as being part of the workplace agreement unless the agreement expressly so requires*"

By ss 4 and 6 of the WPA, it is apparent that the legislative scheme is such that a registered workplace agreement will effectively oust the operation of the relevant award under Act, as long as the workplace agreement remains in force.

In the case of an individual workplace agreement, which on the evidence is the type of agreement in existence in these proceedings, the agreement comes into force on the date it is signed by the parties to the agreement, or from a later date which is specified in the agreement: *s 19(2) WPA*. This operative date of a workplace agreement is subject to the requirement that the agreement is lodged with the office of the Commissioner for Workplace Agreements for registration within 21 days of its effective date. If not so lodged, the agreement ceases to have any effect and may not be lodged for registration: *s 27(1) WPA*.

Additionally, ss 19(4) and (5) of the WPA provide—

> "*(4) On the expiry of a workplace agreement, this Act no longer applies to any contract of employment that it governed and that contract then becomes subject to relevant award provisions (if any) unless it becomes subject to —*
>
> *(a) another workplace agreement;*
>
> *(b) some other arrangement between the parties provided for in the expired workplace agreement.*
>
> *(5) So long as a contract of employment is not subject to award provisions because of an arrangement under sub-section (4)(b), sections 6 and 8 continue to apply to that contract as if the workplace agreement had not expired".*

It should also be observed that s 52 of the WPA enables a person who is entitled to recover an amount under s 27, to bring a claim for that purpose in the Industrial Magistrate's Court.

In my opinion, the combined effect of the relevant provisions of the WPA to which I have referred, is to render the terms of a relevant award inoperative for the period that a workplace agreement is in effect (or some other arrangement exists) *in respect of those parties to that workplace agreement*. It is not the case in my view, that the relevant award has no force at all. The award continues in force, as a matter of law, as an award of the Commission under the Act but simply put, its operation is suspended in relation to the parties to the workplace agreement. It is revived when the relevant workplace agreement ceases to have effect and no other arrangement is entered into between the parties to the workplace agreement. Furthermore, by the operation of s 6(1) of the WPA, no employer may be in breach of the relevant award for the purposes of enforcement of the Act. The issue then becomes, what is the effect of s 6(1) of the WPA in the circumstances of this case? The resolution of this issue is fundamental in my opinion, to the exercise by the Commission of the powers of a board of reference pursuant to s 48(7) of the Act.

As noted above, a board reference is an independent tribunal which obtains its jurisdiction and powers by the terms of s 48 of the Act. It is trite to observe that being a creature of statute, a board of reference as a tribunal, like the Commission, has no inherent powers and its jurisdiction, powers and functions are derived from the statute. In cases where the jurisdiction of an inferior court or tribunal depends upon the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction: *R v Income Tax Special Purposes Commissioners* (1888) 21 QBD 313 at 319 – 320. Further, where a tribunal or court proceeds to exercise jurisdiction which it does not in law possess, any decision of such a tribunal or court is a nullity: *A -G v Lord Hotham* (1827) 3 Russ 415 (see generally *Halsbury's Laws of England 4th Ed Vol.10 para 715).* A jurisdictional error will be committed where a tribunal purports to exercise its jurisdiction when the prescribed facts or circumstances upon whose existence its jurisdiction depends, are not established on the evidence to exist (see generally *Hotop Principles of Australian Administrative Law 6th Ed pp247-261).*

In my opinion, for the purposes of these proceedings, a condition precedent to the valid exercise of the jurisdiction and powers of a board of reference, is the application and continued application, of a relevant award for the purposes of ss 48(6) and (7) of the Act.

As observed earlier in these reasons, by s 48(1) of the Act, boards of reference in this State are established by legislative fiat and not by awards. The powers and functions of boards of reference are derived from the statute and not from the relevant award. By s 48(2) of the Act, *employer* representatives for the purposes of the constitution of a board of reference under that sub-section must be, in the terms of s 48(1), employers bound by the award in respect of which the board of

reference is established. Also, on this same basis, *employee members*, must be employees covered by the award concerned. In my opinion, s 6(1) of the WPA fundamentally affects the operation of s 48(2) of the Act. Once a workplace agreement is in effect for the purposes of the WPA, employer and employee parties to such an agreement can no longer be an *employer* or *employee* for the purposes of the constitution of a board of reference pursuant to s 48(2) of the Act. As I have observed earlier in these reasons, this does not mean that the relevant award is no longer in force. It simply means however, that it ceases to have any application to the parties to the workplace agreement.

It follows in my view, that for the purposes of the constitution and the exercise of powers of a board of reference pursuant to s 48 of the Act, no board of reference *could be established nor continued*, involving an employer and employees as parties to a workplace agreement, when s 6(1) of the WPA has effect. By s 48(7), the Commission may exercise the powers, and for the reasons that I have mentioned above, only those powers, of a board of reference as set out in s 48(6). In so exercising those powers, the Commission is obviously not constituted in the manner provided for in s 48(2) of the Act, actually as a board of reference. To that extent, s 48(7) is not directly affected by s 6(1) of the WPA, as is s 48(2) of the Act.

However, it is clear that in the exercise by the Commission of the powers conferred on a board of reference pursuant to s 48(7), the powers are confined to those in s 48(6). For the purposes of these proceedings, that involves the exercise of powers under s 48 (6)(a), that being any matter or thing that "*under the award*" may be dealt with and determined by a board of reference. In my opinion, the terms of s 48(6)(a) require a temporal connection between the time at which the board of reference comes to exercise any of its powers, and the existence and operation of the relevant award in respect of which those powers are to be exercised. Put another way, at the time at which the board of reference comes to exercise any of its powers, it must be satisfied as to the existence and the continued existence of the jurisdictional facts upon which it can proceed to deal with the merits of the application.

It is established on the evidence in this case, that as at the time of the commencement of the proceedings, the relevant employees of the respondents are covered by workplace agreements under the WPA. In the case of two of the respondents, it appears on the evidence that this situation obtained prior to these applications being instituted. Therefore, it follows that in respect of the respondents and their relevant employees, there is no award for the purposes of s 48(6)(a) of the Act, *under which* the board of reference may allow, approve, fix, determine or deal with any matter as prescribed.

Conclusion

In my opinion, on and from the Award ceasing to have any actual or potential application to the respondents and their relevant employees, there was no power capable of being exercised by the Commission pursuant to s 48(7), as the jurisdictional facts necessary for the exercise of jurisdiction and power by the board of reference had either never existed or had ceased to exist.

For all of the above reasons, these applications must be dismissed for want of jurisdiction.

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

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

Main Roads Western Australia.

No. CR173A of 1997.

COMMISSIONER P E SCOTT.

11 August 1998.

Order.

WHEREAS on the 11th day of June 1997 the Applicants filed an application pursuant to Section 44 of the Industrial Relations Act, 1979; and

WHEREAS on the 20th day of June 1997, the 22nd day of September 1997, the 24th day of October 1997, the 11th day of November 1997, the 4th and 12th days of December 1997, the 19th and the 26th days of February 1998 the Commission convened conferences for the purposes of conciliating between the parties; and

WHEREAS a number of attempts were made to have an independent assessor undertake an assessment of Mr Richard Macale's skills for the purpose of determining his correct classification, however, this was unsuccessful and on the 5th day of May 1998 the matter was referred for hearing and determination; and

WHEREAS on the 5th day of May 1998 a Memorandum of Matters Referred for Hearing and Determination issued in the following terms—

> "The Union claims that R. Macale was not properly classified under Appendix D, Building Trades (Government) Award No. 31A of 1966 and seeks a determination from the Commission as to his correct classification. The Union seeks an order that Mr Macale be classified at Level 6.
>
> The Respondent says that Mr Macale has been properly classified at Level 5."

WHEREAS the matter was set down for hearing and determination on the 23rd day of July 1998; and

WHEREAS by facsimile dated the 22nd day of July 1998 the Respondent advised the Commission that it had only that day come to their attention that the Applicants were intending to call a number of witnesses. Consequently, the Respondent sought to adjourn the hearing to enable it time to prepare for cross-examination of those witnesses; and

WHEREAS by facsimile dated the 22nd day of July 1998 the Applicants advised the Commission that they would seek leave at the hearing on the 23rd day of July 1998 to amend the Memorandum of Matters for Hearing and Determination; and

WHEREAS at the hearing on the 23rd day of July 1998 the Commission rejected the Respondent's application for adjournment and indicated that the Commission would rule on the question of the amendment to the application having heard further from the parties as to the substance of the application; and

WHEREAS the Applicants commenced their case with opening submissions and lead evidence from Mr Macale, at the conclusion of which the Respondent sought the Commission's determination as to the Applicants' application to amend; and

WHEREAS the Commission determined that there would be no amendment and the matters to be dealt with were those contained in the Memorandum of Matters Referred for Hearing and Determination, at which point the Respondent indicated that it would concede that the appropriate classification for Mr Macale was Level 6. The Respondent consented to the making of an order in those terms and for back pay to be made to Mr Macale no later than 4 weeks from the 23rd day of July 1998; and

WHEREAS the Commission indicated that such an order would issue; and

WHEREAS the Applicants sought time to consider whether or not they would make any further application arising from the Respondent's concession;

NOW THEREFORE, the Commission, having heard from the parties and pursuant to the powers conferred on it under the Industrial Relations Act 1979, and by consent, hereby orders that—

1. Mr Richard Macale shall be classified as Level 6 pursuant to Appendix D, Building Trades (Government) Award No. 31A of 1966.
2. No later than 4 weeks from the 23rd day of July 1998 the Respondent shall pay to Mr Macale any back pay due to him as a consequence of the change to his classification.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Bega Garnbirringu Health Services Aboriginal Corporation.

No. CR 163 of 1997.

9 October 1998.

Reasons for Decision.

Preliminary Matter.

COMMISSIONER C.B. PARKS: At the request of the parties the Commission is asked to determine, as a preliminary matter, whether, because of the means by which a claim has come before it such falls within the jurisdiction of the Commission, and whether, if the matter be properly before the Commission whether it has the jurisdiction to make the orders sought.

A Notice of Application which cites the Australian Liquor, Hospitality & Miscellaneous Workers Union, Miscellaneous Workers Division, WA (the Union), and which bears the common seal thereof and the signature of the Union Secretary was filed in the Registry

of the Commission on 5 June 1997. Therein it is stated to be an application to the Commission for—

"A conference under section 29 (1)(b)(i) of the Act"

and states the grounds upon which the application is made are contained within the schedule attached thereto. In turn the schedule contains the following five numbered paragraphs.

"1. Ms Beryl Norman (the worker) was employed by the respondent as an Aboriginal Environmental Health Worker/Cleaner under the Aboriginal Medical Services Award on 7 December 1992.
2. On 5 May 1997, the worker received a letter from the Respondent dated 28 April 1997, dismissing her from her employment on the grounds of serious misconduct.
3. The worker disputes the allegations of serious misconduct and seeks to resolve this dispute through conciliation.
4. This application should have been lodged the latest Monday, 2 June 1997. However, because of the geographical isolation factor, the worker only had a chance of obtaining advice from the Applicant Union on Wednesday, 4 June 1997.
5. The Applicant requests that an extension of time be granted in this matter".

Upon the filing of the Notice of Application the receiving Registry clerk allocated to it the identifying letter and number C 163 of 1997 which, because the prefix letter "C" is affixed, indicates that the application was registered as one seeking a conference pursuant to s44 of the Industrial Relations Act, 1979 (the Act).

An advice was issued to the parties by the Commission that a conference was to be held pursuant to s44 of the Act, and subsequently, that conference was conducted on 18 July 1997, and involved a telephone link with several persons. The agent for the respondent objected to the conference being conducted pursuant to s44 of the Act on the ground that the Commission did not have the "jurisdiction" to do so but notwithstanding, and without prejudice, engaged in an exchange with the representative of the Union regarding Ms Norman and the dispute associated with her dismissal. The Union representative declared that it was the intention and wish of the Union that the application be viewed as having sought a conference pursuant to s44 of the Act and the Commission proceed to deal with the matter accordingly.

It was apparent to the Commission from the exchange which had occurred between the representatives of the parties that there was no likelihood that further discussions in conference would lead to any form of conciliated resolution, and consequently the Commission announced that a memorandum detailing the matters in dispute, and which the parties had requested the Commission hear and determine would be issued by the Commission pursuant to s44 of the Act. There was agreement between the parties that the Commission conduct a preliminary hearing in which they would address the jurisdiction of the Commission to further proceed and to decide the substance of the dispute relating to Ms Norman. Both parties submitted to the Commission written description of the matters they wished to have heard and determined so as to clearly identify the issues to be dealt with.

A draft memorandum was provided to the parties by the Commission, the content thereof was altered at the request of the union to add a claim to those previously identified, and a final memorandum of matters for hearing and determination was issued by the Commission on 2 September 1997. The material content of that memorandum is set out hereunder –

"The matter described hereunder and signed by me for identification, is a matter which, at the conclusion of a conference held by me in accordance with section 44 of the Industrial Relations Act, 1979 on 11 July 1997, had not been settled by conciliation.

The applicant union—

(1) Claims that the respondent corporation unfairly dismissed Beryl Norman from her employment on or about 2 May 1997; and

(2) Seeks orders that Beryl Norman be—

(a) reinstated to her prior position of employment; and/or

(b) compensated for loss of wages from the date of dismissal until the date of the hearing; and

(c) that her contract of employment be deemed to be continuous as from the date of her dismissal.

The respondent corporation answers that—

(A) The Commission lacked the jurisdiction to refer the claims for hearing and determination; and

(B) Section 44 of the Act does not provide the Commission with jurisdiction to make the orders sought at (2)(a) and (b) hereof; and

(C) In the alternative, if the Commission has the necessary jurisdiction, the respondent—

(i) denies that Beryl Norman was unfairly dismissed; and

(ii) objects to the orders sought at (2)(a) and (b) hereof."

It is not in dispute that the matter of Ms Norman's dismissal and the reasons for that constitute an industrial matter and therefore may be dealt with by the Commission upon it becoming cognisant of, and seized of, the matter in a manner authorised by the Act.

It is argued for the respondent that the application made by the Union expressly requests that the Commission convene a conference pursuant to s29(1)(b)(i) of the Act and the complexion thereof was not altered by the administrative act of the Registry clerk when filing of the application was effected.

Further, no amendment was made to the application by order of the Commission which converted it to one seeking the convening of a conference pursuant to s44 of the Act prior to the Commission scheduling and purportedly conducting a conference pursuant to that section, consequently the Commission acted in excess of the power afforded it by s44 of the Act. That is so, it is said, because the power provided the Commission by subsection (1) thereof may only be exercised pursuant to subsection (7) of the section either, upon an application made for that purpose, or upon the motion of the Commission itself in the circumstance where there is industrial action or that appears likely to occur. The application before the Commission does not seek a conference pursuant to s44 of the Act, nor does it reveal any ground upon which the Commission might conclude there was industrial action or such was likely to occur, consequently none of the precedent conditions for the Commission to proceed pursuant to s44 of the Act existed. Consequently, the conference which the Commission conducted was an exercise in excess of power, it was not pursuant to s44 of the Act, and therefore the Commission is not empowered by subsection (9) of the section to hear and determine any question, dispute, or disagreement in relation to the industrial matter identified within the application.

The application made was said to be incompetent and that being so the Commission should not exercise the powers conferred on it by s27(1)(m) of the Act to correct, amend, or waive any error, defect, or irregularity whether in substance or in form, in relation to the matter before it because to do so would deprive the respondent of a defence which has accrued to it. Having been made pursuant to s29(1)(b)(i) of the Act, the application was required, pursuant to s29(2), to have been referred to the Commission within 28 days of the dismissal of Ms Norman but it was not. Hence the application was statute barred and is therefore not competent, it was said. Furthermore, to amend the application to one seeking a conference pursuant to s44 of the Act would add a new cause of action, and therefore ought not be allowed. (See Reasons for Decision of the Full Bench per Fielding C (as he then was), in the matter of Western Australian Branch, Australasian Meat Industry Employees' Union, Industrial Union of Workers, Perth and M.W. Harris (74 WAIG 214 at 217)).

Although the respondent concedes that Ms Norman's dismissal and matters associated with it constitute an industrial matter and were therefore able to be referred to the Commission pursuant to s44 of the Act, the respondent contends, that it is not open to the Commission to order the relief sought. Section 23(3)(h) prohibits the Commission from making an order on a claim of harsh, oppressive or unfair dismissal except one that is authorised by s23A and this last mentioned section allows only that relief be granted to a "claimant" which the applicant union is not. The nature of orders which may be made in favour of a claimant are, any amount to which the claimant is entitled, reinstatement or re-employment of the claimant or alternatively compensation to the claimant for loss or injury caused by the dismissal, and as the union had no entitlement from the respondent, could not have been dismissed nor suffered any consequential loss or injury, it is not the claimant and therefore orders of the type mentioned cannot be made in favour of the union, it was argued.

It is conceded by the applicant union that the application made by it requesting that the Commission convene a conference wrongly cited s29(1)(b)(i) as the section which enables the Commission to so act and should have cited s44 of the Act. That application caused the Commission to conduct a conference attended by the parties whereat the union declared its wish that the matter proceed and be dealt with pursuant to s44 of the Act and that the Commission arbitrate upon the matter of Ms Norman's alleged unfair dismissal when it became apparent that that matter would not be resolved by conciliation. That declaration, the union advocate says,constituted an oral application which the Commission is authorised to grant and appropriately did and embarked upon a course to hear and determine the matter.

Section 29(1)(a)(ii) allows the union to refer an industrial matter, ie the alleged unfair dismissal of an employee who is a member of the union, to the Commission. Thereupon the Commission becomes cognisant of the matter and pursuant to s28 of the Act may exercise the powers conferred on it by s27(1)(m) of the Act and may "correct, amend, or waive any error, defect, or irregularity whether in substance or in form," the union contends. And, the union contends, given that s6(b) and (c) describe the objects of the Act as being to "encourage, and provide means for, conciliation with a view to amicable agreement" and to provide the means for "preventing and settling industrial disputes not resolved by amicable agreement … with … the minimum of legal form and technicality," that together with the command of s26(1)(a) that in the exercise of its jurisdiction the Commission shall "act according to equity, good conscience, and the substantial merits of the case without regard to technicalities or legal forms," shows the intention that industrial matters be dealt with by the Commission notwithstanding their substance or form of notification may not be technically correct.

The respondent, it is said, has wrongly put to the Commission that an amendment to the application for a conference in order to have it proceed pursuant to s44 of the Act raises a new cause of action in a circumstance where a defence has accrued to the respondent. That is so, it is said, because the cause for the application is the alleged unfair dismissal and that has not changed. And, further, the application made by the union and which cites that cause is not statute barred by a time limit within which the matter was required to be referred to the Commission, unlike an application made by an individual employee, and therefore no defence had accrued to the respondent. Hence, the Reasons for Decision in the matter of the WABAMIEUIUW and M.W. Harris (op cit) are not material to the determination of the present matter.

The argument of the respondent that the relief the Commission may grant in relation to a matter of unfair dismissal is limited by s23(3)(h) of the Act to that allowed by s23A(1), and therefore to orders made in favour of a "claimant" and that term does not include the union, consequently orders of the type sought may not be made, the union submitted has been considered in the matter the Australian Worker's Union, West Australian Branch, Industrial Union of Workers and WMC Resources Ltd (77 WAIG 2389), a matter dealt with pursuant to s44 of the Act, and rejected by the Commission.

Section 23(1) of the Act prescribes the jurisdiction of the Commission and there vests in the Commission, subject to the Act, cognisance of and authority to inquire into and deal with any industrial matter. Section 29(1) of the Act, which is procedural, prescribes whom may refer an industrial matter to the Commission and therein, at paragraph (a)(ii) authorises that such a reference be made by an organisation, ie the union, and paragraph (b) thereof allows that an employee refer an industrial matter but limited by subparagraph (i) to a claim of unfair dismissal, or by subparagraph (ii) to a benefit to which the employee is entitled under the contract of service. Subsection (2) of the section prescribes that the referral of an unfair dismissal claim, " … by an employee under subsection (1)(b)(i) …", cannot occur more than 28 days after the date of the employee's dismissal.

Section44(1) of the Act confers upon the Commission the power to conduct a conference, and to summons persons to attend that conference, subject to that section as a whole. Subsection (7) of this section allows that the Commission exercise the power conferred by subsection (1) either, upon an application made by a union, or by others not relevant here, or by the Commission on its own motion whenever industrial action has occurred, or in the opinion of the Commission, is likely to occur.

Where an industrial matter has been referred to the Commission, it is, in the every day exercise of its jurisdiction, required by s32 of the Act to endeavour to resolve matters by conciliation and provision is made for the Commission to pursue that by presiding over a conference with the parties or through other avenues not presently relevant.

On a claim of unfair dismissal the Commission may, pursuant to s23A(1) of the Act, order the claimant be paid any amount to which the claimant is entitled, order the employer to reinstate or re-employ the claimant when found to have been unfairly dismissed or where reinstatement or re-employment is impracticable the employer may be ordered to pay compensation to the claimant for the loss or injury caused by the dismissal. In the matter of the AWUWABIUW and WMC Resources (op cit) the Commission considered s23A(1) of the

Act and whether the relief which may be allowed to a "claimant" is able to be granted by the Commission, to an employee found to have been unfairly dismissed, in the circumstance where the matter had come before the Commission pursuant to s44(9) of the Act and consequent upon an application for a conference made by the union party to that matter. The Commission there held, as the union party to the present matter correctly submitted, that the term "claimant" in s23A(1) meant the employee involved in that matter, a Mr Anderson, and the term is not restricted to whomever it is that refers a matter to the Commission. In the later matter of Katina Pty Ltd t/a Kato Concrete Co and the Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (77 WAIG 2863) the Full Bench removed any doubt regarding the effect of s23A(1). It is there made clear that the Commission may order relief, of the nature mentioned in the section, to an employee the subject of an unfair dismissal where the matter has been referred to the Commission pursuant to s44 of the Act. It is also plain from the ratio of these Reasons for Decision that the powers conferred on the Commission under s23A(1) of the Act may be exercised in relation to the unfair dismissal of an employee, the subject of a referral by a union to the Commission in whatever manner is authorised by the Act and not limited to a referral arising under s44 of the Act.

A union, because of the status afforded it by the Act, may refer a matter to the Commission in its own right and therefore is a party principal to that referral and not simply the agent of an employee the subject of the industrial matter involved. Hence, where in s29(1)(b)(i) it is provided that an employee may refer a claim of unfair dismissal to the Commission, such extends a limited right of referral to an employee, that is, the right of an employee as an individual to apply to the Commission for remedy. Section 29(2) of the Act expressly refers to subsection (1)(b)(i) and limits the exercise of the right to refer expressed therein to not more than 28 days after the date of the applicant employee's dismissal. I therefore conclude that this time limit upon the referral of an unfair dismissal matter to the Commission does not apply to a matter referred to the Commission by a union acting in its own right, and therefore as a party principal, where the employee involved is the "claimant" but not the applicant.

The application made to the Commission asks that the Commission convene a conference for the purpose of conciliating between the parties with regard to the alleged unfair dismissal of Ms Norman (supra) and does not purport to refer the matter of dismissal to the Commission for adjudication and the grant of remedial orders. As I have already observed (supra) s32 of the Act bids that the Commission endeavour to conciliate. That the Commission may elect to pursue by means of a conference with the parties however, it is not open for an applicant to expressly apply for a conciliatory conference authorised by s32. An application to the Commission that it conduct a conference for conciliation purposes is authorised by s44 of the Act alone.

The content of the application made is somewhat misguided and confusing, firstly by its reference to s29(1)(b)(i) of the Act within the Notice of Application, and then secondly, in what are purported to be the grounds for the application there appears what can only be described as a separate application for an extension of time in which to file the application for a conference. Notwithstanding, it is evident that the primary purpose of the application was to have the Commission convene a conference and that was recognised by the Registry clerk when filing was effected. However, a Registry clerk has no power to amend, or alter, an application lodged for filing nor can the administrative act of that person convert an application to what it is not. Hence, the application made for a conference did not change in character to one seeking a conference pursuant to s44 of the Act by reason of the manner in which it was registered upon filing. Consequently, I find that the application made to the Commission designated C163 of 1997 did not request that a conference be convened pursuant to s44(1) of the Act, and absent any associated industrial action or the likelihood of it occurring, the Commission was not empowered to call and conduct a conference pursuant to s44 of the Act. The fact remains however that the parties were brought together in the presence of the Commission and there the Union expressed the wish that its application be viewed as having sought a conference authorised by s44(1) of the Act and that the Commission proceed to deal with the matter accordingly. The Commission having satisfied itself at the time that the filed application had been served upon the respondent and that, notwithstanding it erroneously purported to seek a conference pursuant to s29(1)(b)(i) of the Act such clearly conveyed a request to have the Commission conduct a conciliatory conference and the cause for that had been adequately identified, concluded that the respondent had sufficient knowledge of what was in issue between the parties and therefore would suffer no prejudice were the matter able to proceed before the Commission pursuant to s44(1) of the Act. The Commission reached the preliminary conclusion that it had the power, to grant what, in effect, was an oral application of the Union, and to thereupon proceed pursuant to s44(1) of the Act.

Sections 6, 26 and 27 of the Act make it abundantly clear that the Commission may disregard legal form and technicality and may also correct, amend or waive any defect or irregularity whether in substance or in form.

The amendment sought by the Union does not raise a new cause of action, the cause is unchanged, it is the dismissal of Ms Norman and the alleged unfairness of that. No defence had accrued to the respondent with regard to the content of the amendment. Given that the amendment sought by the applicant union was directed at the process before the Commission and did not refer the underlying cause, ie. the alleged unfair dismissal, the statutory bar of s29(2) has no possible relevance on that ground. Furthermore, for the reasons given (supra), the statutory bar of s29(2) also does not apply where there is a referral of an alleged unfair dismissal when a union is the applicant party. Hence, were the union to recast the principal application, either to reflect that which the Commission has allowed by amendment, or to effect a direct referral of the claim of unfair dismissal for adjudication, and file anew, neither is barred by s29(2) of the Act. No valid purpose would have been served had the Commission required that the Union follow either of these courses, there was no evident prejudice to the respondent, and consequently it was judicious to exercise the powers vested by s27 of the Act to amend the principal application and proceed accordingly.

It being apparent to the Commission that conciliation would not be successful the Commission concluded the conference and effected a referral of the matter of alleged unfair dismissal for adjudication. I confirm my decision to amend the principal application and to proceed pursuant to s44 of the Act. On a date to be fixed the Commission will reconvene to hear the parties in relation to the claims and answers identified (1), (2) and (C) within the memorandum (supra).

Appearances: Mr J. Rosales-Castaneda on behalf of the applicant

Mr C. Fitz Gibbon on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australia

and

Cat Welfare Society Incorporated T/A Cat Haven.

No. CR 359 of 1996.

18 September 1998.

Order.

HAVING heard Mr N. Ellery on behalf of the Applicant and Mr S. Foy 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.

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

and

Coca-Cola Amatil Western Australia.

No. CR 117 of 1998.

COMMISSIONER J F GREGOR.

23 September 1998.

Reasons for Decision.

On the 5 May 1998 at the conclusion of a conference held pursuant to section 44 of the Industrial Relations Act, 1979 (the Act) a dispute between the parties had not been settled and was referred for hearing and determination. The matter for determination is delineated in the schedule to the Memorandum of Matters for Hearing and Determination under section 44 is as follows—

> *On the 27 March 1998 George Grispos, a member of the union employed by the respondent, was suspended on full pay while an investigation was made into an allegation that he had assaulted a co-worker. On the 3 April 1998 the respondent terminated the services of Mr Grispos. The application union believes that the termination is unfair and seeks orders for re-instatement of the applicant.*
>
> *The respondent says that the termination of the contract of employment of Mr Grispos occurred after a proper investigation of an allegation against him. There has been no unfairness and no order should issue.*

At the commencement of the hearing on the 12 August 1998, Mr Randles who appeared for Coca-Cola Amatil Western Australia (the respondent) raised a question of jurisdiction. It came as no surprise to the parties because when the matter was before the Commission in a conference held on the 11 May 1998 Ms Downing who then appeared for the respondent took issue with the Commission's jurisdiction on the matter. She said that the contract of employment is governed by a certified agreement of the Australian Industrial Relations Commission (AIRC) and therefore any matter arising out of the employment relationship ought to dealt with in that jurisdiction. At the time the Commission had responded by indicating there was no prohibition on the jurisdiction to conduct a conference but may well be that if the Commission attempted to issue orders or deal with the matter further, a jurisdictional argument may arise.

Eventually the Commission was asked by the Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, WA Branch (ALHMWU) that the matter be referred for hearing and determination. At the conclusion of the conference the Commission had mentioned that if there were a claim of lack of jurisdiction it would need to be dealt with as a preliminary matter. This history of the proceedings which were before the Commission subject to section 44 of the Act has been recited to put the current request by the respondent for determination of jurisdiction in context. The recitation of the history is purely factual and does not relate to any matters which were dealt with in the section 44 conference concerning the dispute proper between the parties.

The Commission heard submissions from both parties. In a nutshell Mr Randles says that this application is on all fours with a decision handed down by the Commission as constituted on the 23 July 1998 in *Desmond Bartlett –v- Alcoa of Australia Ltd 1998 (78 WAIG 3351)*. In that case the Commission had declined to exercise jurisdiction, citing the tests developed by Commissioner S J Kenner in *Ashley Todd Mitchell –v- United Credit Union Limited No. 76 of 1998 (78 WAIG 2939)*. In applying those tests the Commission decided in *Bartlett's Case* that it was not empowered to entertain the application and dismissed it for want of jurisdiction. The same should happen in this case, Mr Randles says, because the Coca-Cola Amatil Western Australia – Beverage Operations (Kewdale) Enterprise Development Agreement 1997-1999 Print C2877 (the EBA) constitutes a code as to how dismissals are to be dealt with. There is a mandatory provision within the dispute resolution clause which requires that the matter must or will be referred to the AIRC. For the Commission to deal with the matter would mean it would embark upon a process which in effect enforces the federal law something which, in Mr Randles view, cannot be done. He says that although the agreement does not outlaw unfair dismissals per se as was referred to in *Jan Irimia and Swan Transit Services (South) Pty Ltd 1998 (78 WAIG 747)* by Fielding SC, the EBA does contemplate the situation by direct language of a dispute which is subject to the procedure relates to disciplinary action for serious and/or wilful misconduct. Mr Randles concedes that the language is not identical but it could not be clearer on the plain reading of the terms of the agreement that in stating that where this occurs the matter must go to the AIRC.

Mr Rosales-Castaneda who appeared for the ALHMWU however distinguishes the facts in this case. He says that there is only a dispute resolution clause which, although it may encompass unfair termination, is not as qualified as in *Mitchell's Case (ibid)*. There is not a procedure that step by step addresses an unfair dismissal problem. This means that the EBA does not cover the field, it only gives general coverage relating to dispute resolution. As there is no express term in the EBA and there exists an appropriate State award, in this case the Aerated, Water and Cordial Manufacturing Award No. 10 of 1997 (the Award), there is no inconsistency and therefore the applicant has the option of bringing the matter before the Commission as there is no express inconsistency.

In February 1998 Commissioner Laing had before him for certification under section 170LS of the Workplace Relations Act, 1998 (the WR Act) an agreement to be known as the Coca-Cola Amatil, Western Australia – Beverages Operations (Kewdale) Enterprise Development Agreement 1997-1999, which agreement had been made between the respondent in this case and the Australian Liquor, Hospitality and Miscellaneous Workers' Union, MiscellaneousWorkers' Division, Western Australian Branch together with the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union and the Construction, Forestry, Mining and Energy Union. The certification was properly made, the Commissioner having decided the relevant requirements of the WR Act and Rules have been met. The EBA came into force from the 13 February 1998 and is to remain in force until the 15 July 1999. The EBA is a document which comprehensively regulates the relationship between the parties. It covers employees of the respondent employed at Kewdale whose contract of employment is otherwise covered by the terms and conditions of any of the Aerated Waters and Cordials Manufacturing Industry Award 1975, the Metal Trades (General) Award 1966 No. 13 of 1965 and the Engine Drivers (General) Award No. R21A of 1977. The EBA is said to operate in conjunction with those awards but will prevail to the extent of any consistency between any of the awards and the agreement. During the life of the agreement the parties agree to continue to abide by the current terms of those awards and where an application is made to vary any of them, and an Order is granted, and where it results in the terms and conditions superior to the terms and conditions of the agreement, the variation will be passed on to those covered by the agreement. However those variations only apply to wage levels and related expenses.

The parties entered into a procedure for the settling of disputes which requires that in any instance where there is a dispute between an employee or employees and the respondent it will be resolved in a climate characterised by cooperation, mutual respect and open communication directly between management and employees and union representatives to avoid interruptions to customer's access to the company products. A detailed dispute procedure is contained in Appendix 1 of the EBA. Section 2 of the agreement deals with consultative mechanisms. It sets up system for communication. There is to be a joint consultative council and there are provisions for the establishment of work teams which will have the responsibility for managing workplaces consistent with their skills. Section 3 of the agreement contains 25 subclauses which relate to operating practices, principles and employment conditions. Amongst other things the section covers wage reviews, payment of wages, hours of work, rostered days off, shift work,

shift allowances, meal breaks, job security, it also deals with annual leave, sick leave, carers leave, bereavement leave, special leave, parental leave, superannuation and so on.

All of these provisions are the ingredients which establish the core contract between the parties employees and their employer. For all intents and purposes if one compares the provisions of the agreement with that of the Award there is very little left of the award which would have any practical operation. The final section of the EBA deals with skills development, career path and training. These provisions are particular arrangements which are not specified in the award but go further in terms of regulation of the arrangement between employees and their employer.

Of particular interest for this decision are the provisions of Appendix 1 – Dispute Settlement Procedure where the parties acknowledge that consistent with the need to encourage harmonious industrial relations, they have a mutual responsibility to formalise a dispute procedure which in time and given all necessary requirements will make strikes, bands and work limitations unnecessary. The procedure will be applied within the provisions of section 170MN of the WR Act 1996. The nub of that section is to prescribe that when a certified agreement comes into operation, until its nominal expiry date is past, an employer or organisation or officer covered by it must not for the purpose of supporting or advancing claims against the employer in respect of the employment of employees whose employment is subject to the agreement engage in industrial action. Later in the section there are other provisions of the section relating to lockouts.

The intention of the procedure is said to reduce disputes liable to cause stoppage of work or a loss of earnings. Each of the parties make commitments. The The Australian Liquor, Hospitality and Miscellaneous Workers' Union, MiscellaneousWorkers' Division, Western Australian Branch and its members in respect of limiting industrial action while the disputes procedure operates and the respondent committing itself to maintain the status quo and not take any action during the course of the dispute procedure, except where following the exhaustion of all procedures and the final response the employer is unsatisfactory, the right to take action. There is a procedure of the resolution of any dispute or grievance. The procedure is said to not preclude either party notifying the relevant tribunal which in this case can only be the Australian Industrial Relations Tribunal because that is the tribunal which gives life to the agreement under the powers vested in it in section 170LS. Finally the procedure requires that in the failure to resolve a dispute the parties will refer the matter to the 'Industrial Relations Commission'.

The law to be applied in these instances has been examined by Kenner C in *Ashley Todd Mitchell –v- United Credit Union Limited (ibid)* and by myself in *Bartlett –v- Alcoa of Australia (ibid)*. There is no need to recite what has been written in those Decisions, suffice to say that I apply them to the current case.

The difference between the parties in this case is that the agreement does not include a precise set of words which refer to unfair dismissal. According to Mr Rosales-Castaneda, this means the agreement does not produce a circumstances similar to that examined by Fielding SC in *Swan Transit Services (ibid)* where the agreement contains a provision expressly dealing with dismissals which are harsh, unjust or unreasonable. The learned Senior Commissioner said in those circumstances there could hardly be a more definite expression of an intention to cover the field insofar as unfair dismissals are concerned. It is upon those words and the suggestion that there is no particular set of wording in the EBA which deals with unfair dismissal that Mr Rosales-Castaneda says there is a difference between the set of facts here and those that have been examined both in *Bartlett (ibid)* and *Mitchell's Case (ibid)*.

My response is as follows. It is wrong in my respectful view to suggest that Fielding SC was saying in the *Swan Transit Services Case (ibid)* that there has to be an express provision outlawing dismissals. On my reading what the learned Senior Commissioner was saying was that the Federal award in question before him in *Swan Transit Services* contained a provision outlawing dismissals, clearly put the matter beyond any doubt, but essentially the award contained a mechanism dealing with termination of employment.

That is not dissimilar to the provisions of the EBA under review in this case. This is an agreement which on its clear terms evinces an intention for the relationship between the parties to be regulated by an agreement registered in the AIRC pursuant to section 170LS of the WR Act. There is very little of the State award left in operation. It requires a stretching of the imagination to conclude that the intention of the parties was to still operate under the State award. This is clear from the provisions of the EBA itself where it provides in section 1.5 that the only variations to the State award which will apply and which will be passed on to those covered by the EBA will be wage levels and related expenses. There is a clear intention that the rest of the provisions of the State award have no application and are replaced by the EBA. The EBA in Appendix 1 – Dispute Settlement Procedure sets a dispute agreement procedure which is to be used in the event of any dispute. The use of the procedure is not to preclude the party notifying the relevant industrial relations tribunal. As I have observed before, the agreement is made pursuant to the WR Act and it makes no reference in its terms to the State Commission in any shape or form, the parties can only be nominating the AIRC as the relevant industrial tribunal.

In my opinion there can be no other conclusion to be drawn from the way that the agreement is constructed than that it was the intention of the parties that when they had any dispute and the procedure they set up in the agreement failed to resolve it, the matter would be referred to the AIRC for resolution. That intention is not diminished by the action of the parties in not using the words 'dismissal or termination' in the agreement. It is clear on the tests that I am required to apply that this Commission is not empowered to entertain the application and it will be dismissed for want of jurisdiction.

Appearances: Mr J Rosales-Castaneda appeared on behalf of the applicant.

Mr A Randles appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Coca-Cola Amatil Western Australia.

No. CR 117 of 1998.

COMMISSIONER J F GREGOR.

23 September 1998.

Order.

HAVING heard Mr J Rosales-Castaneda on behalf of the applicant and Mr A Randles on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the application be and is hereby dismissed for want of jurisdiction.

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

CONFERENCES—Notation of—

PARTIES		NUMBER COMMISSIONER	DATE	MATTER	RESULT
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Pickton Steel Pty Ltd	Kenner C. C191 of 1998	05/08/98	Alleged Contractual Entitlements	Referred
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Phillips Electronics Australia Limited Service Division	Scott C. C382 of 1997	20/01/98 16/04/98	Redundancy Payment	Discontinued
Builders' Labourers, Painters and Plasterers Union	A & R International Pty Ltd	Scott C. C175 of 1998	—	Failure to make available time and wage records for inspection	Concluded
Builders' Labourers, Painters and Plasterers Union	KRC Scaffolding Pty Ltd	Scott C. C164 of 1998	—	Time and Wages Records & Failure to Pay Correctly for Work Performed	Concluded
Builders' Labourers, Painters and Plasterers Union	West Coast Scaffolding (WA) Pty Ltd	Scott C. C166 of 1998	—	Time and Wages Records	Concluded
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union	Commissioner, Main Roads Department	Fielding S.C. C183 of 1998	24/06/98	Retrospective Wage Increase	Concluded
Forest Products, Furnishing and Allied Industries Industrial Union	Kresta Blinds Limited	Kenner C. C219 of 1998	14/07/98	Alleged Unfair Dismissal	Referred
Liquor, Hospitality and Miscellaneous Workers Union	Quirk Corporate Cleaning Australia Pty Ltd	Beech C. C259 of 1998	15/09/98	Dismissal	Concluded

CORRECTIONS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

P B Foods Ltd and Others.

No. AG 261 of 1997.

P B Foods Limited (Balcatta Operations) Enterprise Agreement 1997.

COMMISSIONER P.E. SCOTT.

28 August 1998.

Correcting Order.

WHEREAS on the 11th day of March 1998 an Order in this matter was deposited in the office of the Registrar; and

WHEREAS the said Order had an error in Clause 34.—Superannuation; and

WHEREAS Clause 34.—Superannuation should have read—

34. SUPERANNUATION

(1) The Company will, in respect of each of its employees, contribute to the fund in accordance with the provisions of the Superannuation Guarantee Act 1992.

(2) The Company will make such contribution monthly for pay periods completed in such months, or at such other time and in such manner as may be agreed in writing between the Trustees of a fund and the Company from time to time.

(3) Notwithstanding the provisions of this clause, the Company is not obliged to contribute to more than one fund in respect of an employee. The Company contribution will be paid into a fund of the employee's choosing, providing there are at least 20 employees who wish to be a member of that fund.

(4) Where there is a dispute over the choice of fund to be utilised by the employer, the matter will be referred to the Western Australian Industrial Relations Commission for determination.

(5) The Company is not required to contribute during any periods of unpaid leave or unauthorised absences.

(6) Compliance, Nomination and Transition

Notwithstanding anything contained elsewhere herein which requires that contribution be made to a superannuation fund or scheme in respect of an employee, on and from 30 June 1998—

(a) Any such fund or scheme shall no longer be a complying superannuation fund or scheme for the purposes of this clause unless—

(i) the fund or scheme is a complying fund or scheme within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; and

(ii) under the governing rules of the fund or scheme, contributions may be made by or in respect of the employee permitted to nominate a fund or scheme;

(b) The employee shall be entitled to nominate the complying superannuation fund or scheme to which contributions are to be made by or in respect of the employee;

(c) The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable;

(d) A nomination or notification of the type referred to in paragraphs (b) and (c) of this subclause shall, subject to the requirements of regulations made pursuant to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the employee to whom such is directed;

(e) The employee and employer shall be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made;

(f) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by a employee;

Provided that on and from 30 June 1998, and until an employee thereafter nominates a complying superannuation fund or scheme—

(g) if one or more complying superannuation funds or schemes to which contributions may be made be specified herein, the employer is required to make contributions to that fund or scheme, or one of those funds or schemes nominated by the employer;

or

(h) if no complying superannuation fund or scheme to which contributions may be made be specified herein, the employer is required to make contributions to a complying fund or scheme nominated by the employer.

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

PROCEDURAL DIRECTIONS AND ORDERS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.27(1)(o)

James Peter Thomas D. Anderson

and

Crystal Brook Dental Centre.

No. 591 of 1998.

COMMISSIONER A.R. BEECH

IN CHAMBERS.

17 August 1998.

Reasons for Decision.

INSPECTION OF DOCUMENTS

On the 8th July 1998 the respondent issued a summons out of the Registry to the Manager of the National Australia Bank, Northbridge requiring him to appear before the Commission on the hearing of this matter and requiring him to have and produce all books, papers or other documents in his possession or under his control in any way relating to the proceedings in the said matter and in particular "all notes, memorandums, account details, letters of or relating to" the applicant. No issue was taken by the person to whom the summons was directed with the apparent breadth of the documents required to be produced. On the 10th August 1998, and in response to that summons, the legal officer of the National Australia Bank delivered to the Commission a bundle of files and documents ("the documents"). A letter to the Commission from the National Australia Bank stated that the respondent's solicitors had requested the information be made available prior to the hearing. Subsequent to the delivery of the file and the documents to the Commission, the respondent's solicitors have verbally applied for permission to inspect the documents. That application raises a number of issues which I have found it appropriate to resolve by issuing these formal Reasons.

The authority to issue a summons in the manner described above is found in s. 33(1). Although the summons is intended to procure a witness's attendance at the hearing of the matter, the summons may either be to compel the witness to give oral evidence or, and perhaps in addition, to require the witness to produce documents in the witness's possession, custody or control. The summons issued to the Manager of the National Australia Bank is of the latter kind.

The Commission is not bound by the rules of evidence but may inform itself on any matter in such a way as it thinks just: s. 26(1)(b). The Commission should decide this application in the same way as it decides the matters which come before it, that is, in accordance with the requirements of the Act and according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms. Although s.27(1)(o) authorises the Commission to issue orders in relation to interlocutory matters, the Commission is not an appropriate forum for the legal determination of the finer points of civil procedure in such matters. Rather, it should adopt "a broad approach of common sense and common fairness eschewing all legal or other technicality" (to borrow the words of the National Industrial Relations Court in *Earl v Slater and Wheeler (Airlyne) Ltd* [1973] 1 All ER 145 at 150 as cited by Olsson J in *Trittenheim Pty Ltd v H&H Gill Nominees Pty Ltd* (1994) 63 SASR 434 at 442).

The documents are now in the custody of the Commission. As I understand the practice in these matters, obtaining and admitting into evidence documents produced in response to a summons is a three-stage procedure as explained in *Waind v. Hill and National Employers' Mutual General Association Ltd* [1978] 1 NSWLR 376. Documents produced in response to the summons are produced to the court, not to the party which took out the summons. Once the documents have been produced and are in the court's possession the court then decides what preliminary use the parties may make of the documents. That is an appropriate approach here particularly given s.33 of the Act.

It should be noted that s.33(5), relevantly, states that "… such books, papers and documents relating to … the …financial position of any witness or party shall not, without the consent of that witness or party, be inspected by any party". The Commission has inspected the documents delivered from the National Australia Bank. They relate to the financial position of the applicant in these proceedings. The Commission does not have the consent of the applicant for the documents to be inspected by any party. Section 33(5) refers to books, papers and other documents "produced in evidence before the Commission". Although the documents are in the custody of the Commission, they are not in evidence before the Commission. However I think s. 33(5) still applies because there seems to me to be little point in permitting a party to inspect documents relating to the financial position of a party prior to the hearing if they are prohibited from inspecting them when the documents are tendered in evidence. I am not prepared to allow the respondent to view the contents of the files and documents in the absence of the applicant's consent. Nor do I see it as the responsibility of the Commission to seek out that consent.

However, in my view the applicant's request is also able to be dealt with on a further basis. The documents which a party to proceedings before the Commission are able to validly require to be produced to it, whether by an opposing party to the proceedings or by a third person, are documents which have an apparent relevance to the issues between the parties: *Waind's case* at 385 per Moffitt, P. There is of course some difficulty in determining whether documents are relevant prior to the presentation of the evidence or, as here, before the commencement of the hearing. However, the situation is no different from the situation where the Commission is required to deal with an application for the discovery, inspection or production of documents in section 27(1)(o). The proper approach is to determine relevance by reference to the matters set out in the Notice of Application and in the corresponding Notice of Answer and Counter Proposal. I am of the opinion that the contents of the documents do not have an apparent relevance to the issues set out in the Notice of Application and in the corresponding Notice of Answer and Counter Proposal. Indeed, given the breadth of the documents required to be produced in accordance with the summons, I tend to the view that it is based upon a hope that the documents may contain some admissions damaging to the applicant. Common fairness indicates that the Commission should not permit the respondent to inspect the documents for fishing purposes (see *Cooper v Bech (No 1)* (1975) 12 SASR 147 at 148).

For those reasons the Commission refuses the application of the respondent's solicitors to inspect the material in the custody of the Commission. The matter is determined accordingly.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.33(2)

APPLICATION TO SET ASIDE WITNESS SUMMONS

James Peter Thomas D. Anderson

and

Crystal Brook Dental Centre.

No. 591 of 1998.

IN CHAMBERS.

12 August 1998.

Declaration.

On 21st July 1998 the respondent issued a summons out of the Registry to Peter Christopher to appear as a witness in these proceedings. On the 7th August 1998 Peter Christopher wrote to the Commission applying to have the summons set aside. Dr Christopher's application is properly to be viewed as an application for cause to be shown for him to so appear. If that cause is not shown he is not required to appear: s.33(2) of the Act. The onus to show cause is on the party seeking to have that person appear. In this case, the respondent declined to make any submissions in relation to Dr Christopher's application. In my view that is sufficient for me to determine that he is not required to appear.

There is, therefore, no need to consider the reasons Dr Christopher has advanced in his application. Accordingly, the Commission determines that Dr Christopher is not obliged to appear in the Commission in response to the summons.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Section 27(1)(o)

James Peter Thomas D. Anderson

and

Crystal Brook Dental Centre.

No. 591 of 1998.

COMMISSIONER A.R. BEECH.

21 August 1998.

Reasons for Decision.

APPLICATION FOR FURTHER &
BETTER PARTICULARS

The short issue for determination is whether an order should issue requiring the respondent to provide further and better particulars of paragraph 5(i) of its Notice of Answer which refers to the receipt of information by it that the applicant was to commence a dental practice "in the immediate vicinity of the Practice…". If the respondent was told precisely that, in those words, it should say so. If the information received by the respondent was that the applicant was to commence a dental practice in a particular location then paragraph 5(i) is, in my view, too general and it is appropriate for an order to issue requiring the respondent to confirm what location it was told the dental practice was to commence.

Order accordingly

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Section 27(1)(o)

James Peter Thomas D. Anderson

and

Crystal Brook Dental Centre.

No. 591 of 1998.

IN CHAMBERS.

21 August 1998.

Order.

WHEREAS an application was lodged in the Commission pursuant to regulation 81 of the Industrial Reglations Commission Regulations 1985;

AND WHEREAS the Commission is of the view that an order should issue to assist in the expeditious and just hearing and determination of this matter;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred on me under the Industrial Relations Act 1979, hereby order—

THAT the respondent provide further and better particulars in accordance with the Reasons for Decision in this application of paragraph 5(i) of its Notice of Answer.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

James Peter Thomas D. Anderson

and

Crystal Brook Dental Health Centre.

No. 591 of 1998.

6 August 1998.

Order.

WHEREAS an application was lodged in the Commission pursuant to regulation 80 of the Industrial Relations Commission Regulations 1985;

AND WHEREAS the parties were heard in chambers on 31 July 1998;

AND HAVING HEARD Mr 1. Tait (of counsel) on behalf of the applicant and Ms M. Saraceni (of counsel) on behalf of the respondent;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred on me under the Industrial Relations Act 1979, hereby order—

(1) THAT within seven (7) days of the 3lst day of July, 1998, James Peter Thomas D. Anderson discover to the respondent Crystal Brook Dental Health Centre the following documents in his possession, custody or power—

(a) The applicant's professional diary of work appointments from 24 February 1998 and for the month of October 1997 on the basis that any personal entries contained may be masked by the applicant;

(b) The service agreement between the Anderson Family Trust and the respondent;

(c) Copies of any entry into his diary relating to discussions between Dr Kozeniauskas and the applicant between January 1996 and August 1997;

(d) Documents relevant to the applicant's absence from work between January 1996 and 18 March 1998 if they relate to annual leave taken;

(e) Correspondence and copy correspondence passing between the applicant and the respondent between January 1996 and 18 March 1998 which are relevant to the matters raised in the Notice of Application and the Notice of Answer and Counterproposal;

(f) Correspondence and copy correspondence passing between the applicant and the superannuation fund of which he was a member between January 1996 and March 1998 which relate to the amount of the applicant's superannuation entitlement during that period and whether that entitlement was paid to that superannuation fund;

(2) THAT within seven (7) days of the 31st day of July, 1998, the respondent Crystal Brook Dental Health Centre discover to the applicant James Peter Thomas D. Anderson the following documents which are or have been in its possession, custody or power—

The appointment book for the period from 16 March 1998 to 31 March 1998 provided that the respondent may mask from view client contact details.

(3) THAT within seven (7) days of the 31st day of July, 1998 James Peter Thomas D. Anderson produce to the Commission correspondence between the applicant and Futureplan Financial Systems with respect to the proposed Anderson Family Trust.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

William Hull

and

City of Mandurah.

No. 706 of 1998.

COMMISSIONER S.J. KENNER.

19 August 1998.

Direction.

HAVING heard Mr D Howlett (of counsel) on behalf of the applicant and Mr A Randles (of counsel) on behalf of the respondent the Commission, pursuant to the powers conferred on it under s 27 of the Industrial Relations Act, 1979, hereby directs—

(1) THAT the jurisdictional issues raised in this matter be heard and determined by way of written submissions of the parties;

(2) THAT the parties file and serve their written submissions by 31 August 1998;

(3) THAT the hearing dates of the 26th and 27th days of August 1998 be and are hereby vacated.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Russell Sparks, Donna Sparks, Noeline Mather

and

Victoria Hotel (WA) Pty Ltd.

No's. 1004, 1005 & 1006 of 1998.

COMMISSIONER S J KENNER.

8 October 1998.

Order.

WHEREAS on 5 June 1998 Russell Sparks, Donna Sparks and Noeline Mather ("the applicants") applied to the Commission pursuant s 29 of the Industrial Relations Act, 1979, for orders in respect of alleged unfair dismissal;

WHEREAS on 6 October 1998 the Commission convened a conference between the parties pursuant to s 32 of the Industrial Relations Act, 1979;

WHEREAS at the conference the Commission issued orders in relation to interlocutory matters to facilitate the expeditious hearing of the applications;

NOW THEREFORE the Commission pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

(1) THAT the applications be joined and heard and determined together.

(2) THAT the applicants file and serve on the respondent further and better particulars of their claims within seven days of the date of this Order.

(3) THAT the respondent file and serve on the applicants further and better particulars of its notice of answer and counter proposal within seven days of the service upon it of the applicant's further and better particulars of claim.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

A B Cardens

and

Cervantes Electrical Engineering Pty Ltd.

No. 1516 of 1998.

COMMISSIONER J F GREGOR.

12 August 1998.

Order.

WHEREAS on the 11 August 1998 the applicant in Application No. 1516 of 1998 applied for shorten time for a Notice of Answer and Counter Proposal to be lodged in respect of the application; and

WHEREAS the matter was heard ex parte on the 12 August 1998; and

WHEREAS the Commission having considered the circumstances set out in the application has decided to grant the application and require the respondent to file a Notice of Answer and Counter Proposal in Application No. 1516 of 1998 no later than 48 hours from the date of service;

NOW THEREFORE the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

(1) THAT the applicant serve upon the respondent a copy of Application No. 1516 of 1998 together with a copy of this Order.

(2) THAT the respondent file a Notice of Answer and Counter Proposal in respect of Application No. 1516 of 1998 no later than 48 hours from the date of service.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Incorporated

and

Director General, Education Department of Western Australia.

No. PSAC 51 of 1998.

4 August 1998.

Interlocutory Order.

WHEREAS having considered the issues in dispute in this matter and the conference proceedings pursuant to section 44 of the Industrial Relations Act, 1979 held on 30 July 1998; and

WHEREAS the respondent having confirmed at that conference that the respondent accepted that one of the respondent's employees, a Mr Alan Plumb, had applied by way of letter dated 8 June 1998 for information for the purpose of his entering into a salary packaging arrangement with the employer; and

WHEREAS it was confirmed by the respondent that no salary packaging arrangement had been entered into between Mr Plumb and the respondent;

WHEREAS having concluded that for the purposes of conciliation in this dispute that the respondent provide further detail of its position;

NOW THEREFORE I the undersigned pursuant to the powers conferred by the Industrial Relations Act, 1979 and specifically section 44(6)(ba)(iii), do hereby order —

1. (a) THAT the respondent inform the Commission of the person/s who is finally responsible for the decision as to whether or not the employer will enter into a salary packaging arrangement with a particular employee;

(b) THAT the respondent provide particulars of any of its actions/responses/decisions in relation to the letter from Mr Plumb dated 8 June 1998 from receipt of that letter to 4 August 1998;

(c) THAT the respondent provide particulars of each or any reason why the respondent has not entered into a salary packaging arrangement with Mr Plumb.

2. THAT the respondent provide the detail and or particulars required in answer to each subparagraph in 1. hereof to the Commission by 3:00pm on Wednesday the 5th day of August 1998, with a copy to The Civil Service Association of Western Australia Incorporated by the same time.

(Sgd.) S. A. CAWLEY,
[L.S.] Commissioner,
Public Service Arbitrator.

JOINDER/CONCURRENCE OF PARTIES— Application for—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Aluminium Products (1964) Pty Ltd and Others

and

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

No. 466 of 1997.

COMMISSIONER P.E. SCOTT.

1 September 1998.

Order.

WHEREAS this is an application filed on the 5th day of March 1997 by which the Applicants sought to be joined as parties or alternatively, be granted leave to intervene in Application No. 1725 of 1996; and

WHEREAS Application No. 1725 of 1996 was finalised by the issuing of an order dated 1 September 1998; and

WHEREAS there is no further purpose in this matter proceeding;

NOW THEREFORE, 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.) P.E. SCOTT,
[L.S.] Commissioner.

NOTICES— Cancellation of Awards/ Agreements/Respondents— Under Section 47—

CLERKS (COMMERCIAL, SOCIAL AND PROFESSIONAL SERVICES) AWARD. No. 14 of 1972.

METAL TRADES (GENERAL) AWARD. No. 13 of 1965.

TRANSPORT WORKERS (GENERAL) AWARD. No. 10 of 1961.

CLEANERS AND CARTAKERS AWARD 1969. No. 12 of 1969.

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

Clerks (Commercial, Social and Professional Services) Award No. 14 of 1972

namely

A T Brine & Sons Pty Ltd, 22 St George's Terrace, Perth

Metal Trades (General) Award No. 13 of 1965
Transport Workers (General) Award No. 10 of 1961

namely

A T Brine & Sons Pty Ltd

Cleaners and Caretakers Award, 1969 No. 12 of 1969

namely

A T Brine & Co (formerly A T Brine & Sons Pty Ltd), 19 Southport Street, Leederville WA 6007

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 206 on all correspondence.

Dated 30 September 1998.

(Sgd.) J. SPURLING,
Registrar.

ELECTRONICS INDUSTRY AWARD. No. A 22 of 1985.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents.

No. 76 of 1980, Part 97.

Electronics Industry Award No. A22 of 1985.

CHIEF COMMISSIONER W.S. COLEMAN.

27 August 1998.

Order.

HAVING read and considered the documents relating to this matter and there being no party desiring to be heard in opposition thereto;

NOW THEREFORE, 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, acting on my own motion in pursuance of the powers contained in Section 47 of the abovementioned Act, do hereby order and declare—

THAT from the date of this order the following employers be struck out of the Schedule of Respondents to the Electronics Industry Award No. A22 of 1985 namely—

Acet Limited, Herdsman Business Estate, 22-24 Hasler Road,

OSBORNE PARK WA 6017

Adasound Electronic Industries, 1040 Albany Highway, BENTLEY WA 6102

Bow Electronics Ltd, 78 Collingwood Street, OSBORNE PARK WA 6017

Cameronics Technology Corporation Ltd, 50 Clavering Road,

BAYSWATER WA 6053

Computer Protocol Pty Ltd, Node 500, 11 Brodie Hall Drive, BENTLEY WA 6102

Computerlog Pty Ltd, 20 Milford Street, EAST VICTORIA PARK WA 6106

Comsys Australia Pty Ltd, 360 Rokeby Road, SUBIACO WA 6008

Control Engineering Pty Ltd, 188 Balcatta Road, BALCATTA WA 6021

Deltec Pacific, 114 Burswood Road, VICTORIA PARK WA 6100

Magellan Corporation Pty Ltd, 248 St George's Terrace, PERTH WA 6002.

Ran Data Corporation Ltd, 200 Adelaide Terrace, PERTH WA 6000

Steedman Limited (Inc in WA), 384 Rokeby Road, SUBIACO WA 6008

STC Western Australia Pty Ltd, 396 Scarborough Beach Road, OSBORNE PARK WA 6017

Taimac Video Corporation, 323 William Street, PERTH WA 6000

Universal Electronics, 2 Oswald Street, VICTORIA PARK WA 6100

Winslade and Co Pty Ltd, 9 Pilbara Street, WELSHPOOL WA 6106

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

FITTERS (CONTINUOUS PROCESS WORK) HOSPITALS AWARD 1972

No. 20 of 1971.

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

Fitters (Continuous Process Work) Hospitals Award 1972 No. 20 of 1971

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 181 on all correspondence.

Dated 30 September 1998.

(Sgd.) J. SPURLING,
[L.S.] Registrar.

MEAT INDUSTRY (GOVERNMENT) AWARD 1983 No. A44 of 1981.

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

Meat Industry (Government) Award 1983 No. A44 of 1981

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 169 on all correspondence.

Dated 30 September 1998.

(Sgd.) J. SPURLING,
[L.S.] Registrar.

PUBLIC SERVICE APPEAL BOARD—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Pushpanjali Angelina Vyas

and

Commissioner of Police.

No. PSAB 11 of 1997.

PUBLIC SERVICE APPEAL BOARD
PUBLIC SERVICE ARBITRATOR J. F. GREGOR, CHAIRPERSON
MS DIANE ROBERTSON, BOARD MEMBER
MS GABRIELLA HAWKE, BOARD MEMBER.

Reasons for Decision.

On the 28 August 1998 Pushpanjali Angelina Vyas (the applicant) instituted an appeal to the Public Service Appeal Board (the Board) against a decision by the Commissioner of Police (the respondent) to terminate her employment. According to the evidence before the Board the applicant commenced employment with the WA Police Service on the 25 July 1996 as a Level 1 officer in the Forensic Branch. On the 16 November 1996 she was offered a permanent position via an offer signed by the Senior Personnel Officer, Personnel Administration of the WA Police Service. The offer (*Exhibit E1*) was made, under section 64(1)(a) of the Public Sector Management Act (PSM Act) and subject to the WA Police Service Enterprise Agreement for Public Service Officers 1996, to a position PO107505 Level 1 in the Forensic Branch of the Photographic Section. Permanency was subject to successful completion of a six month probationary period. Prior to the conclusion of the probationary period the applicant's work would be assessed and if it was satisfactory, and if she met other qualifications and requirements set out in the letter of offer, then appointment as a permanent officer could be confirmed. It was made clear that the terms and conditions of employment were those provided in the PSM Act and any regulations made under that act including the disciplinary provisions.

The applicant told the Board that during her probationary period she was subject to harassment by the acting supervisor and her co-workers; she felt isolated and believed she was receiving less favourable treatment than other employees. This was manifest particularly by her not receiving what she considered to be proper training or being allocated a full range of duties. This led her to inform Personnel Administration of her concerns. She did this because she had the impression that she may be treated unfairly in performance assessments. At the same time she formed the opinion that other employees were receiving favouritism in training. She also spoke to her supervisor about this.

From December 1996 through to February 1997 the applicant was employed in various sections. According to her she thought she would commence in the Warrant Bureau on the 10 December but instead she was sent to Criminal Records completing typing on microfilm, filing and matching of information sheets for fingerprints. On 23 December 1996 she worked a half day in each of the Drug Room and Criminal Records sections. On a number of occasions she asked when she would commence in the Warrant Bureau but she did not receive a definite answer. Eventually on the 3 February 1997 she arrived in the Warrant Bureau and was instructed to practice her typing. This went on for over two weeks. During this time she alleged she was required to copy type from a magazine eight hours per day. This she found extremely embarrassing. Eventually she became concerned and upset about the things that were happening to her and she rang the counsellor of the Police Health Service, who gave evidence in these proceedings, to complain about her isolation and embarrassment. In due course she commenced counselling to help overcome these feelings. In the applicant's mind her perceptions concerning her mistreatment did not change and in April she approached her team leader to discuss her probationary period. According to her she still thought she was under constant harassment and isolation and receiving less favourable treatment than other employees, nor had she received full training in her range of duties. Around this time she was told that her probationary period would be extended in order that she receive that training.

The assessment of the applicant for the extension of the probationary period occurred on the 23 July, one month prior to the end of the probation period. The applicant told the Board of her complaints concerning the typing tests that were administered to her. She alleged the supervisor made errors, other employees were allowed to make more mistakes than her but no action was taken. Her training was inadequate, the assessment was unfair and at a different standard and this made her dismissal unfair.

The dismissal notice is contained in a letter of 19 August (*Exhibit E2*). Formal parts omitted it is incorporated herein—

RE: TERMINATION OF EMPLOYMENT

As you are aware your confirmation of permanency was initially deferred for three months and, in order for an assessment to be completed at the end of this period, you were placed on performance management. This has resulted in regular meetings (daily) and on-going training to assist you to achieve a minimum level of competence in the position within the Forensic Branch. As there appears to have been no discernible improvement in performance I have no option but to terminate your employment with this Agency with effect from close of business August 20, 1997.

You will receive four (4) weeks pay in lieu of notice and any outstanding accruals owing to you in due course.

The Board heard evidence from the applicant and the clinical psychologist. For the purposes of these Reasons there is no need to summarise his evidence but the Board has taken into account what he has said in its analysis of the information before it.

For the respondent it was argued that the issue was a simple one where an employee on probation did not meet the standard performance required and the employer in due course exercised the option of denying confirmation of a permanent appointment. This was not done before there were extensive efforts made to train, support and assist the applicant to reach the standard of performance required. The allegations that the applicant was treated unfairly by harassment were refuted. Evidence was called to demonstrate that despite help and assistance from supervisors and other staff the applicant either could not or chose not to meet the standards of performance required by the respondent.

Through evidence, Ms Hancy who appeared for the respondent, rebutted each and every one of the claims made by the applicant. It was emphasised to the Board that typing accuracy is important particularly when recording information on restraining orders, criminal histories and warrants. There

were concerns raised about the applicant's typing ability and action was taken to address that deficiency. Rather than risk her making mistakes loading warrants her supervisor arranged for her to improve her accuracy. There were tests done which showed there had been marginal improvement. There is no evidence at all to support the allegation that there were tactics of harassment and isolation or less favourable treatment by acting supervisors and co-workers. All of these allegations are denied.

The respondent denied that the training provided to the applicant was inadequate or that the performance of the assessment was unfair. Not only was the training and assessment consistent, no other officer has ever needed or received such extensive training in both time and resources. If there was a different standard applied it was only because the applicant was being performance managed. This meant that a concerted effort was made to bring her up to the standard required and give her every chance to prove herself.

In his evidence Mr Clarkson who is the Clerk-In-Charge, Forensic Division of the Western Australian Police Force, gave a detailed recitation of all that was done to help the applicant. It is unnecessary to recite all of that evidence. It is sufficient to comment that at the completion of Mr Clarkson's evidence, the Board reached the conclusion that it did not need to hear further evidence from the respondent. Instead it listed the matter for final submissions.

The respondent told the Commission that all options were considered prior to a recommendation being made that the applicant's appointment be annulled and her services be terminated. Because she had not demonstrated discernible improvement in any area she was required to perform, it was determined the only right option available was to annul her appointment therefore terminating her services.

Mr Rea, who appeared for the applicant, made detailed submissions concerning jurisdiction. Jurisdiction was not challenged by the respondent nor was there anything put to us which would lead us to the conclusion that we are not properly able to dispose of this matter under the powers vested in us by Section 80I of the Industrial Relations Act, 1979. The applicant's advocate submitted that it is accepted that the applicant's performance levels were less than desirable but it is not accepted that remedy was entirely within her control. The performance assessment was conducted in circumstances adverse to her. She had feelings of intimidation and harassment and this affected her performance and added to her stress levels. She knew her job was on the line and this reflected in her difficulties in achieving standards which were appropriate. It was suggested that the applicant had less than a fair go. She should be given her employment back and a proper and fair chance to lift her performance to acceptable standards.

We have had the opportunity to observe the applicant and the witnesses that have been called in these proceedings. Here is a situation where an officer was properly appointed under the terms of the PSM Act. A probationary period is a standard contractual requirement for members of the Public Service. Its purpose is to allow the employer to assess whether an employee is suitable for the work for which they are employed. It is trite law to say that an employer is able at any time during a probationary period to bring the arrangement to an end as if the matter was still at first interview. However the employer in this case did not do so. It entered into a comprehensive training program for this employee. Exhibits H1, H2, H3 and in particular H5 record the extensive efforts which were made to assist the applicant by way of managing her performance. The notes of the meetings between Mr Clarkson and the applicant show a continuing and patient attempt to assist her with problems that she was facing. Additionally the respondent, through its employee support services with the use of its clinical psychologist, provided her with the type of support that is not available in many other organisations. We have carefully examined all the information before us and we can find no grounds on which to criticise the respondent for the attempts that it made to assist the applicant.

It is suggested to us that she has received less than a fair go in this employment relationship. On the information before us, we come to a contrary view. Everything that could be done to assist the applicant to maintain her position was done. Unfortunately those attempts were not successful and ultimately the respondent reached the position where it could see no other cause of action but to bring the relationship to an end. It did so properly within the powers vested in it by the PSM Act. We can find no reason to justify interference with that decision and the application will be dismissed.

Appearances: Mr E Rea appeared on behalf of the applicant.

Ms S Hancy appeared on behalf of the respondent.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act, 1979.

Pushpanjali Angelina Vyas

and

Commissioner of Police.

No. PSAB 11 of 1997.

PUBLIC SERVICE APPEAL BOARD
PUBLIC SERVICE ARBITRATOR J. F. GREGOR, CHAIRPERSON
MS DIANE ROBERTSON, BOARD MEMBER
MS GABRIELLA HAWKE, BOARD MEMBER.

28 July 1998.

Order.

Having heard Mr E Rea on behalf of the applicant and Ms S Hancy on behalf of the respondent, the Public Service Appeal Board, pursuant to the powers conferred on it, hereby orders:

THAT the application be and is hereby dismissed.

(Sgd.) J. F. GREGOR,
[L.S.] Public Service Arbitrator
Chairperson, Public Service Appeal Board.

RECLASSIFICATION APPEALS—

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Wayne Louis Daley

and

Hon. Minister for Community Services.

No. PSA 15 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 24 January 1992 Wayne Louis Daley applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ronald Norman Bailye

and

Dental Services.

No. PSA 38 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 24 February 1992 Ronald Norman Bailye applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Peter Charles Mears

and

Director, Corrective Services.

No. PSA 52 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 10 March 1992 Peter Charles Mears applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Terrence John Flood

and

Director, Corrective Services.

No. PSA 51 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 10 March 1992 Terrence John Flood applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Francis Keith Scott

and

Director, Corrective Services.

No. PSA 53 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 10 March 1992 Francis Keith Scott applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Janette E Lenepveu

and

Department of Employment Vocational Education and Training.

No. PSA 54 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 11 March 1992 Janette E Lenepveu applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Susan Jory

and

Ministry of Education.

No. PSA 55 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 16 March 1992 Susan Jory applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Lenna Margaret Truslove

and

The Honourable Minister for Education.

No. PSA 56 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 18 March 1992 Lenna Margaret Truslove applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Andrea Norman

and

The Honourable Minister for Education.

No. PSA 60 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 18 March 1992 Andrea Norman applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Margaret Ruth Angel

and

The Honourable Minister for Education.

No. PSA 62 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 18 March 1992 Margaret Ruth Angel applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Lynette Margaret Madigan

and

The Honourable Minister for Education.

No. PSA 65 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 18 March 1992 Lynette Margaret Madigan applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Margaret Gladys Cowles

and

The Honourable Minister for Education.

No. PSA 64 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 18 March 1992 Margaret Gladys Cowles applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Jeanette Leanne Walling

and

The Honourable Minister for Education.

No. PSA 67 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 18 March 1992 Jeanette Leanne Walling applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Patricia Allnutt

and

The Honourable Minister for Education.

No. PSA 68 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 18 March 1992 Patricia Allnutt applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Lynn Shelley Galbraith

and

The Honourable Minister for Education.

No. PSA 70 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 18 March 1992 Lynn Shelley Galbraith applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Pamela Gardiner

and

The Honourable Minister for Education.

No. PSA 69 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 18 March 1992 Pamela Gardiner applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Michele Josephine Mary Williams

and

The Honourable Minister for Education.

No. PSA 71 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 18 March 1992 Michele Josephine Mary Williams applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Pauline Ethel Armstrong

and

The Honourable Minister for Education.

No. PSA 72 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 18 March 1992 Pauline Ethel Armstrong applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Rosalind Patricia Weinert

and

The Honourable Minister for Education.

No. PSA 74 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 19 March 1992 Rosalind Patricia Weinert applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Evelyn May Tempany

and

The Honourable Minister for Education.

No. PSA 73 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 18 March 1992 Evelyn May Tempany applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Eric James Payne

and

The Honourable Minister for Education.

No. PSA 77 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 20 March 1992 Eric James Payne applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Danielle Elizabeth Hesler

and

The Honourable Minister for Education.

No. PSA 78 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 20 March 1992 Danielle Elizabeth Hesler applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Valerie Jean Anderson

and

The Honourable Minister for Education.

No. PSA 80 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 20 March 1992 Valerie Jean Anderson applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Civil Service Association of WA (Inc.)

and

The Honourable Minister for Education.

No. PSA 81 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 20 March 1992 the Civil Service Association of WA (Inc.) applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Rita Eileen Hawkins

and

The Honourable Minister for Education.

No. PSA 83 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 20 March 1992 Rita Eileen Hawkins applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Susan Spencer

and

The Honourable Minister for Education.

No. PSA 86 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 20 March 1992 Susan Spencer applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Alice Cecilia Thomas

and

The Honourable Minister for Education.

No. PSA 90 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 26 March 1992 Alice Cecilia Thomas applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Helen May Temple

and

The Honourable Minister for Education.

No. PSA 87 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 23 March 1992 Helen May Temple applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Willem Arie Stolk

and

The Honourable Minister for Education.

No. PSA 94 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 27 March 1992 Willem Arie Stolk applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Geoffrey Robert Gilbert

and

The Honourable Minister for Education.

No. PSA 95 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 27 March 1992 Geoffrey Robert Gilbert applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Tanya Catrine Nugent

and

The Chairman, Public Service Commission.

No. PSA 97 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 6 April 1992 Tanya Catrine Nugent applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Theovorus Mathieu Marie Berden

and

Public Service Commissioner.

No. PSA 96 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 6 April 1992 Theovorus Mathieu Marie Berden applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Murray James Vance

and

Main Roads Western Australia.

No. PSA 109 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 13 May 1992 Murray James Vance applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Glenys Lillian Nelson

and

The Honourable Minister for Education.

No. PSA 112 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 20 May 1992 Glenys Lillian Nelson applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Kaye Maree Ruggeri

and

Edith Cowan University.

No. PSA 120 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 23 June 1992 Kaye Maree Ruggeri applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Christine Angela McGeoch

and

Edith Cowan University – Churchlands Campus.

No. PSA 119 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 23 June 1992 Christine Angela McGeoch applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Thomas Kee Hing Chung

and

Edith Cowan University.

No. PSA 127 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 13 July 1992 Thomas Kee Hing Chung applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Harshajan Dhaliwal

and

Edith Cowan University.

No. PSA 129 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 13 July 1992 Harshajan Dhaliwal applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Margaret Elaine Carroll

and

Edith Cowan University.

No. PSA 135 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 17 July 1992 Margaret Elaine Carroll applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Diana Millsom

and

Edith Cowan University.

No. PSA 134 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 17 July 1992 Diana Millsom applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Douglas William Bennett

and

Public Service Commissioner.

No. PSA 139 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Douglas William Bennett applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Craig Trevor Bergersen

and

Public Service Commissioner.

No. PSA 140 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Craig Trevor Bergersen applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Raymond Leslie Brenton

and

Public Service Commissioner.

No. PSA 142 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Raymond Leslie Brenton applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Klaus Dieter Bolke

and

Public Service Commissioner.

No. PSA 141 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Klaus Dieter Bolke applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Alan Rodney Bull

and

Public Service Commissioner.

No. PSA 143 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Alan Rodney Bull applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

John Terrence Bush

and

Public Service Commissioner.

No. PSA 144 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 John Terrence Bush applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Thomas Clifton Lushey

and

Public Service Commissioner.

No. PSA 146 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Thomas Clifton Lushey applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Arthur Ernest Carey

and

Public Service Commissioner.

No. PSA 145 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Arthur Ernest Carey applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

John Thomas Clover

and

Public Service Commissioner.

No. PSA 147 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 John Thomas Clover applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Graeme Cornish

and

Public Service Commissioner.

No. PSA 148 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Graeme Cornish applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Christopher Thomas Darwin

and

Public Service Commissioner.

No. PSA 150 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Christopher Thomas Darwin applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ewa Maria Cwiek

and

Public Service Commissioner.

No. PSA 149 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Ewa Maria Cwiek applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ronald Dibbells

and

Public Service Commissioner.

No. PSA 151 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Ronald Dibbells applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Peter Donnelly

and

Public Service Commissioner.

No. PSA 152 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Peter Donnelly applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ronald Ivan Elverd

and

Public Service Commissioner.

No. PSA 154 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Ronald Ivan Elverd applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Raymond Charles Elson

and

Public Service Commissioner.

No. PSA 153 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Raymond Charles Elson applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Phillip Douglas Evans

and

Public Service Commissioner.

No. PSA 155 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Phillip Douglas Evans applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

William Walker Fisher

and

Public Service Commissioner.

No. PSA 156 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 William Walker Fisher applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Kenneth Malcolm Goodchild

and

Public Service Commissioner.

No. PSA 158 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Kenneth Malcolm Goodchild applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Chris Gerginis

and

Public Service Commissioner.

No. PSA 157 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Chris Gerginis applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Kayley Margaret Griffiths

and

Public Service Commissioner.

No. PSA 159 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Kayley Margaret Griffiths applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Frank Leslie Gyoergy

and

Public Service Commissioner.

No. PSA 160 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Frank Leslie Gyoergy applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

David Robert Jones

and

Public Service Commissioner.

No. PSA 164 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 David Robert Jones applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Bruce Antony Hastings

and

Public Service Commissioner.

No. PSA 161 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Bruce Antony Hastings applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Stanley Leslie Kenneth Jones

and

Public Service Commissioner.

No. PSA 165 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Stanley Leslie Kenneth Jones applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Julie Ann Kitto

and

Public Service Commissioner.

No. PSA 166 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Julie Ann Kitto applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Rodney Clive Kitto

and

Public Service Commissioner.

No. PSA 167 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Rodney Clive Kitto applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ian Vivian Ladner

and

Public Service Commissioner.

No. PSA 168 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Ian Vivian Ladner applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Katherine Elisabeth Lancaster

and

Public Service Commissioner.

No. PSA 169 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Katherine Elisabeth Lancaster applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mark Raymond Liedel

and

Public Service Commissioner.

No. PSA 170 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Mark Raymond Liedel applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

James Frederick Lorrimar

and

Public Service Commissioner.

No. PSA 172 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 James Frederick Lorrimar applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Paul Arthur Littlely

and

Public Service Commissioner.

No. PSA 171 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Paul Arthur Littlely applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Anthony George Marfleet

and

Public Service Commissioner.

No. PSA 173 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Anthony George Marfleet applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Barbara Ann Marks

and

Public Service Commissioner.

No. PSA 174 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Barbara Ann Marks applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Brian David Murphy

and

Public Service Commissioner.

No. PSA 177 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Brian David Murphy applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Raymond Donald Matson

and

Public Service Commissioner.

No. PSA 176 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Raymond Donald Matson applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

John Peter Niggli

and

Public Service Commissioner.

No. PSA 178 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 John Peter Niggli applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ian Ronald Pettingill

and

Public Service Commissioner.

No. PSA 179 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Ian Ronald Pettingill applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

James John Scott

and

Public Service Commissioner.

No. PSA 181 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 James John Scott applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

P J Phillippe

and

Public Service Commissioner.

No. PSA 180 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 P J Phillippe applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Laurie Spatariu

and

Public Service Commissioner.

No. PSA 182 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Laurie Spatariu applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Peter James Strickland

and

Public Service Commissioner.

No. PSA 184 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Peter James Strickland applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Murray William Verhoeff

and

Public Service Commissioner.

No. PSA 186 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Murray William Verhoeff applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Desmond Francis Toomey

and

Public Service Commissioner.

No. PSA 185 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Desmond Francis Toomey applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ellwyn Phillip Watson

and

Public Service Commissioner.

No. PSA 187 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Ellwyn Phillip Watson applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

James Watson

and

Public Service Commissioner.

No. PSA 188 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 James Watson applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Hilton John Devereux

and

Ministry of Education.

No. PSA 191 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Hilton John Devereux applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Karina Valerie Watson

and

Public Service Commissioner.

No. PSA 189 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 30 July 1992 Karina Valerie Watson applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Janice May Press

and

Edith Cowan University.

No. PSA 193 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 3 August 1992 Janice May Press applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

John Douglas MacPherson

and

Mr P Shaw, Executive Director, DOSHWA.

No. PSA 208 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 11 September 1992 John Douglas MacPherson applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Donald Albert Moore

and

Director Police Licensing and Services.

No. PSA 237 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 19 October 1992 Donald Albert Moore applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Italo Amato

and

Department of Employment, Vocational, Education and Training.

No. PSA 240 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 27 October 1992 Italo Amato applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Marian Mathilda Taylor

and

Department of Employment, Vocational, Education and Training.

No. PSA 241 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 27 October 1992 Marian Mathilda Taylor applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Vanessa Adrienne Joanna Waghorn

and

Department of Employment, Vocational, Education and Training.

No. PSA 242 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 27 October 1992 Vanessa Adrienne Joanna Waghorn applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Roger Francis Nilon

and

Department of Employment, Vocational, Education and Training.

No. PSA 245 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 5 November 1992 Roger Francis Nilon applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Leon Francis Van Erp

and

Department of Employment, Vocational, Education and Training.

No. PSA 250 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 10 November 1992 Leon Francis Van Erp applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Graydon Hutchinson

and

Water Authority of Western Australia.

No. PSA 256 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 25 November 1992 Graydon Hutchinson applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Stephen David Jenner

and

Edith Cowan University.

No. PSA 258 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 25 November 1992 Stephen David Jenner applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

[L.S.]

(Sgd.) J.F. GREGOR,
Commissioner,
Public Service Arbitrator.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Kenneth William Hart

and

The University of Western Australia.

No. PSA 263 of 1992.

COMMISSIONER J F GREGOR.

14 August 1998.

Order.

WHEREAS on the 23 December 1992 Kenneth William Hart applied to the Public Service Arbitrator for an Order pursuant to Section 80E(2) of the Industrial Relations Act, 1979; and

WHEREAS the applicant was requested in October 1995 to inform the Commission of the status of the application; and

WHEREAS the applicant was advised that in the absence of any advice the Public Service Arbitrator will dismiss the application for want of prosecution; and

WHEREAS by the 13 August 1998 there had been no reply from the applicant, the Public Service Arbitrator decided to dismiss the application for want of prosecution;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby order—

THAT the application be and is hereby dismissed for want of prosecution

[L.S.]

(Sgd.) J.F. GREGOR,
Commissioner,
Public Service Arbitrator.