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CUMULATIVE CONTENTS AND DIGEST APPEAR AT THE END OF THIS PUBLICATION

FULL BENCH—
Appeals against decision of Commission—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Director General of the Ministry for Culture and the Arts
(Appellant)

and

The Civil Service Association of Western Australia Incorporated and Others
(Respondents).

No. 189 of 1999.

BEFORE THE FULL BENCH

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

16 July 1999.

Reasons for Decision.

THE PRESIDENT: These are the joint Reasons for Decision of Chief Commissioner W S Coleman and myself.

This is an appeal against a decision of the Public Service Arbitrator (hereinafter referred to as "the Arbitrator") made on 8 December 1998 in application No PSA CR 85 of 1998, pursuant to s.49 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act").

That decision, formal parts omitted, reads as follows (see page 18 of the appeal book (hereinafter referred to as "AB"))—

> "THAT on registration of the enterprise agreement between the parties as expressed at 30 November 1998, the operative date for the purposes of calculating the first pay increases due employees shall be deemed to be the date of the commencement of the first pay period on or after the 4th day of November 1998."

It is against that decision that the appellant now appeals on the following grounds, which were amended by leave—

> "1. The learned Commissioner erred in law and acted in excess of jurisdiction in ordering that the operative date for the purpose of calculating the first pay increase due to employees upon registration of an enterprise agreement between the parties as expressed on 30 November 1998 should be the first pay period commencing on or after 4 November 1998 in that such order purports to vary an industrial agreement otherwise than as permitted under the provisions of the Industrial Relations Act 1979 ("the Act").
>
> PARTICULARS
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> An industrial agreement may only be varied by the Commission for the purpose of including, omitting or varying a provision authorising an employer to stand down an employee and not otherwise.
>
> 2. (a) Further, and alternatively to paragraph 1, if the effect of the order is not to vary an industrial agreement then the learned Commissioner erred in law and acted in excess of jurisdiction to the extent of making an order which purported to be given retrospective effect, which is not permitted under the provisions of the Act.
>
> (b) Further and in the alternative, the order purported to be given retrospective effect prior to 16 November 1998, the date upon which the application leading to the making of the order was lodged in the Commission.
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> 3. The learned Commissioner erred in fact in finding that the first respondent proceeded to ballot its members on the basis that the operative date for pay increases would be 4 November 1998 when such finding was inconsistent with the submissions advanced by the Advocate for the first respondent that as part of the balloting process members were informed that the Ministry and the CSA were negotiating on an operative date for the first salary increase and, by paragraph 6 of the Statement of Agreed Facts, the appellant forwarded a letter to the first respondent communicating a willingness to support a date of effect per previous correspondence.
>
> 4. The learned Commissioner erred in fact in finding that, true to its commitments, the appellant confirmed that the date of notification of the outcome was endorsed for the purposes of the operative date of the first pay increase when such a finding was inconsistent with paragraph 9 of the Statement of Agreed Facts which asserted that the respondent would do no more than support a proposition the date of effect of the proposed agreement should be no earlier than 4 November 1998."

BACKGROUND

The appellant (the respondent at first instance), the Director General of the Ministry for Culture and the Arts, was, at all material times, the employer of a number of employees. These were represented by the first respondent (the applicant at first instance), The Civil Service Association of Western Australia Incorporated (hereinafter referred to as "the CSA"), which is an organisation as that is defined in s.7 of the Act. The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch is the second respondent on this appeal. (The other respondents were not represented on this appeal.)

The CSA made application pursuant to s.44 of the Act to the Commission and sought a declaration and an order that the first pay increase pursuant to the agreement between the CSA and the Director General should take place no later than 4 November 1998. The appellant acknowledged that the date, 4 November 1998, was agreed, but said that this was not something to which she could now agree because of the decision of the government which is contained in the "Guidelines for Workplace Bargaining" (see page 93 (AB), paragraph 39, which reads as follows)—

> "39. No retrospectivity will be allowed in agreements. Wage increases under an individual workplace agreement are to apply from the date it is signed by both parties or from any later date provided in the agreement. Wage increases in all other agreements are to apply from the first pay period commencing on or after the date of registration or from any later date provided for in the agreement."

Upon the hearing of the matter, five other organisations of employees, namely The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch, The Media, Entertainment and Arts Alliance of Western Australia (Union of Employees), The Shop, Distributive and Allied Employees' Association of WA, the Transport Workers' Union of Australia, Industrial Union of Workers, WA Branch, and The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers – Western Australian Branch, applied to be joined and were joined to the application by the CSA, they having coverage of employees of the appellant employer.

The parties filed at first instance a Statement of Agreed Facts (see pages 56-57 (AB)). The Statement, specifically, in paragraph 1, agreed to this fact—

> "1. The parties to this application have agreed on a replacement agreement for five agencies which now comprise the Ministry for Culture and the Arts with the exception of the following issue—
>
> Whether the operative date for the first increase shall be from the date of registration of the industrial agreement or 4 November 1998."

That was a specific recognition of the question which was before the Arbitrator.

It was agreed, too, that by letter dated 25 September 1998 (see page 58 (AB)), the appellant wrote to the CSA communicating "in principle" support for a "date of effect" which would operate "prior to the processing of the proposed agreement". By that, we assume was meant that it would operate before the agreement's registration. The agreement itself is and was called The Ministry for Culture and the Arts Enterprise Agreement.

After various discussions, on 5 November 1998 the appellant advised that the date of effect of the proposed agreement should be no earlier than 4 November 1998 (see page 74 (AB), an electronic communication from Mr John Phillips, Manager Human Resources of the appellant's Ministry, to Ms Deana Whitaker). That contains, inter alia, the second paragraph which reads—

> "Consistent with previous advice, the Executive Team would support the proposition (at the WAIRC) that the **d.o.e should be no earlier than 4/11/98**."

On 9 November 1998, the appellant forwarded a copy of the prepared agreement, which contained an operative date of 4 November 1998, to the CSA. That agreement was to be referred to the Cabinet Standing Committee for Labour Relations (see page 77 (AB)).

The letter under cover of which the document was sent was a letter from Mr Phillips to the CSA, marked for the attention of Ms Whitaker. Inter alia, the letter says—

> "This Agreement has incorporated all amendments agreed to by the Single Bargaining Unit, and is the version that will be referred to the Cabinet Standing Committee for Labour Relations, and the WAIRC. Items to note include—
>
> - The availability of salary packaging for Award based staff;
> - A date of effect of 4 November 1998." (our underlining)

The letter also notes that the writer would forward the Memorandum of Understanding to the Director General for her signature on 10 November 1998 and would discuss the matter with Ms Whitaker and another person when they were available as to the best method of proceeding to formal registration of the agreement in the Commission. That date was accepted by Ms Whitaker in a memorandum (see 78(AB)) of 12 November 1998 to Mr Phillips.

The 4 November 1998 was therefore accepted by the CSA as the date from which the first salary increase would operate pursuant to the agreement (see 78(AB)).

The proposed agreement was forwarded to the Cabinet Sub-Committee which considered it on 16 November 1998. The outcome was orally communicated to the CSA on 16 November 1998 and in writing on 23 November 1998 (see page 83 (AB)). That advised that Cabinet had approved the Cabinet Standing Committee on Labour Relations decision for the proposed Industrial Agreement 1998 and the Memorandum of Understanding between the parties operative from the date of registration by the Western Australian Industrial Relations Commission, subject to three other conditions.

That decision of Cabinet, therefore, did not endorse the agreement that the first pay increase would date from or after 4 November 1998.

The agreement appears at pages 98-173 (AB). The agreement in clause 10 contains a subclause (1) that the agreement shall operate from the date on which it is registered in the Commission and shall remain in operation for a term of 24 months from the date of registration. The agreement itself has dates from 8 November 1998 to 25 November 1998.

The Memorandum of Understanding was signed by Ms Ricky Burges, the Director General, on 11 November 1998, and by the Secretary of the CSA, Mr David Robinson, on 20 November 1998. The Memorandum of Understanding, it is provided, inter alia, has been entered into in an effort to particularise, inter alia, what the parties will do should the parties be able to reach agreement on matters currently outstanding but subsequently agreed to post the registration of the Ministry for Culture and the Arts Enterprise Bargaining Agreement 1998, and what matters the parties are committed to negotiating further in an effort to try and resolve outstanding issues. There is no specific mention of the operative date of the first payment of increased salary in that document.

On 26 November 1998, the Arbitrator sat to arbitrate the matter. At page 26 (AB), Ms Whitaker, who appeared for the respondent CSA in this matter (the applicant at first instance), and the other applicants, summarised the issues. These were that an agreement was reached, that the first pay increase, which the Ministry for Culture and the Arts Enterprise Bargaining Agreement 1998 was not then registered would be payable from 4 November 1998; that the agreement reached could reasonably have been reached and relied on by the negotiating parties, that to not follow through with the agreement would damage the industrial relationship with the CSA and its members to a significant extent; and that other government agencies had agreed to a similar arrangement, but did not have government policy applied to them in this manner.

Ms Zupanovich, who appeared at first instance for the appellant, after referring to sections of the Act, namely s.39 and s.44(13), submitted that there was no agreement before the Commission to be registered because there was no application to do so (see page 45 (AB))—

> "So all we're talking about is initial operative date for a potential industrial agreement."

Ms Zupanovich also said that the agreement went to Cabinet and was not consistent with the policy as to operative dates which was included in the document (see page 52 (AB)).

The Arbitrator observed that it was not until March 1998, some nine months after negotiations commenced, that "human resources (and other factors) applying to the Ministry were centralised".

The CSA was not able to take a proposal to its members until October 1998, 16 months after discussions commenced. When, as the Arbitrator observed, all other terms and conditions for an enterprise agreement were a matter of consensus, the appellant considered its position and essentially suggested that, subject to the CSA's members approving those terms and conditions by ballot, the date of notification of that fact to the employer could be endorsed as the operative date for the first pay increase.

There was a balloting of CSA members as to the agreement between 26 October 1998 and 2 November 1998 (see page 29 (AB)) and the agreement approved.

On 4 November 1998, the appellant was notified that the agreement had been approved by the members.

The respondent then, the next day, confirmed that the date of notification of that outcome was endorsed for the purposes of the operative date of the first agreed pay increase.

As the Arbitrator also observed, arbitration was required to determine whether or not the operative date for the first pay increase should be 4 November 1998 or another prospective date from the date of hearing on 30 November 1998, based on whenever the agreement was registered with the Commission.

The Arbitrator concluded that the rejection of 4 November 1998 was done relying on paragraph 39 of the "Government Wages Policy and Workplace Bargaining Guidelines". There was no expression, by or on behalf of the respondent, of the reasons for the rejection of that date. The Arbitrator made a finding that the negotiations extending over a lengthy period constituted special circumstances for the purposes of the Wage Fixing Principles.

The Arbitrator also found as follows—

> "Submissions were put that the Commission was prohibited by the Act from deciding an operative date earlier than the CSA's application for arbitration; that being made on 16 November 1998. But it would be very curious outcome if the Commission, having precluded access to arbitration during enterprise bargaining other than as a last resort, was then to be prohibited from dealing with the actual issue because an application for that arbitration was not made earlier than when the dispute arose. I do not accept that the Act should be construed in this way. And in any event the order to be made will have effect from a prospective date."

The Arbitrator then concluded that there was no other impediment to the making of the order and expressed herself satisfied that she should "endorse" the date of 4 November 1998 for the purpose of the agreed pay increase.

The order was then made on 8 December 1998. However, it was not effective until 4 January 1999 when it was deposited in the registry at 1.58 pm.

ISSUES AND CONCLUSIONS

The decision of the Arbitrator was a discretionary decision, as such a decision is defined in Norbis v Norbis 65 ALR 12 (HC). This Full Bench cannot interfere with the decision unless it is established that an error or errors were made in the exercise of the discretion at first instance, as those errors are described in House v The King [1936] 55 CLR 499 (HC) (see also Gromark Packaging v FMWU 73 WAIG 220 (IAC)).

The application, it should be understood, was not an application to register an agreement under s.41 of the Act. The matter came before the Arbitrator under s.44 of the Act, and the memorandum of dispute sets out the subject matter in such a manner as to support that view.

The sole question before the Arbitrator was on what date the first pay increase due under the agreement should be made. The question before the Arbitrator was not whether the agreement should be registered. There was before the Arbitrator an issue for arbitration pursuant to s.44 as to one matter which had been agreed to be included in the agreement, but subsequently was excluded, that exclusion being the subject of disagreement between the parties.

It is true that an industrial agreement cannot be varied by the Commission. Under s.41, the Commission can, however, require variations before a registration is effected.

It is noteworthy that the agreement having been registered, the appellant specifically said, upon the hearing of this appeal, that the agreement's registration is not challenged. That, in itself, constituted an admission that the agreement's registration was not the process before the Commission. We should add that the order appealed against could not be competently appealed against on that basis, in any event. That is because the order does not purport to register the agreement.

What the order clearly does is to prescribe that on registration of the enterprise bargaining agreement between the parties as expressed at 30 November 1998, the operative date for the purpose of calculating the first pay increase due to employees shall be deemed to be the date of commencement of the first pay period on or after 4 November 1998. The order was obviously made before the agreement was registered.

Alternatively, the decision as to the date of payment of the first increase was such as to be a condition precedent to the registration of the agreement which was no part of the agreement. In addition and alternatively, the actual terms which the parties had agreed as constituting the agreement, if any, as to the date of the first payment of the increased salary, in that respect were to be determined. We say that because there was a matter of agreement subsequently repudiated by Cabinet.

Accordingly, for those reasons, there is no merit in ground 1 because the order does not purport to vary an industrial agreement, an industrial agreement meaning "an agreement registered by the Commission under this Act as an industrial agreement" (see s.7 of the Act). However, it would be and was specifically within power before registering the agreement for the Arbitrator to require the parties to effect a variation to reflect its order, or, alternatively, as the Arbitrator seems clearly to have done, to have resolved the question of the date of the increased payment as a condition precedent to the agreement being entered into. Accordingly, it would be within power for the Arbitrator, having decided what the agreement was by the use of its s.44 powers, to register it, if that were the application. Alternatively, having ascertained the true intention of the parties, the variation sought could be required to be made before the agreement was registered.

The order did not in any way purport to vary an industrial agreement because none existed, nor was it sought to be varied.

The Arbitrator was not prevented by s.39, s.41(3) or s.44(13) of the Act from making the order which it did. The order was within power.

As to ground 2, for the reasons which we have already mentioned, the Arbitrator did not err in law or act in excess of jurisdiction in making the order which she made.

Further, the facts in this matter are entirely different from those in Department of Community Services and Others and CSA 74 WAIG 1709 (IAC). In any event, the principle expressed by Franklyn J in that case at page 1712 was not breached. The Arbitrator did not order that an agreement have effect from a date earlier than the date of registration. The Arbitrator determined what would be the date of the first increased payment were the agreement registered. That was the question in dispute for arbitration. Alternatively, the Arbitrator determined what would be included in the agreement, but it is not at all clear that that is what occurred. Ground 2, for those reasons, is not made out.

As for grounds 3 and 4, we turn to those now. It was an agreed fact that between 26 October 1998 and 2 November 1998 the CSA balloted their membership on the acceptance or rejection of the proposed agreement. The members were not informed that the agreed date for the first salary increase was 4 November 1998. They were informed (see page 72 (AB)) that the operative date "commenced from 1 September 1998" when, in principle, agreement was reached on the enterprise bargaining agreement by the CSA. However, they were informed that the appellant was yet to respond on that question.

However, also, as a matter of agreed facts, the appellant on 5 November 1998 communicated that it would support a proposition that the date of effect of the proposed agreement would be no earlier than 4 November 1998 (see page 74 (AB)). Support of that proposition was to be expressed before this Commission. That amounted to an expression of agreement. The appellant, on 9 November 1998 (an agreed fact) forwarded a copy of the prepared agreement to the CSA (see page 77 (AB)), advising as follows—

> "This Agreement has incorporated all amendments agreed to by the Single Bargaining Unit, and is the version that will be referred to the Cabinet Standing Committee for Labour Relations, and the WAIRC."

A date of effect of 4 November 1998 is specifically expressed to be included amongst those items.

The allegation in ground 4 is not incompatible with those facts, nor is the allegation in ground 3. In any event, even if they were, it is not fatal to the exercise of the Arbitrator's discretion, nor was the Arbitrator's finding in that respect so erroneous that it is fatal to the exercise of discretion.

There was no other attack on the merit of the decision. We have considered all of the evidence and all of the submissions.

We are not satisfied that any ground is made out. We are not satisfied that the discretion miscarried. We are satisfied that the Arbitrator acted within power and within jurisdiction.

For those reasons, we would dismiss the appeal.

COMMISSIONER S J KENNER: This is an appeal pursuant to s 49 of the Industrial Relations Act 1979 ("the Act") from a decision of the Commission constituted as a Public Service Arbitrator ("Arbitrator"), arising out of a dispute between the appellant and the respondent concerning an enterprise bargaining agreement. The matter in dispute between the parties at first instance being the operative date for salary increases as contained in the proposed industrial agreement.

The grounds of appeal, as amended by leave of the Full Bench, and the background to the matter before the Arbitrator at first instance, are set out in the reasons for decision of the President and I need not refer to these matters any further.

Grounds 1 and 2

These grounds of appeal attack the decision of the Arbitrator on the basis that it was asserted that the effect of the Arbitrator's order at first instance was to vary an industrial agreement, alternatively register such an agreement with retrospective effect. In this regard, it was submitted that as a matter of law, there was no power for the Arbitrator under the Act, to give effect to an industrial agreement retrospectively, by order of the Commission. In this regard, reliance was placed by the appellant upon the decision of the Industrial Appeal Court in *Department of Community Services v Civil Service Association* (1994) 74 WAIG 1709. It was submitted that the order of the Arbitrator dated 8 December 1998, deposited in the office of the Registrar on 4 January 1999, had the effect of creating the retrospective operation of the industrial agreement, which agreement was ultimately registered by order of the Commission dated 12 January 1999. This order of itself, purported to register the industrial agreement with effect from 10 December 1998. It should be observed that the terms of this order were not subject to challenge on the appeal.

Alternatively, the appellant submitted that if the order of the Arbitrator was to be considered to be made pursuant to s 44 of the Act, by the terms of s 44 (13), when read together with s 39 (3) of the Act, it would only be able to have retrospective operation to 16 November 1998, being the date upon which the application leading to the making of the order was lodged in the Commission.

It is trite to observe that an agreement only becomes an industrial agreement on and upon its registration under the Act. Until the act of registration by the Commission under s 41 of the Act, an agreement does not have the character of an industrial agreement, as defined in s 7 of the Act: *Department of Community Services and Others v Civil Service Association of Western Australia* (supra). Furthermore, an industrial agreement as registered by the Commission under the Act, can only operate from the date of its registration and not from a retrospective date.

In considering the appellant's grounds of appeal in relation to the retrospectivity issue, it is important to first properly characterise the nature of the proceedings that took place before the Arbitrator at first instance. It is apparent from the record that the appellant and the respondent were in dispute as to the operative date of salary increases to take effect under the terms of the proposed industrial agreement. In that regard, the respondent filed an application pursuant to s 44 of the Act, in order to obtain the assistance of the Commission in resolving the dispute between the parties, so that presumably, the agreement could be concluded and registered as an industrial agreement. The Memorandum of Matters for Hearing and Determination under s 44 (see AB 7) and the attached schedule (see AB 8) make it plain that the parties were seeking the assistance of the Arbitrator in resolving this dispute.

It is also apparent from the terms of the reasons for decision of the Arbitrator (see AB 14), that the Arbitrator was arbitrating the dispute between the parties as a last resort, given that conciliation had apparently failed to resolve the dispute. This is a course clearly contemplated by the enterprise bargaining principle, as contained in the Commission's Statement of Principles arising from the June 1998 Stage Wage Case. As a part of resolving that dispute, the Arbitrator heard the parties to the dispute and issued her order dated 8 December 1998. That order in my opinion, properly characterised, reflected the settlement of the dispute between the appellant and the respondent. What the Arbitrator did in the proceedings at first instance was no different to the usual dispute resolution process engaged in by the Commission.

At the time the Arbitrator came to deal with the matter at first instance, there was in my opinion, no concluded agreement between the parties. This was somewhat self evident, by reason of the fact that the parties were before the Arbitrator in conciliation and arbitration proceedings. The matter in issue being the question of operative date of salary increases to take effect in the agreement. Until that matter was determined, it could not be said that the parties were ad idem. There was certainly in my view, no industrial agreement in existence at that time. The same can be said about the time of the issuance of the order of the Commission issued on 8 December 1998, albeit that it was not deposited in the office of the Registrar until 4 January 1999.

In my opinion, the order of the Arbitrator dated 8 December 1998, which is the subject of this appeal, did not purport to either retrospectively register an industrial agreement or vary an industrial agreement under the Act. For the reasons that I have already referred to, when the order under challenge came into effect, no such industrial agreement existed.

The reliance placed by the appellant upon the decision of the Industrial Appeal Court in the *DCS* case was, in my view, misplaced. That decision can be clearly distinguished from the facts of the matter before the Arbitrator at first instance. In the *DCS* case, the Commission was exercising its power to register an industrial agreement under the Act. The issue arising in that case, was the Commission's power to give retrospective effect to the registration of an industrial agreement. That is not the matter that was before the Arbitrator the subject of this appeal. Furthermore, the appellant's reliance upon authority dealing with the retrospective operation of legislation was also not of assistance, in that the issue before the Full Bench on appeal was not the retrospective effect of any provisions of the Act rather, an allegation that an order of the Commission purported to have such an effect.

I am far from satisfied that the order of the Arbitrator was beyond power. Neither of these grounds of appeal are made out.

Grounds 3 and 4

The attack on the decision of the Arbitrator in relation to these two grounds of appeal goes to the findings of the Arbitrator as to the operative date for salary increases being agreed between the parties as from 4 November 1998.

For the reasons set out by the President, I am not satisfied that either ground of appeal is made out. In my opinion, the findings made by the Arbitrator were open on the evidence. In any event, I am satisfied that even if such findings were not reasonably open on the evidence, those findings did not infect the decision of the Arbitrator to such an extent as would warrant the Full Bench overturning those findings on appeal.

For all of the above reasons, the appeal should be dismissed.

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

Order accordingly

Appearances: Mr M Lundberg (of Counsel), by leave, on behalf of the appellant.

Mr P Harris (of Counsel), by leave, on behalf of The Civil Service Association of Western Australia Incorporated and The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch.

No appearance by or on behalf of the other respondents hereto.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Director General of the Ministry for Culture and the Arts
(Appellant)

and

The Civil Service Association of Western Australia
Incorporated and Others
(Respondents).

No. 189 of 1999.

BEFORE THE FULL BENCH

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

16 July 1999.

Order.

THIS matter having come on for hearing before the Full Bench on the 16th and 17th days of June 1999, and having heard Mr M Lundberg (of Counsel), by leave, on behalf of the appellant and Mr P Harris (of Counsel), by leave, on behalf of The Civil Service Association of Western Australia Incorporated and The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch, and there being no appearance by or on behalf of the other respondents hereto, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 16th day of July 1999 wherein it was found that the appeal should be dismissed, it is this day, the 16th day of July 1999, ordered that appeal No 189 of 1999 be and is hereby dismissed.

By the Full Bench

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Director General, Ministry for Culture and the Arts
(Appellant)

and

The Civil Service Association of Western Australia
Incorporated and Others
(Respondents).

No. 189 of 1999.

BEFORE THE FULL BENCH

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

13 May 1999.

Order.

THIS matter having come on for hearing before the Full Bench on the 11th day of May 1999, and having heard Mr M Lundberg (of Counsel), by leave, on behalf of the appellant and Mr P Harris (of Counsel), by leave, and with him Ms D Whittaker, as agent, on behalf of The Civil Service Association of Western Australia Incorporated and The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch, and there being no appearance by or on behalf of the other respondents hereto, and the Full Bench having reserved its decision on the matter, and having determined that reasons for decision will be delivered at a future date, it is this day, the 13th day of May 1999, ordered and directed as follows—

(1) THAT, there being no appearance on behalf of The Transport Workers' Union, Industrial Union of Workers, Western Australian Branch, The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch, The Media, Entertainment & Arts Alliance of Western Australia (Union of Employees) and The Shop, Distributive and Allied Employees' Association of WA, the matter proceed.

(2) (a) THAT the application to extend time to file appeal No 189 of 1999 out of time be and is hereby granted; and

(b) THAT the appellant be and is hereby given leave to make the said application out of time and to do all things necessary to enable the said appeal to be properly brought.

(3) THAT leave be and is hereby granted for the applicant to amend the grounds of the Appeal Book by deleting Ground 2 of the existing grounds of appeal and substituting the Grounds 2A and 2B which appear on the document headed "Proposed amendment to appeal ground 2" placed before the Full Bench.

(4) THAT the hearing and determination of application No 189 of 1999 be and is hereby adjourned to 8.30 am to 10.15 am on Wednesday, the 16th day of June 1999 and 8.30 am to 10.15 am on Thursday, the 17th day of June 1999.

By the Full Bench

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

FULL BENCH—
Unions—Application for Alteration of Rules—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Master Plumbers' and Mechanical Services Association of Western Australia (Union of Employees)
Applicant.

No 106 of 1999.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.
CHIEF COMMISSIONER W S COLEMAN.
COMMISSIONER J F GREGOR.

28 July 1999.

Order.

This matter having come on for hearing before the Full Bench on the 28th day of July 1999, and having heard Mr S Varidel on behalf of the applicant organisation, it is this day, the 28th day of July 1999, ordered that the matter be and is hereby adjourned sine die.

By the Full Bench

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

COMMISSION IN COURT SESSION— Matters dealt with—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Bakewell Pies (1998) and Others.

(Nos. 1023 of 1998 and Other Applications per Appendix A)

COMMISSION IN COURT SESSION
CHIEF COMMISSIONER W S COLEMAN
COMMISSIONER S A CAWLEY
COMMISSIONER A R BEECH.

5 August 1999.

Reasons for Decision.

CHIEF COMMISSIONER COLEMAN: I have read the reasons for decision of Commissioners Cawley and Beech in draft form. I agree with them and with the orders to issue and have nothing to add.

COMMISSIONER CAWLEY: Each of these 39 applications is to vary an award to provide for the safety net adjustment allowed for in the 1998 State Wage Case decision [(1998) 78 WAIG 2579] which issued in June of that year. This Commission in Court Session varied each award for that purpose in orders issued in December 1998. The operative date for the purposes of each order was set as either 17 or 20 July 1998.

These decisions were appealed on grounds to the effect that the orders were in breach of the Commission's Wage Fixing Principles so far as the operative dates were concerned. The Industrial Appeal Court upheld the appeals, varied the orders by substituting the date of the Commission in Court Session orders for the operation of the variations to each award and remitted the question of any consideration of retrospective effect to the Commission in Court Session for further hearing and determination according to law. These reasons are limited to that consideration. What is at stake, effectively, is the approximately five months from the operative dates ordered by the Commission in Court Session for the operation of the safety net adjustments to the dates substituted on appeal.

The applicant union argued at the further hearing that special case consideration under the Wage Fixing Principles was open and that as a matter of merit the operative dates for the variations to each award should be made retrospective to the respective dates of hearing. Respondents represented by Mr Blyth at the further hearing made a common submission in opposition to this course and specifically argued that there was no jurisdiction for consideration of these claims under the Special Case principle. The Chamber of Commerce and Industry of WA (Inc) and the Minister for Labour Relations supported this position while the Trades and Labor Council of WA supported the applicant union's position. Mr Blyth also submitted as a preliminary point that the members of this Commission in Court Session should disqualify themselves from hearing these applications further on the ground of a reasonable apprehension of bias.

Having had the advantage of reading the reasons for decision of Commissioner Beech in draft form I agree with his conclusions on the question of alleged bias and that the circumstances here constitute a special case and largely for the reasons expressed by him.

The question then is whether or not the power for the Commission in section 39(3)(b) to give retrospective effect to the safety net adjustment provisions inserted in these awards in December should be exercised. In my view it is plain from the record and evidence in these matters that special circumstances exist and that a retrospective operative date should be applied in each case as a matter of equity.

First, the context in which the claims were raised. The applications as filed were for the safety net adjustment allowed for in the 1998 State Wage Case. Safety net adjustments are of fundamental importance in the wage fixing policy developed by the Australian Industrial Relations Commission in successive National Wage Cases over a number of years and followed by this tribunal in accordance with the requirements of section 51 of the Industrial Relations Act, 1979. They are a key element of the award safety net which underpins enterprise bargaining and, significantly, they also are designed to ensure a measure of equity for the industrially weak or unorganised in the Australian work force whose employment is regulated by awards but who have been unable to achieve wage increases through enterprise bargaining.

The impact of a safety net adjustment in an award will depend on whether any employee's actual wage is directly regulated by that award and is so low as to qualify for it. It is not an across the board wage increase. For instance, an industrial (or enterprise) agreement registered in this jurisdiction will override the award for the purposes of the particular employer and employees concerned. And an award of the Australian Industrial Relations Commission or an industrial agreement registered in that jurisdiction will override an award of this jurisdiction for the purposes of the particular employers and their employees. But where there is no other industrial regulation of minimum conditions applying the only avenue for a wage increase for some employees covered by awards will be through safety net adjustments.

The safety net adjustment allowed for in the 1998 State Wage Case followed the National Wage Case in that there were no preconditions for it to be inserted into awards other than the making of an application for that to occur. I turn now to the record of these applications and the evidence brought by the applicant union; which evidence was not rebutted in any way.

Applications to provide for the safety net adjustment in each of these 39 awards (and more than 40 others) were filed by the applicant union shortly after the State Wage Case decision issued. Declarations of service of the application were filed in each case. Copies of each application were forwarded by the applicant union to the Chamber of Commerce and Industry of Western Australia as a courtesy with the purpose, no doubt, of facilitating proceedings on the claims in the event that respondent employers availed themselves of the industrial representation services offered by that organisation.

Shortly after the time for filing answers elapsed the applicant union requested that the applications be listed. Hearings of each of the 39 applications were set down for either 17 July or 20 July 1998. On and from 9 July 1998 up to the dates of hearing the applicant union forwarded copies of schedules of variations in each application to the Commission and to respondent employers care of the Chamber of Commerce and Industry of Western Australia.

This was designed, no doubt, to enable an early identification of any issues in relation to any application and the pursuing of possible resolutions. As such it amounts to prudent industrial relations practice. And it seems from the evidence of Ms Jackson that, to a limited extent, it bore fruit. She says Mr Peter Robertson of the Chamber of Commerce and Industry of Western Australia, contacted the applicant union to advise an objection in relation to the fares and travelling allowance variations in the schedules produced for various child care industry awards. This issue was not resolved by the time the applications proceeded to hearing but, by then, there was an undertaking by the applicant union to continue to seek resolution or to apply for that issue to be divided from the remainder of the relevant applications so it could be dealt with separately at a later date. The latter position is reflected in two of the orders issued by the Commission in Court Session. No other issue with respect to any application or the schedules was identified to the applicant union in this way up to and including the respective days of hearings. This is significant when regard is had for answers filed in these claims and subsequent developments.

First the matter of answers. There are anomalies. Answers in two applications appear to be invalid by virtue of the named respondent in each instance, the *Chamber of Commerce and Industry WA Members*, not being a respondent employer and there being no registered industrial organisation of that name (or similar) which could allow for a class based response to be filed. Contradictory answers were filed in the name of the same respondent in three applications. The first answer in each

instance stated "*Not object*". The second in each instance simply stated *Object to claim pending discussion with union"*. There was no application to amend the previous answers and not all of these answers were the subject of declarations of service anyway. Thus in these cases the applicant union was either served with contradictory answers in the name of the same respondent or only one answer which consented to the claim.

However, leaving aside these and other questions as to respondents cited such as statements that an answer has been filed by "Others" without identification of any others, an examination of the record of answers filed in each application reveal the following. None at all were filed in six of the 39 applications; a situation which the applicant union would be entitled to presume meant that no objection was taken to the variations sought. Answers in 15 applications (including answers said to be filed by *Chamber of Commerce and Industry WA Members*) stated consent to the respective claims subject to the provision of further detail of the variations which were to result and/or the method of calculation. Answers in 13 applications (including the three involving second and contradictory answers) objected to the claims pending discussion with the applicant union. And answers in five other applications are commonly expressed as follows—

> Consent to the application subject to the application being in accordance with the State Wage Case Decision of June 1998 and the variation being effective from the first pay period commencing on or after the date of the Commission's order.

As disclosed, by the time of hearing of each application the applicant union in fact had produced schedules of the variations sought in each case and, as the evidence pertaining to Mr Robertson suggests, there had been opportunity for any respondent employer being represented by any officer of the Chamber of Commerce and Industry of Western Australia to raise issues arising with the applicant union. In the context of the answers filed, the absence of any other response to the schedules or any attempt to engage the applicant union in discussions between the time of service of the claims and the hearing supports the position of the applicant union that it reasonably believed that there was no other or new issue to be raised and there would be no impediment to the claims being finalised expeditiously.

The applications were listed for hearing in two groups before a single Commissioner. The respective dates of hearing were 17 and 20 July 1998. The applications listed on each date were heard concurrently. Ms S Jackson appeared on behalf of the applicant union in each application at the hearing of 17 July and at the hearing of 20 July. She made a single submission at those hearings to the effect that each award be varied to provide for the safety net adjustment with effect from the beginning of the first pay period commencing on or after the date of that hearing.

Mr J Uphill put in an appearance on behalf of respondents at both hearings. There was no appearance by any other person on behalf of a respondent. Mr Uphill made a single submission at each hearing too. He did not distinguish any application or exclude any application for the purposes of his appearance or submission. His submission was the only one raised on behalf of respondents and was presented for all intents and purposes as being in relation to each of the 39 applications, including the six in which no answers had been filed. Mr Uphill told the Commission that respondents agreed to the variations sought by the applicant union, and to the respective operative dates sought (17 and 20 July 1998) with a rider that the consent to the operative dates was subject to a timely finalisation of the schedules of variations. No qualification of what constituted timeliness was expressed. No view was expressed by Mr Uphill in the hearings as to schedules of variations the applicant union proposed in each of the 39 awards which had been provided by it already to his office. And no question of the application of the Wage Fixing Principles in relation to either the submission put by Ms Jackson or himself was raised.

The hearings were adjourned by the Commission on the basis that schedules would be checked by the parties for the purpose of finalisation of orders in each application with the operative date being the respective dates of hearing. It is clear from the applicant union's subsequent conduct that it accepted the position put by Mr Uphill in good faith. The evidence is that by 24 July 1998 it had provided his office with further checked schedules of variations to apply to each award and it continued to liaise cooperatively with his office generally with a view to achieving agreed detail in the schedules for each application.

But it was to be more than six weeks from the dates of hearing before the applicant union received any written response in relation to any application. And it appears approximately another week elapsed while the applicant union continued to liaise with Mr Uphill's office to establish what remained in issue so far as any schedule was concerned. No issue regarding operative date had been raised to then.

But on or about the end of this period the applicant union was told, informally, that there was now going to be objection taken to the operative dates consented to at the hearings in July. Not surprisingly it tried to follow up but it was not until about a week later that Mr Blyth confirmed that respondent employers said to be represented by him now objected to the respective operative dates of 17 and 20 July 1998 on the basis that those dates would be in breach of the Wage Fixing Principles. No application was excluded from the objection now raised.

And indeed this position in objection was commonly put at the speaking to the minutes with respect to each of the 39 applications held in early October. The minutes were not finalised. The issue of operative dates was referred to the Commission in Court Session which heard argument on 18 November 1998. As already noted, it concluded (wrongly as the Industrial Appeal Court determined on appeal) that the respective operative dates of 17 and 20 July 1998 in these applications would not be in breach of the Safety Net Adjustment principle arising out of the 1998 State Wage Case decision and proceeded to make orders reflecting that conclusion. These issued in December 1998. That conclusion is not open to be revisited here and is not. The question of retrospectivity to be determined now is different however in that it goes to merit as well as law.

In my view retrospectivity should be awarded in each instance because the applicant union (and by extension the employees whose interests it represented) was unfairly disadvantaged by the respondents and to the advantage of respondents.

First the matter of the position/s of respondents. Between the filing and serving of these claims no substantive objection was filed or raised with the applicant union other than that of Mr Robertson which, given it was not pursued at the hearings of 17 and 20 July 1998, can be presumed was variously satisfied as Ms Jackson says. The objection that the operative dates were in breach of the Wage Fixing Principles was not communicated to the applicant union, in any way, until weeks after these hearings and, at a point (after tardy responses to the applicant union's schedules) where it only remained to finalise the orders.

The objection was new. It was not expressed in the submissions put by Mr Uphill on 17 and 20 July. Nor could it be implied from these submissions. In effect, given the objection raised by Mr Uphill at the speaking to the minutes, his submissions on 17 and 20 July 1998, for all practical purposes, amounted to an endorsement of a breach of the Wage Fixing Principles (though it was not presented as such). The "reservation" in the submissions put in July as to the timely production of agreed schedules does not alter that and should not obscure that fact.

And while, in a technical sense, the answers filed in five of the applications and reproduced earlier in these reasons could be said to be consistent with the position in objection eventually put in relation to each application, it was not consistent with the position put on behalf of any respondent at the hearings in July.

The advantage to respondents which resulted from the change in position came about through delays in finalising schedules. It is clear from the record and the unrebutted evidence of Ms Jackson that the applicant union did not cause those delays. Respondents did.

Further the applicant union was disadvantaged by the fact that the identities of respondents represented by Mr Uphill and Mr Blyth, and now objecting, was not fully disclosed at the time of that objection being raised or subsequently with a result that the applicant union could not directly pursue expeditious resolution of this dispute with any respondents and, indeed, was put in the position of not even knowing whether a respondent actually objected in every application.

The situation could not be remedied by the applicant union simply having recourse to the records as was suggested in the course of hearing. The requirement to file warrants had been waived earlier. By the time of the hearings on 17 and 20 July a version of the Commission's Form 27 (for a warrant for an agent to appear on behalf of a party) had been filed in only 14 applications. The "agent" is identified in each of these as the Chamber of Commerce and Industry of Western Australia. While observing that it appears the Industrial Relations Act, 1979 does not contemplate representation by other than an individual person, it is interesting to note that "the agent" in those 14 applications subsequently applied to intervene in all 39 applications. Neither of these observations is taken further here however. The point is that the record of representation, by leave, was incomplete. That situation continued throughout.

As already noted, the identity of respondents, and the applications relevant to them was not specified for the purposes of Mr Uphill's appearances in proceedings on 17 or 20 July 1998 or the speaking to the minutes. When the matters proceeded before the Commission in Court Session on 18 November 1998 he announced that he appeared on behalf of "the respondents". No respondents were specifically identified and no applications were identified for the purposes of his appearance. In the course of the hearing he was asked by a member of the Commission in Court Session to identify the respondents he represented and he undertook to do so. But, as the record shows, the identification of all respondents whose objection he raised in September had not been disclosed by the time the orders issued in December.

The situation was invidious of course. By analogy, if a person announced an appearance on behalf of "the unions" party to various awards an employer sought to vary, and submitted an objection to those claims, I think it a certainty that the employer applicant would ask (and of course be entitled to know) what unions. The Commission is, after all, is an industrial tribunal created by a statute with the principal object of dispute resolution. Knowing who one is in dispute with must be a given. The fact that the filing of warrants for representation was waived in these cases does not dispose of that. It may have been avenue for the abuse which emerged in these matters but it was not the cause. The experience here may raise ramifications for the Commission's future functioning and regulation of agents but that is not a matter of account in the consideration here.

What is relevant, however, is the disadvantage which resulted for the applicant union in relation to this from the point when the objection to the operative dates was raised for the first time. The fact that the identities of respondents now said to be objecting was not fully disclosed to it then or subsequently hindered its ability to pursue resolution quickly and, indeed, prevented it from even knowing whether an objection had been raised in each application. If no objection existed in an application the applicant union could have pursued finalisation of the orders forthwith in September. Those opportunities were denied it by the failure to fully disclose and, given the subsequent record so far as representation of respondents was concerned, it is probable a significant number of applications could have been proceeded on in this way with the issue of retrospectivity involving much less than five months.

Whether or not the damage done to relations between the applicant union and various employers as evidenced in these proceedings can be repaired can only be a matter of observation here and conjecture for the future. But the inequitable outcome visited on low paid employees and the diminution of the award safety net effect as a result of delays caused by respondents, followed by a change in position of respondents to objection and the fact of an absence of full disclosure of which respondents now objected. The inequity must be remedied by reference to the July hearings as a matter of common sense for resolving these matters. It is inconceivable, in my view, that had the position of respondents raised in September been put at the hearings in July that the union would not have pressed for orders to be finalised immediately. After all, schedules had been produced by it by then and any objections raised to that point resolved. That it did not do so is no doubt due to the submission on behalf of respondents consenting to operative dates of either 17 or 20 July. But then delays were caused.

In my view the circumstances identified in the foregoing and the effects are special and the power pursuant to section 39(3)(b) should be exercised so as to remedy the situation. The orders which issue should provide for retrospectivity of effect of the safety net adjustment variations to these awards to the respective dates of hearing in July.

COMMISSIONER BEECH: The matter remitted to the Commission in Court Session is whether there should be retrospective effect to the variation of the awards which were varied by the Commission in Court Session. By the Order of the Industrial Appeal Court, those awards are now varied with effect from the dates of the respective Orders which had issued.

Preliminary Point

When the matter resumed before the Commission in Court Session a number of respondents and the Chamber of Commerce and Industry of Western Australia (Inc) submitted that the Commission in Court Session should disqualify itself from dealing with the matter remitted because of bias. That submission referred to the concluding comments of the Commission in Court Session in its Reasons for Decision of 3 December 1998—

> Finally, in the event that we are wrong about the application of subparagraph (a) of 8. Arbitrated Safety Net Adjustments of the Statement of Principles then we say that should the Commission have to consider these applications on a "Special Case" basis (and given the record since 17 and 20 July 1998 it is difficult to see any other outcome but that status being accorded) then the application here would not be "caught" by that subparagraph at all.
>
> (79 WAIG 33 at 34).

The Commission in Court Session rejected the submission and what follows are my reasons for so doing.

The bias referred to is the bias which arises when a judge, or quasi judge, has prejudged the case so that he cannot bring to bear upon the decision a fair and unprejudiced mind. The principles of natural justice are relevantly set out in the decision of the High Court in *R v The Commonwealth Conciliation and Arbitration Commission, ex parte the Angliss Group* (1969) 122 CLR 546. That matter concerned the 1967 National Wage Case in which the Commonwealth Conciliation and Arbitration Commission replaced the concept of a basic wage and additional margins with the concept of a total wage. The reasons for its decision were issued by its President. In a subsequent application made by a union for equalisation of rates of payment for male and female employees it was argued that those reasons for decision were open to the inference that the members of the Commission on whose behalf the President of the Commission spoke tendered to favour the adoption of the principle of equal pay for both sexes as soon as the economic and industrial situation of the community would permit. A group of employers applied to the High Court for prohibition to restrain the members of the Commission who were joined in those reasons for decision from sitting in the hearing of the matter involving equal pay. The employers' application was rejected. In rejecting the application, the court stated—

> "[The] requirements of natural justice are not infringed by a mere lack of nicety but only when it is firmly established that a suspicion may reasonably be engendered in the minds of those who come before the tribunal or in the minds of the public that the tribunal or a member or members of it may not bring to the resolution of the questions arising before the tribunal fair and unprejudiced minds. Such a mind is not necessarily a mind which has not given thought to the subject matter or one which, having thought about it has not formed any views or inclination of mind upon or with respect to it." (Ibid at p554).

I am of the view that it cannot be the case that a reasonable and fair minded observer would conclude that the Commission in Court Session might not bring to the matter remitted to it a fair and unprejudiced mind able to deal with the matter placed before it. The comments expressed by the Commission in Court Session were not conceived before the proceedings as a whole began but were formed during the course of the hearing of the matter. To follow the words of King CJ in *R v Industrial Commission (SA) and Others; ex parte Corporation of the City of Salisbury No (2)* [1983] 4 IR 212 at 217, the formation by a judge as a case proceeds of impressions, even strong impressions, as to its proper outcome is by no means inconsistent with a fair and unbiased determination of the matter. It would be absurd to suppose that a fair and unprejudiced mind is necessarily one which has received no impression, however, provisional and tentative, as to the proper outcome of the case until the last word has been spoken. The comments of the Commission in Court Session arose where the last word had been spoken and the decision reserved. The Commission in Court Session had a duty to consider all of the issues, even those to which argument had not been specifically directed by the parties. However, no firm conclusion could be reached because the issue had not been fully argued before it. The comments of the Commission in Court Session therefore do not give an indication that the mind of the Commission in Court Session is other than fair and unprejudiced or closed to any argument or evidence which the parties now wish to place before it.

The Merits

I therefore turn to consider the merits of the matter. The union, supported by the Trades and Labor Council of Western Australia, argued both that the circumstances constituted a Special Case for the purposes of the State Wage Principles and further that there were special circumstances for the purposes of s.39 of the Act which warranted the retrospective operation of the variations to the awards. The union characterised its claims as being for an additional wage increase which is outside the Arbitrated Safety Net Adjustment Principle. It seeks an earlier date of effect than the Principles provide. It relies heavily on the understanding of the parties at the time the applications were dealt with by the Commission at first instance that the orders varying the awards would not issue until after the date of hearing. That practice was recognised in the consent to the variations by the respondents who then appeared but which reserved their positions in relation to retrospective operation of the orders. Conventional practice has been that an order varying an award will issue subsequent to the hearing with a date of operation of the date of hearing. The union therefore argues that the applications remitted to the Commission in Court Session are to be regarded as a Special Case and that special circumstances exist for the granting of the operative dates now sought.

The union's application was opposed by those respondents who appeared before the Commission in Court Session, together with the CCI and the Minister for Labour Relations. For the Minister, the applications are seen to be applications for the safety net rather than applications for variations above or below the safety net. The Minister characterises the applications as being to do with the time it took to issue the orders varying the awards and that that period of time is not "special". The respondents who appeared characterised the applications as being for a wage increase not permitted by the Principles. They acknowledged that those parties before the Commission at first instance expressly agreed in July to common operative dates with reservation about any future retrospective effect. The respondents do not see the time between the hearing and the issuing of the orders as being at all unusual and submit that it is not in the public interest to award retrospectivity due to an error in the interpretation of the State Wage Principles. They believe that there will be risk of a flow on because of the inevitable delays which occur with the issuing of orders varying awards. Further, there is no evidence to show that the increase now sought is needed to underpin the continued implementation of the Structural Efficiency Principle, of actual efficiencies having been implemented or any real gains in productivity. The respondents also submitted that the equity of these circumstances does not satisfy the requirements of s.39 of the Act.

Conclusion

The Statement of Principles which issued in June 1998 provides for an Arbitrated Safety Net Adjustment to operate no earlier than the date of the variation to the award. That is, the award safety net as established by the State Wage Principles provides for the Arbitrated Safety Net Adjustment to operate no earlier than the date to the variation of the award. The applications remitted to the Commission in Court Session seek an operative date, or operative dates, earlier than the date of the variation to the award. I agree with the union, the TLC, the respondents and the CCI that the application is for a wage increase beyond that established by the safety net of the award as it currently stands. It is incorrect to characterise the applications as being for the Arbitrated Safety Net Adjustment because that has already been ordered and the awards varied. The applications seek operative dates earlier than the dates permitted by the Principles. Accordingly, I am satisfied that the applications are to vary the awards for a wage increase above the award safety net. Therefore the applications fall within Principle 10, Special Case.

In reaching that conclusion I also take into account that at the time the parties appeared before the Commission at first instance, they were of the view that there were no impediments in relation to the public interest, flow on and the need for continued implementation of structural efficiency initiatives at the enterprise level for the awards not to be varied by the granting of the Arbitrated Safety Net Adjustment. I reach the conclusion that there is no reason in the terms of the tests set out in the Special Case Principle not to regard the circumstances now before the Commission as a Special Case.

It remains then to consider whether there are "special circumstances" as set down within s.39 of the Act which make it fair and right for retrospective effect to be given to the variation. "Special circumstances" is not defined in the Act. In my view, the words embrace circumstances which are peculiar, and not the general circumstances presented by an application to vary an award for an Arbitrated Safety Net Adjustment. In my view, the facts as set out in the Reasons for Decision of Cawley C establish a special circumstance which makes it fair and right to give retrospective effect to the orders varying the awards. The circumstances of this case where the parties to the awards expressly agreed on the dates now sought as dates of operation, and did so in the assumption that the orders varying those awards would issue at a subsequent date, is a factor of some significance. When coupled with the variations to other awards which have occurred at approximately the same time as the dates now sought, together with the recognition by the Commission that the employees to whom the Arbitrated Safety Net Adjustment has effect are low paid employees who have not been able to benefit from enterprise bargaining, combines to amount to a special circumstance.

In my view, having regard to the interests of the persons immediately concerned whether directly affected or not, and to the interest of the community as a whole for the operation of the wage fixing system, I would grant operative dates for the various awards which have been already varied the operative dates of 17 or 20 July 1998 as applicable.

CHIEF COMMISSIONER COLEMAN: Minutes of orders reflecting the unanimous conclusion of the Commission in Court Session that the operative dates in each matter should be the respective date of hearing in July now issue.

Appearances: Ms S Jackson on behalf of The Australian Liquor, Hospitality and Miscellaneous Workers Division, Western Australian Branch and the Trades and Labor Council of Western Australia.

Mr J Uphill.

Mr G Blyth.

Mr G Bull and Mr J Uphill on behalf of the Chamber of Commerce and Industry of Western Australia (Inc.).

Ms A Hall on behalf of the Minister for Labour Relations.

APPENDIX A

Application Number	Award Sought To Be Varied
1023 of 1998	Pastrycooks' Award No. 24 of 1981
1026 of 1998	Optical Mechanics' Award 1971

Application Number	Award Sought To Be Varied
1028 of 1998	Mineral Earths Employees' Award
1034 of 1998	Private Hospital Employees' Award 1972
1035 of 1998	Hospital Workers (N'Gala) Award
1036 of 1998	Hospital Workers (Cleaning contractors—Private Hospitals Award 1978)
1042 of 1998	Funeral Directors' Assistants' Award
1046 of 1998	Training Assistants' and Community Support Staff (Spastic Welfare) Award
1051 of 1998	Watchmakers' and Jewellers' Award 1970
1052 of 1998	Western Australian Mint security Officers' Award 1988
1055 of 1998	Wool Scouring and Fellmongery Industry Award No. 32 of 1959
1057 of 1998	University, Colleges and Swanleigh Award
1060 of 1998	Security Officers (North West Shelf Project) Order No. 846 of 1996
1063 of 1998	Soap and Allied Products Manufacturing Ad
1065 of 1998	Quadriplegic Centre Award
1066 of 1998	Poultry Breeding Farm & Hatchery Workers' Award 1976
1067 of 1998	Ethnic Children's Services Industrial Award, 1993
1068 of 1998	Family Day Care Co-ordinators' and Assistants' Award, 1985
1069 of 1998	Plastic Manufacturing Award 1977
1070 of 1998	Photographic Industry Award, 1980
1074 of 1998	Drum Reclaiming Award
1079 of 1998	Contract Cleaners' (Ministry of Education) Award, 1990
1082 of 1998	Cleaners and Caretakers (Car and Caravan Parks) Award, 1975
1083 of 1998	Cleaners and Caretakers Award, 1969
1085 of 1998	Child Care (Out of School Care—Playleaders) Award
1086 of 1998	Child Care (Lady Gowrie) Child Centre
1087 of 1998	Building Materials Manufacture (CSR Ltd—Welshpool Works) Award 1982
1088 of 1998	Brushmakers' Award No. 30 of 1959
1089 of 1998	Childrens' Services (Private) Award
1091 of 1998	Children's Services Consent Award
1092 of 1998	Child Care (Subsidised Centres) Award
1093 of 1998	BP Refinery (Kwinana)(Security Officers') Award, 1978
1094 of 1998	Bag, Sack and Textile Award
1095 of 1998	Bakers' (Country) Award No. 18 of 1977
1096 of 1998	Bakers' (Metropolitan) Award No. 13 of 1987
1097 of 1998	Aerated Water and Cordial Manufacturing Industry Award 1975
1100 of 1998	Aged and Disabled Persons Hostels Award, 1987
1101 of 1998	Aboriginal Medical Service Employees' Award
1102 of 1998	Animal Welfare Industry Award

COMMISSION IN COURT SESSION— Awards/Agreements— Variation of—

ABORIGINAL MEDICAL SERVICE EMPLOYEES' AWARD.
No. A 26 of 1987.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Broome Regional Medical Service and Others.

No. 1101 of 1998.

Aboriginal Medical Service Employees' Award.
No. A 26 of 1987.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER S.A. CAWLEY
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 14 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 17th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

AERATED WATER AND CORDIAL MANUFACTURING INDUSTRY AWARD 1975.
No. 10 of 1975.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Coca-Cola Bottlers (Perth) Pty Ltd and Others.

No. 1097 of 1998.

Aerated Water and Cordial Manufacturing Industry Award 1975.
No. 10 of 1975.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER S.A. CAWLEY
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers

conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 10 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 20th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

AGED AND DISABLED PERSONS HOSTELS AWARD, 1987.
No. A 6 of 1987.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Anglican Homes for the Aged (Inc.) and Others.

No. 1100 of 1998.

Aged and Disabled Persons Hostels Award, 1987.
No. A 6 of 1987.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER S.A. CAWLEY
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 14 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 20th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

ANIMAL WELFARE INDUSTRY AWARD.
No. 8 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

P.S. Adams and Others.

No. 1102 of 1998.

Animal Welfare Industry Award.
No. 8 of 1968.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER S.A. CAWLEY
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 10 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 20th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

BAG, SACK AND TEXTILE AWARD.
No. 3 of 1960.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Joyce Bros WA Pty Ltd and Others.

No. 1094 of 1998.

Bag, Sack and Textile Award.
No. 3 of 1960.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER S.A. CAWLEY
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 10 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 20th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

BAKERS' (COUNTRY) AWARD.
No. R 18 of 1977.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Acme Bakery and Others.

No. 1095 of 1998.

Bakers' (Country) Award No. 18 of 1977.
No. R 18 of 1977.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER S.A. CAWLEY
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers

conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 10 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 20th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

BAKERS' (METROPOLITAN) AWARD.
No. 13 of 1987.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Baking Industry Employers' Association of Western Australia.

No. 1096 of 1998.

Bakers' (Metropolitan) Award.
No. 13 of 1987.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER S.A. CAWLEY
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 10 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 20th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

BP REFINERY (KWINANA) (SECURITY OFFICERS') AWARD, 1978.
No. R 56 of 1978.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

BP Oil Refinery (Kwinana) Pty Ltd and Another.

No. 1093 of 1998.

BP Refinery (Kwinana) (Security Officers') Award, 1978.
No. R 56 of 1978.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN.
COMMISSIONER S.A. CAWLEY.
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 14 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 20th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

BRUSHMAKERS' AWARD.
No. 30 of 1959.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

ED Oates Brushware Ltd (Formerly Swan Brushware Limited).

No. 1088 of 1998.

Brushmakers' Award No. 30 of 1959.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN.
COMMISSIONER S.A. CAWLEY.
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 10 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 20th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

BUILDING MATERIALS MANUFACTURE (CSR LIMITED—WELSHPOOL WORKS) AWARD, 1982.
No. A 10 of 1982.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

CSR Limited.

No. 1087 of 1998.

Building Materials Manufacture (CSR Limited—Welshpool Works) Award, 1982.
No. A 10 of 1982.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER S.A. CAWLEY
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers

conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 10 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 20th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

CHILD CARE (LADY GOWRIE CHILD CENTRE) AWARD.
No. A3 of 1984.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Lady Gowrie Centre (WA) (Inc.).

No. 1086 of 1998.

Child Care (Lady Gowrie Child Centre) Award.
No. A3 of 1984.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER S.A. CAWLEY
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 10 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 17th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

CHILD CARE (OUT OF SCHOOL CARE—PLAYLEADERS) AWARD.
No. A 13 of 1984.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Communicare and Others.

No. 1085 of 1998.

Child Care (Out of School Care—Playleaders) Award.
No. A 13 of 1984.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER S.A. CAWLEY
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 14 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 17th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

CHILD CARE (SUBSIDISED CENTRES) AWARD.
No. A 26 of 1985.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Bassendean Day Care Centre and Others.

No. 1092 of 1998.

Child Care (Subsidised Centres) Award.
No. A 26 of 1985.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN.
COMMISSIONER S.A. CAWLEY.
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 14 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 17th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

CHILDREN'S SERVICES CONSENT AWARD 1984.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Winterfold Child Care Centre Incorporated and Others.

No. 1091 of 1998.

Children's Services Consent Award 1984.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN.
COMMISSIONER S.A. CAWLEY.
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers con-

ferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 17 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 17th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

CHILDREN'S SERVICES (PRIVATE) AWARD.
No. A 10 of 1990.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Bassendean Town Council and Others.

No. 1089 of 1998.

Children's Services (Private) Award.
No. A 10 of 1990.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN.
COMMISSIONER S.A. CAWLEY.
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 14 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 17th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

CLEANERS AND CARETAKERS AWARD, 1969.
No. 12 of 1969.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Coca-Cola Bottlers (Perth) Pty Ltd and Others.

No. 1083 of 1998.

Cleaners and Caretakers Award, 1969.
No. 12 of 1969.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER S.A. CAWLEY
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 14 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 17th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

CLEANERS AND CARETAKERS (CAR AND CARAVAN PARKS) AWARD 1975.
No. 5 of 1975.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Kings Parking Co (WA) Pty Ltd and Others.

No. 1082 of 1998.

Cleaners and Caretakers (Car and Caravan Parks) Award 1975.
No. 5 of 1975.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER S.A. CAWLEY
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 10 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 17th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

CONTRACT CLEANERS' (MINISTRY OF EDUCATION) AWARD, 1990.
No. A5 of 1981.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Mastercare Property Services Pty Ltd and Others.

No. 1079 of 1998.

Contract Cleaners' (Ministry of Education) Award, 1990.
No. A5 of 1981.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER S.A. CAWLEY
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers

conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 10 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 17th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

DRUM RECLAIMING AWARD.
No. 21 of 1961.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Drum Services Pty Limited.

No. 1074 of 1998.

Drum Reclaiming Award.
No. 21 of 1961.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN.
COMMISSIONER S.A. CAWLEY.
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 15 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 20th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

ETHNIC CHILDREN'S SERVICES INDUSTRIAL AWARD, 1993.
No. A 10 of 1989.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Ethnic Child Care Resource Unit.

No. 1067 of 1998.

Ethnic Children's Services Industrial Award, 1993.
No. A 10 of 1989.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN.
COMMISSIONER S.A. CAWLEY.
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 17 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 17th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

FAMILY DAY CARE CO-ORDINATORS' AND ASSISTANTS' AWARD, 1985.
No. A 16 of 1985.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Communicare Inc and Others.

No. 1068 of 1998.

Family Day Care Co-Ordinators' and Assistants' Award, 1985.
No. A 16 of 1985.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN.
COMMISSIONER S.A. CAWLEY.
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 17 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 17th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

FUNERAL DIRECTORS' ASSISTANTS' AWARD.
No. 18 of 1962.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Bowra and O'Dea Pty Ltd and Others.

No. 1042 of 1998.

Funeral Directors' Assistants' Award.
No. 18 of 1962.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN.
COMMISSIONER S.A. CAWLEY.
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers

conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 10 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 17th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

HOSPITAL WORKERS (CLEANING CONTRACTORS—PRIVATE HOSPITALS) AWARD 1978.
No. R 2 of 1977.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Powerclean.

No. 1036 of 1998.

Hospital Workers (Cleaning Contractors—Private Hospitals) Award 1978.
No. R 2 of 1977.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN.
COMMISSIONER S.A. CAWLEY.
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 10 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 20th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

HOSPITAL WORKERS' (N'GALA) AWARD.
No. 6A of 1958.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

N'Gala Inc.

No. 1035 of 1998.

Hospital Workers' (N'Gala) Award.
No. 6A of 1958.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER S.A. CAWLEY
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 14 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 17th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

MINERAL EARTHS EMPLOYEES' AWARD.
No. 9 of 1975.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Commercial Minerals Ltd.

No. 1028 of 1998.

Mineral Earths Employees' Award.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER S.A. CAWLEY
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 10 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 17th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

OPTICAL MECHANICS' AWARD, 1971.
No. 9 of 1970.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Laubman & Pank Optometrists Pty Limited and Others.

No. 1026 of 1998.

Optical Mechanics' Award, 1971.
No. 9 of 1970.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER S.A. CAWLEY
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 14 December 1998 varying this award shall operate with effect from the beginning of the

first pay period commencing on or after the 20th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

PASTRYCOOKS' AWARD.
No. 24 of 1981.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Bakewell Pies (1978) and Others.

No. 1023 of 1998.

Pastrycooks' Award.
No. 24 of 1981.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER S.A. CAWLEY
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 10 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 20th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

PHOTOGRAPHIC INDUSTRY AWARD, 1980.
No. A 9 of 1980.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Illustrations Pty Ltd and Others.

No. 1070 of 1998.

Photographic Industry Award, 1980.
No. A 9 of 1980.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER S.A. CAWLEY
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 10 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 20th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

PLASTIC MANUFACTURING AWARD 1977.
No. 5 of 1977.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Jaylon Industries Pty Ltd and Others.

No. 1069 of 1998.

Plastic Manufacturing Award 1977.
No. 5 of 1977.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER S.A. CAWLEY
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 14 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 20th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

POULTRY BREEDING FARM & HATCHERY WORKERS' AWARD 1976.
No. R 20 of 1976.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Hampton Hatcheries and Others.

No. 1066 of 1998.

Poultry Breeding Farm & Hatchery Workers' Award 1976.
No. R 20 of 1976.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER S.A. CAWLEY
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers

conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 10 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 20th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

PRIVATE HOSPITAL EMPLOYEES' AWARD, 1972.
No. 27 of 1971.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

St. John of God Hospital and Others.

No. 1034 of 1998.

Private Hospital Employees' Award, 1972.
No. 27 of 1971.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER S.A. CAWLEY
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 10 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 17th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

QUADRIPLEGIC CENTRE AWARD.
No. A1 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 Board of Management, Quadriplegic Centre.

No. 1065 of 1998.

Quadriplegic Centre Award
No. A1 of 1993.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER S.A. CAWLEY
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 14 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 17th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

SECURITY OFFICERS (NORTH WEST SHELF PROJECT) 1998 ORDER.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Wormalds Security.

No. 1060 of 1998.

Security Officers (North West Shelf Project) 1998 Order.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER S.A. CAWLEY
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 15 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 17th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

SOAP AND ALLIED PRODUCTS MANUFACTURING AWARD.
No. 25 of 1960.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Candle Light Co. Pty Limited.

No. 1063 of 1998.

Soap and Allied Products Manufacturing Award.
No. 25 of 1960.

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER S.A. CAWLEY
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers

conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 10 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 17th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

TRAINING ASSISTANTS' AND COMMUNITY SUPPORT STAFF (SPASTIC WELFARE) AWARD 1987.
No. A 16 of 1986.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Cerebral Palsy Association of WA Inc.

No. 1046 of 1998.

Training Assistants' and Community Support Staff (Spastic Welfare) Award 1987.

COMMISSION IN COURT SESSION
CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER S.A. CAWLEY
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers conferred on it by the Industrial Relations Act, 1979 hereby orders—

THAT the order dated 17 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 17th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

UNIVERSITY, COLLEGES AND SWANLEIGH AWARD, 1980.
No. R7B of 1979.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

St Thomas More College and Others
No. 1057 of 1998

University, Colleges and Swanleigh Award, 1980
No. R 7B of 1979.

COMMISSION IN COURT SESSION
CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER S.A. CAWLEY
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 10 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 17th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W. S. COLEMAN,
[L.S.] Chief Commissioner.

WATCHMAKERS' AND JEWELLERS' AWARD, 1970.
No. 10 of 1970.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Caris the Jeweller and Others.

No. 1051 of 1998.

Watchmakers' and Jewellers' Award, 1970.

COMMISSION IN COURT SESSION
CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER S.A. CAWLEY
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 17 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 20th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W. S. COLEMAN,
[L.S.] Chief Commissioner.

WESTERN AUSTRALIAN MINT SECURITY OFFICERS' AWARD, 1988.
No. A 5 of 1988.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Western Australian Mint.

No. 1052 of 1998.

Western Australian Mint Security Officers' Award, 1988.

No. A 5 of 1988.

COMMISSION IN COURT SESSION
CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER S.A. CAWLEY
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers

conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 14 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 20th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W. S. COLEMAN,
[L.S.] Chief Commissioner.

WOOL SCOURING AND FELLMONGERY INDUSTRY AWARD.

No. 32 of 1959.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Jandakot Wool Scouring Company Pty Ltd and Others.

No. 1055 of 1998.

Wool Scouring and Fellmongery Industry Award.

No. 32 of 1959.

COMMISSION IN COURT SESSION
CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER S.A. CAWLEY
COMMISSIONER A.R. BEECH.

5 August 1999.

Order.

WHEREAS reasons for decision in this matter have issued, now therefore the Commission, pursuant to the powers conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the order dated 17 December 1998 varying this award shall operate with effect from the beginning of the first pay period commencing on or after the 20th day of July 1998.

BY THE COMMISSION IN COURT SESSION

(Sgd.) W. S. COLEMAN,
[L.S.] Chief Commissioner.

PRESIDENT—
Matters dealt with—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Tersita Bryne
(Applicant)

and

Federated Liquor and Allied Industries Employees' Union of Australia, WA Branch, Union of Workers
and
Burswood Nominees Pty Ltd
and
Burswood Resort (Management) Pty Ltd
(Respondents).

No. PRES 6 of 1999.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

6 August 1999.

Order and Directions.

THIS matter having come on for a directions hearing before me on the 6th day of August 1999, and having heard Mr R D Farrell (of Counsel), by leave, and with him, Mr D Kelly on behalf of the applicant and Mr E Fry on behalf of the first named respondent, and Mr R L Le Miere (of Queens Counsel), by leave, on behalf of the second and third named respondents, and the first named respondent having given an undertaking, through the said Mr E Fry, that the said respondent will not enter into any industrial agreement with the abovenamed second and third respondents or either of them until the matters raised upon this directions hearing are heard and determined, and having made such orders and given such directions as are necessary or expedient for the expeditious and just hearing and determination of this matter, and the parties herein having consented to waive the requirements of s.35 of the Industrial Relations Act 1979 (as amended), it is this day, the 6th day of August 1999, ordered and directed as follows—

(1) THAT leave be and is hereby granted to the applicant herein to amend the name of the applicant herein to read "Teresita Byrne".

(2) (a) THAT any material currently filed by the applicant and not served upon the respondents be served upon them forthwith.

(b) THAT any material to be relied upon by the applicant be filed and served by midday on Monday, the 9th day of August 1999.

(c) THAT the applicant file and serve an outline of submissions by 9.00 am on Tuesday, the 10th day of August 1999.

(d) THAT the respondents named in this matter file and serve any material intended to be relied upon in response to the application by 4.00 pm on Tuesday, the 10th day of August 1999.

(e) THAT the respondents file and serve an outline of submissions by 9.00 am on Wednesday, the 11th day of August 1999.

(3) THAT the application herein be and is hereby adjourned for a further directions hearing to 10.00 am on Thursday, the 12th day of August 1999 and Friday, the 13th day of August 1999, subject to any other orders and directions I may so make from time to time.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Burswood Resort (Management) Limited
(Respondent).

No. PRES 1 of 1999.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

16 July 1999.

Reasons for Decision.

INTRODUCTION

THE PRESIDENT: This is an application by the abovenamed organisation of employees made under s.49(11) of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act").

The application was brought by a person with sufficient interest because the applicant was a party to the proceedings at first instance.

The applicant in these proceedings is an organisation of employees, as the word "organisation" is defined in s.7 of the Act.

The respondent company was and is, it is common ground, an employer of members of the applicant organisation.

By the application, the applicant seeks the stay of the whole of an order made at first instance by the Commission, constituted by a single Commissioner. The order is an interim order made on 23 June 1999 in matter No C159 of 1999. The application was made pursuant to s.44(6) of the Act.

For an understanding of the application, it is necessary that I reproduce the order hereunder—

"WHEREAS on 2 June 1999 the application cited herein was filed in the Registry of the Commission; and

WHEREAS on 3 June 1999 a conference was held pursuant to section 44 of the Industrial Relations Act, 1979 (the Act); and

WHEREAS the dispute between the parties relating to employees wearing a union badge upon their uniform remained unresolved at the conclusion of the conference conducted by the Commission; and

WHEREAS the Commission, being satisfied that the interim order of the Commission No. C 125 of 1999, dated 27 May 1999, and which prescribes a dispute settlement process, has not been fully observed, and being satisfied that it was necessary to prevent a deterioration of industrial relations between the parties until the dispute between them was resolved, issued an interim order No. C 159 of 1999, dated 10 June 1999; and

WHEREAS the aforementioned interim order No. C 159 of 1999, dated 10 June 1999, maintained the status quo as at 3 June 1999 and allowed the continued wearing of the disputed lapel badge by employees without fear of disciplinary action from the respondent for a specified period, during which period the parties were ordered to meet in private and attempt to conciliate upon the dispute between them; and

WHEREAS the Commission was informed—

(a) that the parties have met and have not resolved their differences, and

(b) that the respondent maintains its objection to employees wearing a badge not authorised by the respondent, upon the uniform required by the employer; and

WHEREAS the interim order No. C 159 of 1999, dated 10 June 1999, expired on 14 June 1999; and

WHEREAS the Commission held a further conference pursuant to section 44 of the Act on 16 June 1999 and—

(a) at the conclusion of the conference the dispute between the parties remains unresolved; and

(b) the applicant Union requested that the matter which remains in dispute be heard and determined by the Commission and the respondent indicated that it did not object thereto; and

WHEREAS the applicant Union made application to the Commission for a further interim order which allows the continued wearing of the disputed badge upon the same terms contained in order (1) of the interim order No. C 159 of 1999, dated 10 June 1999; and

WHEREAS the respondent objected to the interim order sought by the applicant Union and applied for an interim order requiring employees to observe their contracts of employment and cease wearing a lapel badge upon their uniform that has not been authorised by the respondent;

AND WHEREAS the applicant Union objected to the interim order sought by the respondent;

NOW THEREFORE the Commission, being satisfied—

(a) that the dispute between the parties the subject of these proceedings should be heard and determined by the Commission; and

(b) that it is necessary to prevent a deterioration of industrial relations between the parties until the dispute between them has been resolved by arbitration; and

(c) an interim order should issue for the purpose of preventing a deterioration of industrial relations between the parties; and

being further satisfied that—

(d) prima face each employee of the respondent who may be affected by any order of the Commission made in resolution of the dispute the subject of these proceedings, is a party to a contract of employment which precludes the wearing of a badge or other adornment upon the uniform that the respondent requires be worn unless such badge or other adornment is first authorised by the respondent; and

(e) an employee, a member of the applicant Union, who wears a badge that has not been authorised by the respondent presently does so in contravention of the prima face contract of employment entered upon; and

(f) each party to a contract of employment is entitled to receive a benefit or exercise a right which the terms of such contract affords them until such time as the contract is altered with the consent of the parties thereto, or as may imposed by the Commission in final determination of a matter;

pursuant to the powers conferred on the Commission under s44(6)(ba) of the Act, hereby orders—

(1) THAT each member of the Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division Western Australian Branch, employed by Burswood Resort (Management) Limited shall comply with whatever prescription exists within their contract of employment, as at the date of this order, in relation to the wearing of a badge or other adornment upon the uniform the respondent requires be worn;

(2) THAT the Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division Western Australian Branch and its officials take all such reasonable steps as may be necessary to ensure that members of the Union comply with order (1) hereof, including, but without limiting the generality of that obligation, the obligation to forthwith—

(a) advise the said employees of the terms of this Order; and

(b) counsel the employees to observe the terms of this Order;

(3) THAT order (1) hereof shall have force and effect from 5.00pm on 25 June 1999;

(4) THAT this order is interim and shall remain in force until an Order is made in determination of the dispute the subject of these proceedings."

A question arose as to whether the appeal had been instituted within the meaning of s.49(11)of the Act, given that the appeal was one made against an interim order which is a "finding", as that is defined in the Act.

Pursuant to s.49(2)(a) of the Act, an appeal against a finding does not "lie" under s.49 unless, in the opinion of the Full Bench, the matter is of such importance that, in the public interest, an appeal should lie.

I have been unable to find a judicial definition of the word "lie". However, the word "lie", in its most appropriate definition in the Shorter Oxford Dictionary, is defined to mean—

"Of an action, charge, claim, etc: to be admissible or sustainable"

That definition is consistent with the view that to institute an appeal is a different process from deciding whether an appeal should lie or not.

An appeal is "instituted", within the meaning of s.49(11) of the Act, when the Notice of Appeal has been lodged, filed and issued (see Whitehouse Hotels Pty Ltd v Lido Savoy Pty Ltd [1974] 131 CLR 333 (HC) and Robowash Pty Ltd v Hart 77 WAIG 1664). In the past, I have taken the view that an appeal could not be regarded as having been instituted under s.49(11) where a finding was appealed against, because only the Full Bench can determine whether an appeal can lie. That is, of course, the case. The Full Bench alone can decide whether the appeal can lie. However, it seems to me, upon reflection, that that provision does not prevent an appeal being instituted which, as I have observed above, is an entirely different process.

Indeed, the Full Bench cannot decide whether an appeal lies unless it is, in fact, first instituted. Although I have held differently in the past, I am not now of that opinion.

I was satisfied, subject to what I have said above about the Notice of Appeal being lodged before the order appealed against was perfected, that an appeal was instituted.

BACKGROUND

The dispute in this matter came before the Commission pursuant to s.44 of the Act and was the subject of conferences held pursuant to that section.

An interim order was made on 10 June 1999 in the proceedings, No C159 of 1999, following an interim order made on 27 May 1999 in No C125 of 1999. Then an interim order, the subject of this application, was made on 23 June 1999.

The subject of the matter was a dispute between the applicant and respondent hereto because, as appears to have been common ground, the members of the Burswood Resort Union of Employees ("BRUE"), a section of the applicant organisation ("ALHMWU"), employed by the respondent at the Burswood Casino, on the casino floor, had been instructed to cease wearing union badges which denoted employees as members of the ALHMWU.

The order made on 10 June 1999, again an interim order, was an order which permitted the members of the ALHMWU who were members of the BRUE section before 14 June 1999 to continue to wear the badge of membership on their uniforms when on the gaming floor, provided that it did not interfere with an approved form of identification required by appropriate legislation and regulation.

The order of 23 June 1999 required the employees to comply with the prescription in their contract of employment in relation to the wearing of a badge or other adornment upon their uniform required to be worn by the respondent.

In addition, there was a requirement that the order, having effect from 5.00 pm on 25 June 1999, should have its terms communicated to the employees and enable them to be counselled to observe the terms of the order.

The Notice of Appeal lodged herein seeks that the order be quashed, alleges that the Commissioner erred in failing to have regard for the interests of the persons immediately concerned, whether directly affected or not, and did not act according to equity, good conscience and the substantial merits of the case and further alleges that the Commission then enlarges the order and denied natural justice to the appellant by issuing an order which purported to apply to all of the members and not those employed only on the gaming floor.

PRINCIPLES, ISSUES AND CONCLUSIONS

The applicant bears the onus of establishing that there is a serious issue to be tried, if the balance of convenience is in favour of granting the stay, that an order should therefore be made, having regard to s.26(1)(a),(c) and sometimes (d) of the Act, and having regard to the fact the respondent is, prima facie, entitled to the "fruits of its litigation" (see Gawooleng Dawang Inc v Lupton and Others 72 WAIG 1310).

There is, in my opinion, a serious issue to be tried because the order is a reversal, to a great extent, of the orders previously made, and the order would seem to be inconsistent with the dispute settling procedure between the parties. Further, the order seems to have been unwarrantedly widened, as I discuss hereunder.

As to the balance of convenience, the order was made pursuant to s.44(6)(ba) of the Act in order to prevent the deterioration of industrial relations between the parties, pending the determination of the dispute. However, the order has widened the matter to apply to all union members rather than particular employees wearing union badges whilst upon the gaming floor, and, further, the scope and application of the order was brought without being given an opportunity to be heard.

The order, also, on the evidence, provided only two days to advise and counsel all union members employed by the respondent, which made it, on the uncontroverted evidence, impossible to comply with.

Further, and significantly, there is no contradiction of these admissions and assertions and, indeed, the respondent, through Mr Di Girolami of Counsel, neither consented to comply with nor opposed the order sought, and offered no submissions. That was significant.

For the reasons which I have set out above, I was satisfied that there was a serious issue to be tried and that the balance of convenience lay with the respondent. I say that without retreating from a position which I have adopted in applications for a stay where s.44 and s.32 proceedings are afoot, that the President should not readily stay interim orders used for the purposes of preventing the deterioration of industrial relations, or otherwise made under s.32 or s.44. The reasons why I have, in fact, granted this order are set out above and are peculiar to this case.

The equity, good conscience and the substantial merits of the case lie with the applicant and the applicant has established its case.

For those reasons, I made the order which I made.

APPEARANCES: Ms S Jackson, as agent, on behalf of the applicant

Mr B Di Girolami (of Counsel), by leave, on behalf of the respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, WA Branch
(Applicant)

and

Burswood Resort (Management) Limited
(Respondent).

No. 1 of 1999.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

28 June 1999.

Order.

THIS matter having come on for hearing before me on the 28th day of June 1999, and having heard Ms S Jackson, as agent, on behalf of the applicant and Mr B Di Girolami (of Counsel), by leave, on behalf of the respondent, and I having reserved my decision on the matter, and having determined that my reasons for decision will issue at a future date, it is this day, the 28th day of June 1999, ordered that this application for a stay of operation of the order hereinafter referred to be and is hereby ordered and declared as follows—

(1) THAT the applicant has a sufficient interest as required by s.49(11) of the Industrial Relations Act 1979 (as amended) ("the Act") and was therefore entitled to apply for the orders which appear hereunder.

(2) THAT appeal No 4 of 1999 has been instituted within the meaning of s.49(11) of the Act.

(3) THAT there be a stay of operation of the whole of the order of the Commission made on the 23rd day of June 1999 in application No C 159 of 1999 until the hearing and determination of appeal No 4 of 1999 or until further order.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Pearl & Dean Pty Ltd and Pearl & Dean Group Pty Ltd
(Applicants)

and

Jeanette Marie Levine
(Respondent).

No. PRES 3 of 1999.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

5 August 1999.

Order.

THIS matter having come on for hearing before me on the 5th day of August 1999, and having heard Ms M-L Coulson (of Counsel), by leave, on behalf of the applicant and Mr R Clohessy on behalf of the respondent, it is this day, the 5th day of August 1999, ordered and declared by consent as follows—

(1) THAT the applicant has a sufficient interest as required by s.49(11) of the Industrial Relations Act 1979 (as amended) ("the Act") and was therefore entitled to apply for the orders which appear hereunder.

(2) THAT appeal No FBA 8 of 1999 has been instituted within the meaning of s.49(11) of the Act.

(3) THAT the order made by Chief Commissioner Coleman on the 11th day of June 1999 in application No 2231 of 1997 be and is hereby wholly stayed pending the hearing and determination of appeal No FBA 8 of 1999, or until further order, subject to and conditional upon the applicant complying with the orders and conditions hereinafter expressed.

(4) THAT the applicant herein shall, on or before the 13th day of August 1999, pay the total of the amount of $10,200.00 ordered to be paid by the Commission in its said order of the 11th day of June 1999 into the trust account of the applicants' solicitors, Preuss Feinauer & Associates.

(5) THAT if any dispute as to the administration of the said account shall arise the same shall be referred forthwith to the Registrar of the Western Australian Industrial Relations Commission for the time being, whose decision in the matter shall be final and bind all persons referred to in this order.

(6) THAT all or any liability for taxes or charges of any kind which might become due and payable in respect of such account shall be discharged by the applicant who shall indemnify the respondent against any claim in respect of the same.

(7) THAT all administration expenses in respect of the said account shall be paid forthwith by the applicant.

(8) THAT in the event of any failure to comply with all or any of these conditions then there shall be liberty to apply on 48 hours notice to revoke this order or any part thereof, and/or for any other necessary orders or directions, including directions concerning interest.

(9) THAT in the event of the appeal herein being dismissed then the monies in such account, including any interest earned by the same, shall be paid forthwith without any deduction to the respondent.

(10) THAT in the event of the appeal herein being upheld then the monies in such account, including any interest earned by the same, shall be paid forthwith without any deduction to the applicant.

(11) THAT the President may at any time upon application by any party hereto and without affecting the generality of his ability to give further directions—

(a) Fix further conditions.

(b) Direct that the account be administered by a person or persons in lieu of the persons referred to in order (6) hereof.

(c) Vary these orders.

(12) THAT there be liberty to apply on 48 hours notice in relation to clarification of this order or for any ancillary orders or directions necessary to achieve what these orders require, save and except in relation to decisions made by the Registrar and pursuant to order (7) hereof.

(13) THAT the applicant forthwith serve a copy of this order on the Registrar.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Quinns Baptist College Inc
(Applicant)

and

Kevin Wayne Clarke
(Respondent).

No. PRES 2 of 1999.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

16 July 1999.

Reasons for Decision.

THE PRESIDENT: This is an application by the abovementioned employer pursuant to s.49(11) of the

Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act"), whereby the applicant seeks an order staying the operation of the decision (in the form of an order) made by the Commission at first instance on 8 June 1999 in matter No 2240 of 1998.

A Notice of Appeal was filed herein on 29 June 1999 and is the subject of a Declaration of Service duly filed on 30 June 1999. I am therefore satisfied that an appeal has been instituted within the meaning of s.49(11) of the Act.

I am also satisfied that the applicant, as a respondent to the proceedings at first instance, has sufficient interest to enable it to validly make this application.

At first instance, the respondent, Mr Kevin Wayne Clarke, a teacher employed by the applicant in these proceedings, which is a school, after a hearing by a single Commissioner, was the subject of an order made on 8 June 1999 by the Commission in the following terms, formal parts omitted,—

1. DECLARES that Kevin Wayne Clarke was unfairly dismissed from his employment with the Respondent.
2. ORDERS that upon presenting himself for work no later than the start of Term 3, the Applicant shall be reinstated in employment with the Respondent as the teacher of Year 4 or some comparable class, but not the class which in 1998 was Year 4, and, save for the period 18 April to the end of Term 2 1999, his contract of employment shall be treated as if it had not been determined.
3. ORDERS that the Respondent pay to the Applicant the sum of $10,498.84 as reimbursement of the numeration lost by his unemployment, such payment to be made no later than 21 days from the date of this order."

PRINCIPLES

The principles pertaining to deciding applications for a stay are now well settled. The applicant is required to establish that there is a serious issue to be tried, that the balance of convenience favours the applicant, and that other factors consistent with the application of s.26(1)(a),(c) and perhaps (d) of the Act require that the application be granted, given that, as a general rule, the successful party should not, without the applicant discharging that onus, be deprived of the fruits of his/her/its "litigation".

I heard evidence from Mr Christopher Gerald Robinson, Chairman of the Board of Management of the applicant herein and from the respondent, Mr Kevin Wayne Clarke.

THE ISSUES

Nothing was said which satisfied me that a serious issue existed to be tried. On the other hand, there were submissions which were generally uncontroverted that there was not a serious issue to be tried. I am, therefore, not satisfied that there is a serious issue to be tried.

The evidence and submissions as to the question of the balance of convenience were somewhat more substantial. It was submitted on behalf of the applicant and evidence was led to this effect from Mr Robinson that a dislocation would be caused to the life of the school generally, but specifically to the students concerned, in terms of the integrity and continuity of their learning, by removing an existing teacher from a present class to make a position available for the respondent. It was submitted that only the Year 4 class in what, in terms of numbers, is a small school, could be placed under the respondent.

The present teacher in Year 4 had been engaged on the basis of a teaching role for the whole year and, it was submitted, that the respondent, if he took a position, would necessitate her being relegated to a support role.

The evidence was that the previous Year 4 teacher had resigned in May/June 1999, but this was at or about the time of the hearing of these proceedings at first instance and before the order of 8 June 1999 was made.

In addition, it was submitted that the applicant would need to borrow further funds in order to pay for the respondent's loss of income.

Further, the staying of the order would not unreasonably deprive the respondent of the benefits of the order, it was submitted, when he is, in fact, currently employed as a teacher as his evidence acknowledged.

It would seem obvious that the Year 4 position was filled even before proceedings taken by the respondent were completed, when the applicant might prudently have expected that it was not impossible that an order be made reinstating him.

The dismissal, in relation to which the order for reinstatement was made, took place in November 1998 and a long time has elapsed since that event.

Further, as to the payment of compensation, the loss suffered occurred at or about the time when, on the evidence, which I accept, the respondent and his wife have had expenses in relation to the illness of their baby son. In addition, the respondent has been deprived of the monies for some months. That the applicant might be required to borrow the monies is a consideration secondary to that.

There is also evidence, which I accept, that the respondent will and is capable of paying back the amount, in the event that the appeal succeeds.

I have, to some extent, been invited to go behind the findings of the Commission in this matter without any cogent reason being advanced for me to do so.

The applicant has not established to my satisfaction that the balance of convenience lies with it and that the dislocation occurring is such that the respondent should be deprived of the fruits of his litigation. That was the finding made.

CONCLUSIONS

I am not persuaded at all that the balance of convenience lies with the applicant. For those reasons, too, I am not satisfied that the equity, good conscience and the substantial merits of the case lie with the applicant. Further, I say that, having taken into account the interests of the parties and the children. For those reasons, I dismissed the application.

APPEARANCES: Dr I Fraser, as agent, and with him Mr C Robinson on behalf of the applicant

Mr D Howlett (of Counsel), by leave, on behalf of the respondent

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WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Quinns Baptist College Inc
(Applicant)

and

Kevin Wayne Clarke
(Respondent).

No. PRES 2 of 1999.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

15 July 1999.

Order.

THIS matter having come on for hearing before me on the 15th day of July 1999, and having heard Dr I Fraser, as agent, and with him, Mr C Robinson on behalf of the applicant and Mr D Howlett (of Counsel), by leave, on behalf of the respondent, and having reserved my decision on the matter, and having determined that my reasons for decision will issue at a future date, it is this day, the 15th day of July 1999, ordered that application No PRES 2 of 1999 be and is hereby dismissed.

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

AWARDS/AGREEMENTS— Application for—

ACTIV FOUNDATION SUPPORTED EMPLOYEES WAGES AGREEMENT.
No. AG 117 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Activ Foundation Inc

and

The Disabled Workers' Union of Western Australia.

AG 117 of 1999.

Activ Foundation Supported Employees Wages Agreement.

CHIEF COMMISSIONER W.S. COLEMAN.

28 July 1999.

Order.

HAVING heard Mr M O'Connor on behalf of applicant and Ms Cassidy with Mr G Ferguson on behalf of the respondent;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order —

THAT the agreement entitled Activ Foundation Supported Employees Wages Agreement. 1999 in the terms of the following Schedule be registered as an industrial agreement. This Agreement replaces AG 117 of 1995 Activ Foundation Disabled Employees Wages Agreement 1995 which is hereby cancelled.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

———

Schedule.

1.—TITLE

This Agreement shall be known as the Activ Foundation Supported Employees Wages Agreement, 1999.

2.—SCOPE

This Agreement applies to supported employees of Activ Foundation Incorporated ("the employees"), the Disabled Workers Union of Western Australia ("the Union") and Activ Foundation Incorporated ("the employer"), and replaces Agreement AG 117 of 1995.

3.—TERM

This Agreement shall be for a term of 3 years from the date of registration.

4.—WAGES

(1) An employee covered by this Agreement who works full time shall be paid in accordance with the rates set out in Clause 6.—Wage Rates.

(2) The hourly rate for employees who work part-time shall be calculated by dividing the appropriate weekly rate by 38.

(3) The weekly rate of wage paid to an employee shall be that set out in Clause 6.—Wage Rates which fairly equates to the productivity and skills of the employee as assessed by the workplace manager.

(4) Any change to the wage level of an employee shall be negotiated by the employer with the employee concerned and the union in accordance with the following provisions of this clause.

(5) The employer shall conduct a performance evaluation annually on every employee to review his or her wage level and such evaluation shall be based on each employee's productivity and skill level.

(6) In considering the wage levels to be paid the following matters are to be taken into consideration by the employer—

(a) The employer's objective is to pay higher wages to employees commensurate with their individual productivity and skills;

(b) The employer maintains its encouragement for and facilitation of individual employee's aspirations to seek employment in the open workforce.

(c) That the additional costs from increased wages and related costs should not jeopardise the continuing operations of the employer, nor restrict the recruitment of employees in the future.

(7) Where an employee is dissatisfied with the outcome of the performance evaluation or any proposed wage variation, he or she may invite the union to negotiate the matter with the employer.

(8) The employer shall provide the union, at least monthly, with lists of all wage variations for its employees covered by this agreement.

5.—JOB GROUPINGS

Except as otherwise provided in clause 6.—Wages, each position covered by this Agreement shall be allocated to one of the following groups which shall determine the appropriate wage levels to be paid under clause 6.—Wage Rates—

(a) Group 1 shall consist of the positions of General Hand, Machinist Assistant, Table Hand, Vehicle Cleaner, Driver's Assistant, Cleaner, Kitchen Hand and positions which are substantially similar.

(b) Group 2 shall consist of the positions of Horticulturist, Landscaper, Store Person, Packer, Dispatch Hand, Concrete Block Remover, Trimmer and positions which are substantially similar.

(c) Group 3 shall consist of the positions of Printer, Marker, Leather Worker, Fibre Goods Worker, Machinist, Pallet Maker, Joiner, Furniture Maker, Plant Operator, Clerk, Machinery Operator, Steel Fabricator, Engraver, Cook, Painter/Polisher and positions which are substantially similar.

(d) Group 4 shall consist of positions of Cutter, Sales Person, Car Detailer and positions which are substantially similar.

(e) Group 5 shall consist of Leading Hand Driver and positions which are substantially similar.

6.—WAGE RATES

The rates of wage payable under this Agreement shall be as follows—

(a) GROUP 1 Rates per Week $

44.00	38.50	33.00	27.50	22.00	16.50	11.00	5.50

(b) GROUP 2 Rates per Week $

66.00	55.00	49.50	44.00	38.50	33.00	27.50	22.00

(c) GROUP 3 Rates per Week $

66.00	55.00	49.50	44.00	38.50	33.00	27.50

(d) GROUP 4 Rates per Week $

66.00	55.00	49.50	44.00	38.50	33.00

(e) GROUP 5 Rates per Week $

77.00	66.00	55.00	49.50	44.00

(f) Assistant, Minbalup Community Access Service
Rates per Week $
30.00

(g) Workshop Assistant/Driver (Transport)
Rates per Week $
50.00 32.50

(h) Workshop Assistant (Transport)
Rates per Week $
45.00 20.00

(i) Assistant, Churchlands Community Access Service
Rates per Week $
38.00

7.—PAYOUT OF LEAVE

(1) The parties to this agreement recognise that the accumulation of leave has become a problem for Activ Foundation. To assist in resolving the situation and to reduce the leave liability, the following provisions have been agreed to.

(2) Annual Leave

(a) By agreement between the employer and the employee concerned, an employee who has in excess of 8 weeks leave accumulated, may request that a portion of that leave be paid out rather than taken as leave.

(b) Only leave in excess of a balance of 4 weeks may be paid out.

(c) It is preferable that payment in lieu of annual leave is taken in conjunction with a period of leave.

(d) A request to pay out annual leave will only be approved if an employee takes a minimum of two weeks annual leave in that accrual year.

(3) Long Service Leave

By agreement between the employer and the employee concerned,

(a) an employee may request and be granted half the period of leave at double pay.

(b) an employee may request that a portion or all of an entitlement to long service leave be paid out rather than taken as leave.

(4) Application and Approval

All applications for annual and/or long service leave to be paid out shall be made on the appropriate application form and must be approved by the relevant General Manager.

8. – DISPUTE RESOLUTION

(1) Preamble

(a) Subject to the provisions of the Industrial Relations Act 1979 (as amended) any question, or difficulty, including any matter arising under this Agreement or any matter raised by the Union, the employer or an employee/employees, shall be settled in accordance with the procedures set out herein.

(b) The parties agree that no bans, stoppages or limitations will be imposed prior to, or during the time this procedure is being followed.

(c) This clause in no way limits the rights of the employees and the Union under the Occupational Health, Safety and Welfare Act 1984 or other related legislation.

(2) Procedure

Where the matter is raised by an employee, or a group of employees or the Union, the following steps shall be observed—

(a) The employee(s) concerned and / or the Union shall discuss the matter with the relevant immediate supervisor. If the matter cannot be resolved at this level the supervisor shall, within two working days, refer the matter to a more senior officer nominated by the employer for resolution between the parties.

(b) That senior officer shall contact the union if the union has not been involved at that point and, if able, resolve the matter with the employee and the Union within five working days of it being referred or if not resolved, refer the matter to the Executive Director or his nominated representative for further discussion with the employee and the Union.

(c) The employer shall, as soon as practicable after considering the matter before it, advise the employee(s) and the Union of its decision. Provided that such advise shall be given within 21 calendar days of the matter being referred to the employer.

(d) Should the matter remain in dispute after the above processes have been exhausted either party may refer the matter to the Western Australian Industrial Relations Commission.

(e) Nothing in this provision shall preclude the parties reaching agreement to shorten or extend the period specified in subclauses (2)(a), (b) or (c).

9.—EMPLOYEES COVERED BY THIS AGREEMENT

This Agreement shall apply to 960 persons employed by the Employer.

SIGNATORIES

(signed J Groves)	16/7/99
Signed on behalf of Activ Foundation	Date
(signed G Cassidy)	(16/7/99)
Secretary	Date

Signed on behalf of Disabled Workers Union.

ALLSTATE CONCRETE INDUSTRIAL AGREEMENT
AG 93 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Allstate Concrete Pty Ltd.

AG 93 of 1999.

Allstate Concrete Industrial Agreement.

COMMISSIONER S J KENNER.

22 July 1999.

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 Allstate Concrete Industrial Agreement as filed in the Commission on 26 May 1999 in the terms of the following schedule be and is hereby registered as an industrial agreement.

(Sgd.) S.J. KENNER,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Allstate Concrete Industrial Agreement.

2.—ARRANGEMENT

22. 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 All State Concrete 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 six (6) 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 Clause 46 Settlement of Disputes and Appendix – Resolution of Disputes Requirements of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act 1979, as amended (the "Act").

8.–RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Unions and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate and allowances resulting in the wage rates in 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 on all projects with a value of $1 million or over, and on all sites where the Unions Commercial Construction Agreement applies. On all other jobs the weekly payment shall be $25 per week per employee.

2. **Superannuation**

(i) The Company will immediately increase its level of payment to $60 per week per employee or 7% Ordinary Time Earnings, whichever is the greater.

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 shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by the employee.

(ii) "Ordinary Time Earnings" (which for the purposes of the Superannuation Guarantee (Administration) Act 1992 will operate to provide a notional earnings base) shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including tool allowance, industry allowance, trade allowances, shift loading, special rates, qualification allowances (eg. first aid, laser safety officer), multistorey allowance, site allowance, asbestos eradication allowance, leading hand allowances, in charge of plant allowance and supervisory allowances where applicable. The term includes any regular over-award pay as well as casual rates received and any additional rates and allowances paid for work undertaken during ordinary hours of work, including fares and travel.

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 employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an inability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than—

course fees
course books and materials
payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

3. The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (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.—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.—UNION MEMBERSHIP

The employer will encourage, as far as possible, all employees covered by the agreement, to be financial members of the BLPPU and the CMETU.

22.—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: 24/5/99

.....

WITNESS

CMETU

.....

Date: 24/5/99

.....

WITNESS

The Company:

.....

SIGNATURE

Date: 24/5/99

Company Seal

BRUCE S. CALLENDER

PRINT NAME

.....

WITNESS

APPENDIX A—WAGE RATES

	Date of Signing Hourly Rate $	1 August 1999 Hourly Rate $
Labourer Group 1	16.92	17.15
Labourer Group 2	16.34	16.56
Labourer Group 3	15.90	16.12
Plaster, Fixer	17.58	17.82
Painter, Glazier	17.19	17.42
Signwriter	17.56	17.80
Carpenter	17.70	17.93
Bricklayer	17.52	17.75
Refractory Bricklayer	20.12	20.38
Stonemason	17.70	17.93
Rooftiler	17.38	17.62
Marker/Setter Out	18.21	18.46
Special Class T	18.45	18.69

APPRENTICE RATES

	Date of Signing Hourly Rate $	1 August 1999 Hourly Rate $
Plasterer, Fixer		
Year l	7.38	7.48
Year 2 (1/3)	9.68	9.81
Year 3 (2/3)	13.19	13.37
Year 4 (3/3)	15.48	15.69
Painter. Glazier		
Year l (.5/3/5)	7.22	7.32
Year 2 (1/3), (1.5/3.5)	9.45	9.58
Year 3 (2/3), (2.5/3.5)	12.89	13.06
Year 4 (3/3), (3.5/3.5)	15.13	15.33

	Date of Signing Hourly Rate $	1 August 1999 Hourly Rate $
Signwriter		
Year l (.5/3/5)	7.38	7.48
Year 2 (1/3), (1.5/3.5)	9.65	9.78
Year 3 (2/3), (2.5/3.5)	13.17	13.35
Year 4 (3/3), (3.5/3.5)	15.46	15.66
Carpenter		
Year l	7.44	7.54
Year 2 (1/3)	9.73	9.86
Year 3 (2/3)	13.27	13.45
Year 4 (3/3)	15.57	15.78
Bricklayer		
Year l	7.36	7.46
Year 2 (1/3)	9.63	9.76
Year 3 (2/3)	13.14	13.31
Year 4 (3/3)	15.41	15.62
Stonemason		
Year l	7.44	7.54
Year 2 (1/3)	9.73	9.86
Year 3 (2/3)	13.27	13.45
Year 4 (3/3)	15.57	15.78
Rooftiler		
6 months	9.91	10.04
2nd 6 months	10.90	11.04
Year 2	12.73	12.90
Year 3	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 person's ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/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	$520,000	NIL
Above	$520,000 to $2.17m	$1.90
Above	$2.17m to $4.55m	$2.25
Over	$4.55m	$2.85

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17m	$1.70
Above	$2.17m to $4.55m	$1.90
Over	$4.55m	$2.45

4.2 Projects Located Within West Perth (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17m	$1.70
Above	$2.17m to $4.55m	$1.90
Over	$4.55m	$2.45

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17m	$1.60
Above	$2.17m to $4.55m	$1.80
Over	$4.55m	$2.05

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 $2.17m	$1.30
Above	$2.17m to 6m	$1.60
Above	$6m to $11.98m	$1.85
Above	$11.98m to $24.43m	$2.05
Above	$24.43m to $60.5m	$2.35
Over	$60.5m	$2.55

"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 eastem 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 Procedure
   - 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. Productivity Allowance

In return to increase productivity and/or timely completion of projects it is agreed that a productivity allowance of $1.00 per hour worked shall be paid toemployees engaged upon projects (new construction only) which exceed two stories in height or building where the structure exceeds 10 metres in height (excluding spires, flagpoles and the like).

14. Concretors Allowance

    It is agreed that a Concretors allowance of $1.00 per hour all purpose shall be paid to all employees engaged upon all projects.
15. Provision of Canteen

    It is agreed that a canteen accommodation shall be provided where a project exceeds $35 million in value and where the operation of the canteen is financially self supporting in respect of consumables. Canteen to come into operation when on site manning levels exceed 50 and to cease when manning levels reduce to below 50.
16. Provision of Nurse

    It is agreed that a qualified nurse shall be engaged where the forecast long term staffing levels for a project exceed 100 (one hundred) or when actual numbers exceed 100 not withstanding that forecasts may have been below that level. The nurse shall commence duties when staffing levels reach (fifty) and shall terminate when levels reduce to 50 (fifty). The requirement for a provision of a nurse shall be waived if the project is adjacent to a hospital with a public emergency department.
17. This agreement shall only apply to building contracts entered into on or tendered for on or after 1 January 1999.
18. Application to Apprentices

    The rates prescribed in this agreement shall apply to all apprentices commencing employment after 31 December 1997 in the same proportion as the percentage of a tradesperson's wage rate as prescribed by the appropriate award or Enterprise Bargaining Agreement, being

1st year	42%
2nd year	55%
3rd year	75%
4th year	88%

ARROW HOLDINGS INDUSTRIAL AGREEMENT.
No. AG 101 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Arrow Holdings Pty Ltd.

AG 101 of 1999.

Arrow Holdings Industrial Agreement.

COMMISSIONER S J KENNER.

2 August 1999.

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 Arrow Holdings Industrial Agreement as filed in the Commission on 4 June 1999 in the terms of the following schedule be and is hereby registered as an industrial agreement.

(Sgd.) S. J. KENNER,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Arrow Holdings Industrial Agreement.

2.—ARRANGEMENT

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 Arrow Holdings 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 where the project contractual value is covered by a site agreement between the Unions and the Principal Contractor, in which case employees will be paid pursuant to the site agreement, covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award"). There are approximately four (4) 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 Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Unions and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate and allowances resulting in the wage rates in 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. This clause will only apply when workers are engaged on construction sites not covered by a specific site agreement.

2. Superannuation

(i) The Company will immediately increase its level of payment to $60 per week per employee or 7% Ordinary Time Earnings, whichever is the greater.

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 shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by the employee.

(ii) "Ordinary Time Earnings" (which for the purposes of the Superannuation Guarantee (Administration) Act 1992 will operate to provide a notional earnings base) shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including tool allowance, industry allowance, trade allowances, shift loading, special rates, qualification allowances (eg. first aid, laser safety officer), multi-storey allowance, site allowance, asbestos eradication allowance, leading hand allowances, in charge of plant allowance and supervisory allowances where applicable. The term includes any regular over-award pay as well as casual rates received and any additional rates and allowances paid for work undertaken during ordinary hours of work, including fares and travel.

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 employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an inability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than—

course fees
course books and materials
payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

3. The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (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 tradespeople shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

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 when the tradesperson travels to site using their own vehicle.

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.—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.—UNION MEMBERSHIP

The employer will encourage, as far as possible, all employees covered by the agreement, to be financial members of the BLPPU and the CMETU.

22.—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: 1/6/99

.....

WITNESS

CMETU

.....

Date: 1/6/99

.....

WITNESS

The Company:

.....

SIGNATURE

Date: 27/5/1999

Company Seal

LINDA MARGARET DIXON

Print Name

.....

WITNESS

APPENDIX A—WAGE RATES

	Date of Signing Hourly Rate $	1 August 1999 Hourly Rate $
Labourer Group 1	16.92	17.15
Labourer Group 2	16.34	16.56
Labourer Group 3	15.90	16.12
Plaster, Fixer	17.58	17.82
Painter, Glazier	17.19	17.42
Signwriter	17.56	17.80
Carpenter	17.70	17.93
Bricklayer	17.52	17.75
Refractory Bricklayer	20.12	20.38
Stonemason	17.70	17.93
Rooftiler	17.38	17.62
Marker/Setter Out	18.21	18.46
Special Class T	18.45	18.69

APPRENTICE RATES

	Date of Signing Hourly Rate $	1 August 1999 Hourly Rate $
Plasterer, Fixer		
Year l	7.38	7.48
Year 2 (1/3)	9.68	9.81
Year 3 (2/3)	13.19	13.37
Year 4 (3/3)	15.48	15.69
Painter. Glazier		
Year l (.5/3/5)	7.22	7.32
Year 2 (1/3), (1.5/3.5)	9.45	9.58
Year 3 (2/3), (2.5/3.5)	12.89	13.06
Year 4 (3/3), (3.5/3.5)	15.13	15.33
Signwriter		
Year l (.5/3/5)	7.38	7.48
Year 2 (1/3), (1.5/3.5)	9.65	9.78
Year 3 (2/3), (2.5/3.5)	13.17	13.35
Year 4 (3/3), (3.5/3.5)	15.46	15.66
Carpenter		
Year l	7.44	7.54
Year 2 (1/3)	9.73	9.86
Year 3 (2/3)	13.27	13.45
Year 4 (3/3)	15.57	15.78
Bricklayer		
Year l	7.36	7.46
Year 2 (1/3)	9.63	9.76
Year 3 (2/3)	13.14	13.31
Year 4 (3/3)	15.41	15.62
Stonemason		
Year l	7.44	7.54
Year 2 (1/3)	9.73	9.86
Year 3 (2/3)	13.27	13.45
Year 4 (3/3)	15.57	15.78
Rooftiler		
6 months	9.91	10.04
2nd 6 months	10.90	11.04
Year 2	12.73	12.90
Year 3	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 person's ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/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	$510,000	NIL
Above	$510,000 to $2.13m	$1.85
Above	$2.13m to $4.47m	$2.20
Over	$4.47m	$2.80

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$510,000	NIL
Above	$510,000 to $2.13m	$1.65
Above	$2.13m to $4.47m	$1.85
Over	$4.47m	$2.40

4.2 Projects Located Within West Perth (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$510,000	NIL
Above	$510,000 to $2.13m	$1.65
Above	$2.13m to $4.47m	$1.85
Over	$4.47m	$2.20

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$510,000	NIL
Above	$510,000 to $2.13m	$1.55
Above	$2.13m to $4.47m	$1.75
Over	$4.47m	$2.00

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 $2.13m	$1.25
Above $2.13m to 5.89m	$1.55
Above $5.89m to $11.77m	$1.80
Above $11.77m to $24m	$2.00
Above $24m to $59.4 m	$2.30
Over $59.4m	$2.50

"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 eastem 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 Procedure
—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. Productivity Allowance

In return to increase productivity and/or timely completion of projects it is agreed that a productivity allowance of $1.00 per hour worked shall be paid toemployees engaged upon projects (new construction only) which exceed two stories in height or building where the structure exceeds 10 metres in height (excluding spires, flagpoles and the like).

14. Structural Frame Allowance

It is agreed that a structural frame allowance of $1.00 per hour all purpose shall be paid to all employees engaged upon projects (new construction only) which exceed two stories in height or building where the structure exceeds 10 metres in height (excluding spires, flagpoles and the like).

15. Provision of Canteen

It is agreed that a canteen accommodation shall be provided where a project exceeds $35 million in value and where the operation of the canteen is financially self supporting in respect of consumables. Canteen to come into operation when on site manning levels exceed 50 and to cease when manning levels reduce to below 50.

16. Provision of Nurse

It is agreed that a qualified nurse shall be engaged where the forecast long term staffing levels for a project exceed 100 (one hundred) or when actual numbers exceed 100 not withstanding that forecasts may have been below that level. The nurse shall commence duties when staffing levels reach (fifty) and shall terminate when levels reduce to 50 (fifty). The requirement for a provision of a nurse shall be waived if the project is adjacent to a hospital with a public emergency department.

17. This agreement shall only apply to building contracts entered into on or tendered for on or after 1 October 1997.

18. Application to Apprentices

The rates prescribed in this agreement shall apply to all apprentices commencing employment after 31 December 1997 in the same proportion as the percentage of a tradesperson's wage rate as prescribed by the appropriate award or Enterprise Bargaining Agreement, being

1st year	42%
2nd year	55%
3rd year	75%
4th year	88%

BARNEY MAC PLASTERING INDUSTRIAL AGREEMENT. No. AG 90 of 1999.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Bernard McGorrigan & Sheila McGorrigan trading as Barney Mac Plastering.

AG 90 of 1999.

Barney Mac Plastering Industrial Agreement.

COMMISSIONER S J KENNER.

22 July 1999.

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 Barney Mac Plastering Industrial Agreement as filed in the Commission on 26 May 1999 in the terms of the following schedule be and is hereby registered as an industrial agreement.

(Sgd.) S.J. KENNER,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Barney Mac Plastering Industrial Agreement.

2.—ARRANGEMENT

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 Bernard McGorrigan and Sheila McGorrigan trading as Barney Mac Plastering (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 is approximately one (1) employee 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 Clause 46 Settlement of Disputes and Appendix – Resolution of Disputes Requirements of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act 1979, as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Unions and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate and allowances resulting in the wage rates in 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

(i) The Company will immediately increase its level of payment to $60 per week per employee or 7% Ordinary Time Earnings, whichever is the greater.

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 shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by the employee.

(ii) "Ordinary Time Earnings" (which for the purposes of the Superannuation Guarantee (Administration) Act 1992 will operate to provide a notional earnings base) shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including tool allowance, industry allowance, trade allowances, shift loading, special rates, qualification allowances (eg. first aid, laser safety officer), multi-storey allowance, site allowance, asbestos eradication allowance, leading hand allowances, in charge of plant allowance and supervisory allowances where applicable. The term includes any regular over-award pay as well as casual rates received and any additional rates and allowances paid for work undertaken during ordinary hours of work, including fares and travel.

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 employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an inability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than—

course fees
course books and materials
payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

3. The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (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.—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.—UNION MEMBERSHIP

The employer will encourage, as far as possible, all employees covered by the agreement, to be financial members of the BLPPU and the CMETU.

22.—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	(Sgd.)
		Date: 24/5/99
		(Sgd.)
		WITNESS
	CMETU	(Sgd.)
		Date: 24/5/99
		(Sgd.)
		WITNESS
The Company:		(Sgd.)
	Company Seal	SIGNATURE
		Date: 24/5/99
		(Sgd.)
		PRINT NAME
		(Sgd.)
		WITNESS

APPENDIX A—WAGE RATES

	Date of Signing Hourly Rate $	1 August 1999 Hourly Rate $
Labourer Group 1	16.92	17.15
Labourer Group 2	16.34	16.56
Labourer Group 3	15.90	16.12
Plaster, Fixer	17.58	17.82
Painter, Glazier	17.19	17.42
Signwriter	17.56	17.80
Carpenter	17.70	17.93
Bricklayer	17.52	17.75
Refractory Bricklayer	20.12	20.38
Stonemason	17.70	17.93
Rooftiler	17.38	17.62
Marker/Setter Out	18.21	18.46
Special Class T	18.45	18.69

APPRENTICE RATES

	Date of Signing Hourly Rate $	1 August 1999 Hourly Rate $
Plasterer, Fixer		
Year l	7.38	7.48
Year 2 (1/3)	9.68	9.81
Year 3 (2/3)	13.19	13.37
Year 4 (3/3)	15.48	15.69
Painter. Glazier		
Year l (.5/3/5)	7.22	7.32
Year 2 (1/3), (1.5/3.5)	9.45	9.58
Year 3 (2/3), (2.5/3.5)	12.89	13.06
Year 4 (3/3), (3.5/3.5)	15.13	15.33
Signwriter		
Year l (.5/3/5)	7.38	7.48
Year 2 (1/3), (1.5/3.5)	9.65	9.78
Year 3 (2/3), (2.5/3.5)	13.17	13.35
Year 4 (3/3), (3.5/3.5)	15.46	15.66
Carpenter		
Year l	7.44	7.54
Year 2 (1/3)	9.73	9.86
Year 3 (2/3)	13.27	13.45
Year 4 (3/3)	15.57	15.78
Bricklayer		
Year l	7.36	7.46
Year 2 (1/3)	9.63	9.76
Year 3 (2/3)	13.14	13.31
Year 4 (3/3)	15.41	15.62
Stonemason		
Year l	7.44	7.54
Year 2 (1/3)	9.73	9.86
Year 3 (2/3)	13.27	13.45
Year 4 (3/3)	15.57	15.78
Rooftiler		
6 months	9.91	10.04
2nd 6 months	10.90	11.04
Year 2	12.73	12.90
Year 3	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 person's ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/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	$520,000	NIL
Above	$520,000 to $2.17m	$1.90
Above	$2.17m to $4.55m	$2.25
Over	$4.55m	$2.85

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17m	$1.70
Above	$2.17m to $4.55m	$1.90
Over	$4.55m	$2.45

4.2 Projects Located Within West Perth (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17m	$1.70
Above	$2.17m to $4.55m	$1.90
Over	$4.55m	$2.45

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17m	$1.60
Above	$2.17m to $4.55m	$1.80
Over	$4.55m	$2.05

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 $2.17m	$1.30
Above $2.17m to 6m	$1.60
Above $6m to $11.98m	$1.85
Above $11.98m to $24.43m	$2.05
Above $24.43m to $60.5m	$2.35
Over $60.5m	$2.55

"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 eastem 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 Procedure
- 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. Productivity Allowance

In return to increase productivity and/or timely completion of projects it is agreed that a productivity allowance of $1.00 per hour worked shall be paid toemployees engaged upon projects (new construction only) which exceed two stories in height or building where the structure exceeds 10 metres in height (excluding spires, flagpoles and the like).

14. Structural Frame Allowance

It is agreed that a structural frame allowance of $1.00 per hour all purpose shall be paid to all employees engaged upon projects (new construction only) which exceed two stories in height or building where the structure exceeds 10 metres in height (excluding spires, flagpoles and the like).

15. Provision of Canteen

It is agreed that a canteen accommodation shall be provided where a project exceeds $35 million in value and where the operation of the canteen is financially self supporting in respect of consumables. Canteen to come into operation when on site manning levels exceed 50 and to cease when manning levels reduce to below 50.

16. Provision of Nurse

It is agreed that a qualified nurse shall be engaged where the forecast long term staffing levels for a project exceed 100 (one hundred) or when actual numbers exceed 100 not withstanding that forecasts may have been below that level. The nurse shall commence duties when staffing levels reach (fifty) and shall terminate when levels reduce to 50 (fifty). The requirement for a provision of a nurse shall be waived if the project is adjacent to a hospital with a public emergency department.

17. This agreement shall only apply to building contracts entered into on or tendered for on or after 1 January 1999.

18. Application to Apprentices

The rates prescribed in this agreement shall apply to all apprentices commencing employment after 31 December 1997 in the same proportion as the percentage of a tradesperson's wage rate as prescribed by the appropriate award or Enterprise Bargaining Agreement, being

1st year	42%
2nd year	55%
3rd year	75%
4th year	88%

BHP WESTERN AUSTRALIAN SERVICE CENTRE ENTERPRISE BARGAINING AGREEMENT 1999.

No. AG 121 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

BHP Steel (JLA) Pty Ltd T/as BHP Coated Steel

and

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing And Allied Workers Union Of Australia, Engineering And Electrical Division, WA Branch.

No. AG 121 of 1999.

BHP Western Australian Service Centre Enterprise Bargaining Agreement 1999.

27 July 1999.

Order.

HAVING heard Ms A.C. Young on behalf of the Applicant and Mr C.F. Young on behalf of the Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the agreement made between the parties as lodged in the Commission on the 25th day of June 1999 entitled BHP Western Australian Service Centre Enterprise Bargaining Agreement 1999 be registered in the terms of the following Schedule as an industrial agreement in replacement of the AEEFEU/Sheet and Coil Products Division Myaree Performance Related Payments Scheme (Enterprise Bargaining) Agreement (AG 30 of 1993) which is hereby cancelled.

(Sgd.) G.L. FIELDING,
Senior Commissioner.

[L.S.]

Schedule

1.—AGREEMENT

This agreement shall be referred to as the BHP Western Australian Service Centre Enterprise Bargaining Agreement 1999.

2.—ARRANGEMENT

3.—APPLICATION OF THE AGREEMENT

(1) This agreement will apply at the BHP Steel (JLA) Pty Ltd, Coated Steel Australia, establishment located at Myaree in respect of employees bound by the terms of the John Lysaght (Australia) Limited Award in Western Australia.

(2) This agreement supersedes the Operation of Agreement AG30 of 1993 and the Myaree Compact Agreement dated December 1996, which is cancelled by the registration of this Agreement.

4.—PARTIES BOUND

(1) The parties to this Agreement are—

(a) BHP Steel (JLA) Pty Ltd carrying on business as BHP Steel, Coated Steel Division; and

(b) Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia. Engineering and Electrical Division, WA Branch; and

(c) This agreement covers approximately 20 employees.

(2) The parties accept they are bound by the terms of this Agreement for its period of operation and will oppose any application by other parties to be joined to this Agreement.

(3) The parties to this Agreement will comply with its terms, notwithstanding the provisions of any Award, Order or Industrial Agreement by which they are covered.

5.—DATE AND PERIOD OF OPERATION

This Agreement will operate from the beginning of the first pay period to commence on or after 1 January 1999. It will remain in force until 31 December 1999.

6.—RELATIONSHIP TO PARENT AWARD

(1) This Agreement is to be read and interpreted in conjunction with the John Lysaght (Australia) Limited Award (No 27 of 1967).("The Award")

(2) This agreement shall prevail over the award and the Myaree Compact attached here to the extent of any inconsistency.

7.—PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to promote a site team approach towards continuous improvement in the Company's business performance and recognise employees for their involvement in this process.

Accordingly, this Agreement provides for—

- The revised Performance Related Payments Scheme (Refer WA-WP-HR05 which is attached)
- The revised Wages Compact Agreement (Ref WA-WP-HR06 which is attached)

8.—DISPUTE RESOLUTION

This procedure aims to promote the resolution of disputes by measures based on consultation, co-operation and discussion, and to avoid interruption to the performance of work and the consequential loss of production and wages.

In the event of a question, dispute or difficulty arising out of this agreement that may affect one or more employees, the following procedure shall apply—

(1) The matter is to be discussed between the employee(s) concerned and the immediate supervisor. The employee(s) may invite a delegate to attend.

If unresolved

(2) The delegate and the employee(s) are to discuss the matter with the immediate supervisor.

If unresolved

(3) They are to raise the matter with the site manager.

If unresolved

(4) Manager to arrange for the matter to be discussed between union organiser and the industrial relations department.

If unresolved

(5) If still unresolved and the employee(s) wish to pursue it further, the matter will be referred to the Western Australian Industrial Relations Commission.

Prior to referral to the WAIRC genuine attempts must be made to resolve the dispute. In order to allow for the peaceful resolution of grievances, the parties are committed to avoid stoppages of work.

9.—NO EXTRA CLAIMS

The Union undertakes for the period to 31 December 1999 not to pursue any extra claims award or other (including claims related to National or State Wage Case decisions), although renewal Agreement discussions may commence after 1 November 1999. There will be agreed scope to arbitrate, if necessary, unresolved issues about classification restructuring or work value claims.

10.—APPENDICES

10.1—AGREEMENT RATIFICATION

The Western Australian Service Centre Enterprise Bargaining Agreement is comprised of the following parts—

Document	Reference No.
1. Enterprise Bargaining Agreement	WA.QP.HR.07 REV B
2. Performance Related Payment System	WA.QP.HR.05 REV B
3. Wages Compact Agreement	WA.QP.HR.06 REV B

The undersigned parties have agreed to the terms of this agreement—

Name: Neil Ribbans
Position: SSC Manager
Signature: N. Ribbans (signed)
Date: 21.6.99
Name: Stephen Stenvers
Position: Process Engineer
Signature: S. Stenvers (signed)
Date: 21.6.99
Name: Joe Daniel Fiala
Position: CEPU Metal Trades Organiser
Signature: J.D. Fiala (signed)
Date: 21.6.99
Name: George Freeman
Position: Shop Steward
Signature: G. Freeman (signed)
Date: 21.6.99

10.2—WAGES COMPACT AGREEMENT

CONTENTS

1—BACKGROUND

The 1996 Wage Settlement was on the basis of a Compact, aimed at improving efficiency and business performance in an environment where we, as with the rest of the world steel industry, were seeing a substantial deterioration in financial performance.

As we move into the next century, it is clear that we face an even more demanding market place and our ability to compete will depend on our success in harnessing all our resources in the most productive and cost efficient manner.

To support this 1998 Wage Settlement Agreement and to help achieve other aspirations of our industry and employees/unions, there is a need to work together and do whatever is safe, efficient, logical and legal to remove remaining barriers to full achievement of "world best" teamworking practices and operational excellence.

2—OBJECTIVES

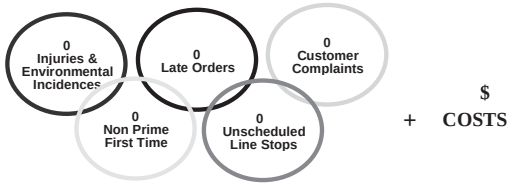
It is our agreed objective to ensure we—

—Achieve and Maintain an injury free workplace

—Achieve and Maintain manufacturing excellence

—Achieve and Maintain excellent customer service

This will be achieved by focussing on "The 5 Zeroes" and Cost Reduction strategies in the CSA Business Plan—



We acknowledge that the "Zero" objective is appropriate and is a necessary focal point to ensure right thinking and to ensure cost effective strategies are put in place. The parties agree that an environment where change is viewed as a positive rather than a threat is the only one in which these objectives will be met.

We recognise that these objectives will be supported by establishing and maintaining a workplace culture where individuals and teams work co-operatively without use of fear of threats.

3—AGREEMENT

3.1 SAFETY—The common goal is a workplace in which no one gets injured. The key initiative in pursuing this must focus on the actions of people. Accordingly—

The Following safety beliefs will guide behaviour of all at Myaree—

- ***W***orking safely is a condition of employment
- ***E***mployee involvement is essential
- ***M***anagement is accountable for safety
- ***A***ll injuries can be prevented
- ***T***raining employees to work safely is essential
- ***A***ll operating exposures can be safeguarded.

All employees will be actively involved in the site safety audit teams which will be responsible for the following on going improvements in their natural work teams.

- Building improvements to safety procedures.
- Implementing corrective actions resulting from audits, near misses, incident reports in their work team area.
- Responsible for coaching employees to comply with the agreed personal protective equipment policy for the site.

3.2 REVIEW OF WORK ARRANGEMENT

The need for continuous improvement in the way we work in accepted by all. Accordingly the parties agree to the following.

3.2.1 Employee Development

- The current classification structure will be reviewed to incorporate team working arrangements

3.2.2 Customer Service

- Production capacity will be increased by improving site based rostered day off strategies.
- The taking of rostered days off under the current system impacts adversely on the business because half of the RDO's in any year fall in the first two weeks of the month (the busiest period).
- The agreed solution lies in a system that removes the incentive to work overtime on RDO's; but this requires further discussion.
- Accordingly, to both minimise the current impact of RDO's on the business and to allow discussion to develop acceptable alternatives, it is agreed that night shift RDO's will move to the same day as day shift RDO's(by changing the RDO due on 23 July to 30 July).
- This common RDO will then be taken on the Friday of each fourth week, thereafter.
- It is agreed that RDO's in December and January will be taken accordingly—
  - The RDO on December 17th will be moved to the Christmas shutdown.
  - The RDO on January 14th will be moved to January 28th (after which the RDO will be taken on the fourth Friday).
  - Night shift employees will be entitled to a second RDO during the Christmas shutdown.

This is on the basis of a firm commitment to negotiate alternative remuneration outcomes (including annualised salaries) and if satisfactory progress is not seen by end January 2000 the four weekly cycle will begin from 10 March 2000.

3.3 WAGE INCREASE

3.2.3 There will be a wage increase of 3% (subject to a minimum $20 per week increase for adult full time employees) operative from the first pay period to begin on or after 1 June 1999.

This increase will apply to the total of the weekly wage and shift allowances. Notwithstanding the rates shown in the John Lysaght (Aust) Ltd Awards, the following consolidated rates will accordingly apply—

Classification	Award	Overaward	Total
Probation	$461.70	$1.2	$462.90
Level 1	$480.10	$17.00	$497.20
Level 2	$510.90	$21.00	$531.90
Level 3	$530.20	$36.40	$566.60
Level 4	$549.90	$45.20	$595.10
Level 5	$567.20	$78.50	$645.70

3.2.4 New arrangements to give extra take home pay will be introduced. They will enable employees to transfer their superannuation contributions to their "before tax" wage rate and thereby increase their take home pay. These arrangements are shown in Attachment 1.

3.4 LONG SERVICE LEAVE

The Company will apply the NSW Long Service Leave Act, 1955 provisions in respect of paying pro rata long service leave after five consecutive years' continuous service. This provides pro-rata long service to an employee with at least 5 years service when the Company terminates that employee for any reason other than the employee's serious and wilful misconduct; or where the employee resigns on account of illness, incapacity or domestic or other pressing necessity, or by reason of the death of the worker.

3.6 DELEGATES TRAINING

The Company will co-operate with the Union to facilitate release and pay ordinary wages to delegates attending agreed courses in cases where—

a) there is prior consultation with the Company about course content and the ability to release particular employees from the job;

b) the course is aimed at improving industrial relations and deals with relevant matters in a positive and responsible manner. "Relevant matters" will be viewed expansively to include matters such as WorkCover, OH&S, legislative change affecting Myaree; and

c) where appropriate, there is an opportunity for Company participation in or contribution to the course.

ATTACHMENT 1

AGREEMENT FOR ALTERNATIVE REMUNERATION (SALARY SACRIFICE)

Despite any other provision of this Agreement, for the purpose only of calculating ordinary time earnings, the rate of pay per week prescribed in clause 3.3.1 shall be reduced by the amount which an employee elects by notice in writing to the Company, to sacrifice in order to enable the Company to make a superannuation contribution for the benefit of the employee.

For an employee's election to be valid the employee must complete the election form provided by the Company.

The reduced rate of pay and the superannuation contributions provided for in this attachment shall apply for periods of annual leave, long service leave and other periods of paid leave.

All other award payments, including termination payments, calculated by reference to the employee's rate of pay shall be calculated by reference to the rate of pay per week specified for the employee in clause 3.3.1.

Employees may start, vary or stop their elections at any time by completing a new election form. Not less than one months notice shall be given by the employee of revocation or variation. If variations become too frequent, the Company may allow employees to vary or revoke the election only once in each twelve months.

If at any time while an employee's election is in force, there are changes in taxation or superannuation laws, practice or rulings, that materially alter the benefit to the employee or the cost to the employer of acting in accordance with the election, either the employee or the Company may, upon one months notice in writing to the other, terminate the election.

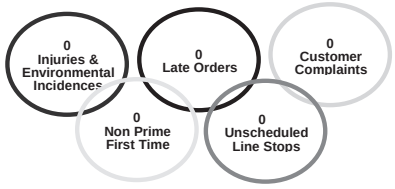
The Company shall not use any superannuation contribution made in accordance with an employee's election to meet its minimum employer obligation under the Superannuation Guarantee Act or any legislation which succeeds or replaced it.

10.3—PERFORMANCE RELATED PAYMENTS SCHEME

CONTENTS

1—KEY PERFORMANCE INDICATORS

Coated Steel Division is committed to accelerating the pace of improvement necessary to help us achieve world class performance. The Western Australia Service Centre will be striving to achieve the "Five Zero" targets and its contribution will be focused on site based work aimed at achieving budget targets in the following areas—



The Western Australian Service Centre's contribution will largely consist of—

(i) improving the level of prime material from the processing lines by 50%

(ii) reducing the number of operational complaints by 50%

(iii) achievement of budget operating costs of—
slitting $22 per tonne
shearing $47 per tonne
services $12 per tonne

(iv) achieve 100% delivery performance for Mill cycle and COM orders

To support the achievement of these site based targets, projects will be identified and implemented by all parties to this agreement. These appear in "Clause 5—Projects".

By implementing these projects, the targets set out in "Clause 2—Targets" will be achieved, although it is acknowledged that other initiatives may be identified to further assist.

For the first 4 quarters of the operation of this Agreement, the Key Performance Indicators will be—

(i) Productivity
(ii) Customer Service
(iii) Product Quality

2—TARGETS

Targets for the first 4 quarters are set out below.

(i) Productivity 0.9367

Current = tones per hour worked on all three process lines

Outstanding	>0.8750
Good	>0.7750 to <0.8750
Adequate	>0.6750 to <0.7750
Poor	<0.6750

Productivity = total production from all three processing lines divided by the total hours worked on all three processing lines

(ii) Customer Service

Current average	97%
Outstanding	>96%
Good	90 to 95%
Adequate	85 to 89%
Poor	<85%

Delivery Performance = the number of Service Centre orders delivered on time divided by the total Service Centre orders during a weekly period.

(iii) Product Quality

Current	146
Outstanding	>170 order items per complaint
Good	150-170 order items per complaint
Adequate	130-150 order items per complaint
Poor	<130 order items per complaint

The number of order items loaded per complaint received during a weekly period.

* Christmas shutdown will be excluded for the purposes of PRPS calculation.

In this agreement

	Year 1
Quarter 1 ends	29 May1999
Quarter 2 ends	26 August 1999
Quarter 3 ends	25 November 1999
Quarter 4 ends	23 February2000

3—PAYMENT

To foster the ongoing co-operation required for the achievement of the targets and to recognise improved performance, lump sum quarterly payments will be available as follows

PRPS MATRIX

Max Percentage	Poor	Adequate	Good	Outstanding
Productivity = 2%	0%	1.0%	1.5%	2%
Product = 2%				
Quality	0%	1.0%	1.5%	2%
Product = 2.5%				
Service	0%	1.0%	1.5%	2.5%

The total percentage amount will be calculated by the addition of appropriate results from the target measures.

The amount as determined above, shall be applied to the gross wage of each qualifying employee for the relevant quarter, to calculate that employee's performance related payment.

For the purposes of determining the quarterly performance related payments, gross wage will include the total of the following earnings for the quarter; award and over award payments, overtime and shift allowance earnings, plus payments in respect of paid leave.

Excluded from gross earnings will be (1) payments for periods of absence on workers compensation where the absence has been for a period of more than twelve months and (2) performance related payments relating to a previous quarter which may have been paid during the quarter.

The parties acknowledge that whilst quarterly lump sum payments of 5.5% are targeted, actual payments may range from 0% to 6.5%. Targets to be met for a 5.5% quarterly lump sum payment, we believe, are realistically achievable, but to provide an added "insurance", topping up arrangements will be available. If in a particular quarter, a payment of less than 5.5% is made, an adjustment may be warranted in the payment for the fourth quarter. Such adjustment will be made only if the performance target of good/good/good or better is achieved in the fourth quarter.

When an adjustment is appropriate, the final quarter payment will include an additional amount equal to the difference between the sum of payments for the four quarters and 5.5% of gross earnings for the four quarters.

No top up will apply in quarter where the results were affected by strike or other forms of industrial action.

Subject to Australian Taxation Office approval employees will be able to choose to enter into "salary sacrifice" arrangements for PRPS (in part of in full) so that the payment becomes an employer contribution to the employee's superannuation account.

4—ELIGIBILITY FOR PAYMENT

Employees eligible for quarterly PRPS payment under this Agreement will be those employees employed by the week and in employment as at the end of the quarter. Accordingly, casual employees are not eligible for quarterly PRPS payments.

5—IMPROVEMENT PROJECTS

As with the previous Performance Related Payments Scheme Agreements, this agreement carries a commitment from employees to strictly comply with standard operating procedures.

There is an agreed commitment to the following improvement initiatives during the operation of this Agreement—

1. Scheduling improvement project to achieve the following outcomes—
   - Schedule arrives to the units on time.
   - Schedule covers a 24 hours operating period.
   - Optimisation of head setting efficiencies.
   - Decrease schedule changes for a 24 hour operating period.
2. MSHI Productivity target of 30t/shift to be obtained by identifying current line delays.
3. Improved order accuracy to match operational requirements.
4. Improved information flow to the crews with focus on quality and timeliness of data.

6—REVIEW

A review of the previous quarters results will occur at the end of each quarter which may facilitate change to targets. The emphasis on the review will be to—

- Update project status.
- Assess the target suitability with the option of increasing or decreasing as necessary.

BLUESTREAM COMMERCIAL INDUSTRIAL AGREEMENT.
No. AG 88 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Bluestream Commercial Pty Ltd.

AG 88 of 1999.

Bluestream Commercial Industrial Agreement.

COMMISSIONER S J KENNER.

22 July 1999.

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 Bluestream Commercial Industrial Agreement as filed in the Commission on 26 May 1999 in the terms of the following schedule be and is hereby registered as an industrial agreement.

(Sgd.) S.J. KENNER,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Bluestream Commercial Industrial Agreement.

2.—ARRANGEMENT

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 Bluestream Commercial 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 Clause 46 Settlement of Disputes and Appendix – Resolution of Disputes Requirements of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act 1979, as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Unions and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate and allowances resulting in the wage rates in 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

(i) The Company will immediately increase its level of payment to $60 per week per employee or 7% Ordinary Time Earnings, whichever is the greater.

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 shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by the employee.

(ii) "Ordinary Time Earnings" (which for the purposes of the Superannuation Guarantee (Administration) Act 1992 will operate to provide a notional earnings base) shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including tool allowance, industry allowance, trade allowances, shift loading, special rates, qualification allowances (eg. first aid, laser safety officer), multi-storey allowance, site allowance, asbestos eradication allowance, leading hand allowances, in charge of plant allowance and supervisory allowances where applicable. The term includes any regular over-award pay as well as casual rates received and any additional rates and allowances paid for work undertaken during ordinary hours of work, including fares and travel.

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 employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an inability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than—

course fees
course books and materials
payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

3. The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (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.—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.—UNION MEMBERSHIP

The employer will encourage, as far as possible, all employees covered by the agreement, to be financial members of the BLPPU and the CMETU.

22.—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 (Sgd.)
Date: 19/5/99
(Sgd.)
WITNESS

CMETU (Sgd.)
Date: 19/5/99
(Sgd.)
WITNESS

The Company: (Sgd.)
Company Seal SIGNATURE
Date: 13/5/99
GLEN ROBERT ASHWORTH
PRINT NAME
(Sgd.)
WITNESS

APPENDIX A—WAGE RATES

	Date of Signing Hourly Rate $	1 August 1999 Hourly Rate $
Labourer Group 1	16.92	17.15
Labourer Group 2	16.34	16.56
Labourer Group 3	15.90	16.12
Plaster, Fixer	17.58	17.82
Painter, Glazier	17.19	17.42
Signwriter	17.56	17.80
Carpenter	17.70	17.93
Bricklayer	17.52	17.75
Refractory Bricklayer	20.12	20.38
Stonemason	17.70	17.93
Rooftiler	17.38	17.62
Marker/Setter Out	18.21	18.46
Special Class T	18.45	18.69

APPRENTICE RATES

	Date of Signing Hourly Rate $	1 August 1999 Hourly Rate $
Plasterer, Fixer		
Year l	7.38	7.48
Year 2 (1/3)	9.68	9.81
Year 3 (2/3)	13.19	13.37
Year 4 (3/3)	15.48	15.69
Painter. Glazier		
Year l (.5/3/5)	7.22	7.32
Year 2 (1/3), (1.5/3.5)	9.45	9.58
Year 3 (2/3), (2.5/3.5)	12.89	13.06
Year 4 (3/3), (3.5/3.5)	15.13	15.33
Signwriter		
Year l (.5/3/5)	7.38	7.48
Year 2 (1/3), (1.5/3.5)	9.65	9.78
Year 3 (2/3), (2.5/3.5)	13.17	13.35
Year 4 (3/3), (3.5/3.5)	15.46	15.66
Carpenter		
Year l	7.44	7.54
Year 2 (1/3)	9.73	9.86
Year 3 (2/3)	13.27	13.45
Year 4 (3/3)	15.57	15.78
Bricklayer		
Year l	7.36	7.46
Year 2 (1/3)	9.63	9.76
Year 3 (2/3)	13.14	13.31
Year 4 (3/3)	15.41	15.62
Stonemason		
Year l	7.44	7.54
Year 2 (1/3)	9.73	9.86
Year 3 (2/3)	13.27	13.45
Year 4 (3/3)	15.57	15.78
Rooftiler		
6 months	9.91	10.04
2nd 6 months	10.90	11.04
Year 2	12.73	12.90
Year 3	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 person's ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/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	$520,000	NIL
Above	$520,000 to $2.17m	$1.90
Above	$2.17m to $4.55m	$2.25
Over	$4.55m	$2.85

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17m	$1.70
Above	$2.17m to $4.55m	$1.90
Over	$4.55m	$2.45

4.2 Projects Located Within West Perth (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17m	$1.70
Above	$2.17m to $4.55m	$1.90
Over	$4.55m	$2.45

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17m	$1.60
Above	$2.17m to $4.55m	$1.80
Over	$4.55m	$2.05

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 $2.17m	$1.30
Above $2.17m to 6m	$1.60
Above $6m to $11.98m	$1.85
Above $11.98m to $24.43m	$2.05
Above $24.43m to $60.5m	$2.35
Over $60.5m	$2.55

"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 eastem 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 Procedure
- 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. Productivity Allowance

In return to increase productivity and/or timely completion of projects it is agreed that a productivity allowance of $1.00 per hour worked shall be paid toemployees engaged upon projects (new construction only) which exceed two stories in height or building where the structure exceeds 10 metres in height (excluding spires, flagpoles and the like).

14. Structural Frame Allowance

It is agreed that a structural frame allowance of $1.00 per hour all purpose shall be paid to all employees engaged upon projects (new construction only) which exceed two stories in height or building where the structure exceeds 10 metres in height (excluding spires, flagpoles and the like).

15. Provision of Canteen

It is agreed that a canteen accommodation shall be provided where a project exceeds $35 million in value and where the operation of the canteen is financially self supporting in respect of consumables. Canteen to come into operation when on site manning levels exceed 50 and to cease when manning levels reduce to below 50.

16. Provision of Nurse

It is agreed that a qualified nurse shall be engaged where the forecast long term staffing levels for a project exceed 100 (one hundred) or when actual numbers exceed 100 not withstanding that forecasts may have been below that level. The nurse shall commence duties when staffing levels reach (fifty) and shall terminate when levels reduce to 50 (fifty). The requirement for a provision of a nurse shall be waived if the project is adjacent to a hospital with a public emergency department.

17. This agreement shall only apply to building contracts entered into on or tendered for on or after 1 January 1999.

18. Application to Apprentices

The rates prescribed in this agreement shall apply to all apprentices commencing employment after 31 December 1997 in the same proportion as the percentage of a tradesperson's wage rate as prescribed by the appropriate award or Enterprise Bargaining Agreement, being

1st year	42%
2nd year	55%
3rd year	75%
4th year	88%

BUDGET BRICK HOISTS INDUSTRIAL AGREEMENT.
No. AG 98 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters & Plasterers Union of Workers
and
Aceway Investments Pty Ltd trading as Budget Brick Hoists.

Budget Brick Hoists Industrial Agreement.
AG 98 of 1999.

COMMISSIONER S J KENNER.

2 August 1999.

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 Budget Brick Hoists Industrial Agreement as filed in the Commission on 1 June 1999 in the terms of the following schedule be and is hereby registered as an industrial agreement.

(Sgd.) S.J. KENNER,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Budget Brick Hoists Industrial Agreement.

2.—ARRANGEMENT

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 Aceway Investments Pty Ltd trading as Budget Brick Hoists (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

1. This Agreement shall be binding upon the Company, the Union, its officers and employees eligible to be members of the Union employed by the Company on scaffolding work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the relevant Award). There are approximately two (2) employees covered by this agreement.

2. 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 satisfication 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 and shall remain in force until 31 October 1999.

2. Any party may terminate the Agreement provided three months' notice has first been given in writing.

3. The parties agree to commence discussions on the terms and conditions or any future Agreement three calendar months prior to the expiration of this Agreement.

7.—WAGES AND ALLOWANCES

1. The following rate shall apply to all employees covered by this Agreement—

From the date of signing, hourly rate $16.4

From 1 August 1999, hourly rate $16.56

2. In addition, the following allowance will be paid for work carried out—

(a) A rate of $5.25 per hour will be paid to all employees. This allowance is "all purpose" and shall be included as part of the ordinary rate.

(b) The $5.25 per hour allowance will be paid in lieu of any other allowance.

8.—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.

9.—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.

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.

10.—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 8—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.

11.—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.

3. An overtime roster may be introduced after agreement is reached between the employees, the Company and the Union.

12.—COMPANY BASED INCENTIVE SCHEME

1. 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.

2. Once negotiated incentive schemes will be submitted to the Union prior to its implementation for confirmation that the relevant Award requirements have been satisfied.

13.—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 into the Western Australian Construction Industry Redundancy Fund.

2. **Superannuation**

(i) The Company will immediately increase its level of payment to $60 per week per employee or 7% Ordinary Time Earnings, whichever is the greater.

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 shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by the employee.

(ii) "Ordinary Time Earnings" (which for the purposes of the Superannuation Guarantee (Administration) Act 1992 will operate to provide a notional earnings base) shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including tool allowance, industry allowance, trade allowances, shift loading, special rates, qualification allowances (eg. first aid, laser safety officer), multi-storey allowance, site allowance, asbestos eradication allowance, leading hand allowances, in charge of plant allowance and supervisory allowances where applicable. The term includes any regular over-award pay as well as casual rates received and any additional rates and allowances paid for work undertaken during ordinary hours of work, including fares and travel.

14.—CLOTHING AND FOOTWEAR

1. The following items or other suitable clothing as agreed between the company and the Union will bee supplied to each employee by the Company, upon the completion of five working days.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year)

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

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

1. The parties recognise the need to adopt a "total trade" concept for training and skills acquisition to meet the current and future requirements of the industry. 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.

2. It is agreed that safety training will be an important component in the structured training programme.

3. All scaffolding work will be carried out using labour suitably trained and qualified to a standard approved by the Company and the Union.

4. A training allowance of $12.00 per week per worker shall be paid by the employer to the Union Education and Training Fund.

5. 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 employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an inability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than—

course fees

course books and materials

payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

6. 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.—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.

17.—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 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.

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 A—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.

22.—SIGNATORIES

Signed for and on behalf of—

The Unions:	BLPPU	(Sgd.)
		Date: 31/5/99
		(Sgd.)
		Witness
The Company:	ACEWAY	(Sgd.)
	INVESTMENTS	Date: 24/5/99
	PTY LTD	MICHAEL ROY
	Common Seal	Print Name
		(Sgd.)
		Witness

APPENDIX A

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 person's ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/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 B

Labour Levels for Scaffolding

This appendix sets out parameters for labour levels on scaffolding work, however it has been an understanding between the parties that a common sense approach in keeping with practical and safe working conditions forms the basis of this Agreement.

1. Steel Scaffolding

Scaffolding work of a substantial nature erected over 4 metres high in accordance with Division 7 of the Occupational Safety and Health Regulations and Australian Standard 1576 shall where that scaffolding is to be erected at one time be the work of at least 3 workers.

Scaffolding that will ultimately be erected over 4 metres high, however is built in stages can be erected up to 4 metres by a two person team one of which shall be a licensed scaffolder.

Notwithstanding the abovementioned agreements and due to the variation of circumstances applicable in scaffolding work such as towers, scaffolding over uneven sites, etc, there will be consultation between the Licensed Scaffolder and the Employer on labour levels in line with practical and safe working conditions is an understanding between the parties to this agreement.

2. Aluminium Mobiles

There shall not be a requirement for 3 person gangs up to a height of 9.2 metres on Aluminium Mobiles unless deemed necessary by the employer.

CEREBRAL PALSY ASSOCIATION OF WESTERN AUSTRALIA LTD. PROFESSIONAL SALARIED STAFF ENTERPRISE AGREEMENT 1999.
No. AG 124 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Cerebral Palsy Association of WA Limited

and

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

No. AG 124 of 1999.

Cerebral Palsy Association of Western Australia Ltd. Professional Salaried Staff Enterprise Agreement 1999.

CHIEF COMMISSIONER W.S. COLEMAN.

5 August 1999.

Order.

HAVING heard Mr M O'Connor on behalf of applicant and Ms C. Thomas on behalf of the respondent;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order —

THAT the agreement entitled Cerebral Palsy Association of Western Australia Ltd. Professional Salaried Staff Enterprise Agreement 1999 in the terms of the following Schedule be registered as an industrial agreement.

(Sgd.) W. S. COLEMAN,
[L.S.] Chief Commissioner.

1.— TITLE

This Agreement shall be referred to as the Cerebral Palsy Association of Western Australia Ltd. Professional Salaried Staff Enterprise Agreement 1999.

2.—ARRANGEMENT

3.—APPLICATION OF AGREEMENT

This Agreement shall apply to Cerebral Palsy Association of Western Australia Ltd, to all professional Salaried Staff who are engaged in any of the occupations or callings specified in Schedule 1 hereof, and to the Hospital Salaried Officers Association of Western Australia Union of Workers.

4.—RELATIONSHIP TO PARENT AWARD

This Agreement shall be read and interpreted in conjunction with the Hospital Salaried Officers (Cerebral Palsy Association of Western Australia) Award 1978, hereinafter referred to as the Award, but where the terms of this Agreement are inconsistent with the Award, the terms of this Agreement shall prevail.

5.—OBJECTIVE

This Agreement is designed to provide an appropriate pay increase for employees in recognition of their continuing contribution and agreement to the productivity efficiency measures outlined in the Agreement.

6.—PRODUCTIVITY AND EFFICIENCY MEASURES

(1) Sick Leave

The following provisions will apply in lieu of subclause (3) of Clause 16 of the award—

(a) An application for leave of absence on the grounds of illness exceeding two consecutive working days shall be supported by the certificate of a registered medical practitioner or, where the nature of illness consists of a dental condition and the period of absence does not exceed five consecutive working days, by a certificate of a registered dentist.

(b) The number of days' leave of absence which may be granted without the production of the certificate required by paragraph (a) of this subclause shall not exceed, in the aggregate, five working days in any one accruing year.

(c) Subject to the provisions of this clause no leave of absence on the grounds of illness shall be granted with pay without the production of a medical certificate.

(d) An employee who is unable to resume duty on the expiration of the period shown on the first certificate shall thereupon furnish a further certificate and shall continue to do so upon the expiration of the period respectively covered by such certificates.

(2) Public Holidays

The entitlement to the Easter and Christmas Public Service holidays to cease. To replace these days, 2 additional days of leave will be granted by the Chief Executive Officer on an annual basis. These days are to be taken on days nominated by the Chief Executive officer. This arrangement will continue in line with the State Public Service arrangement whereby the Premier allows State Public Servants 2 additional days leave per annum by Administrative Order. Should the State Public Service arrangement cease and public service employees no longer be allowed the extra 2 days leave, then the Employer reserves the right to cancel the arrangement.

(3) Family Leave

(a) Use of Sick Leave

(i) An employee with responsibilities in relation to either members of their immediate family or members of their household who need their care and support shall be entitled to use, in accordance with this subclause, up to 5 days per year sick leave entitlement which accrues after the date of this Agreement for absences to provide care and support for such persons when they are ill.

(ii) The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned.

(iii) The entitlement to use sick leave in accordance with this subclause is subject to—

(1) the employee being responsible for the care of the person concerned; and

(2) the person concerned being either—

(A) a member of the employee's immediate family; or

(B) a member of the employee's household.

(3) the term "immediate family" includes—

(A) a spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse, in relation to a person, means a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; and

(B) a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent grandparent, grandchild or sibling of the employee or spouse of the employee.

(iv) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

(v) Sick leave provided for family leave purposes is not cumulative.

(b) Unpaid Leave for Family Purpose

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care to a family member who is ill.

(c) Annual Leave

(i) Notwithstanding the provision of this clause, an employee may elect, with the consent of the employer, to take annual leave in single day periods not exceeding five days in any calendar year at a time or times agreed between them.

(ii) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.

(4) Parental Leave

Interpretation

(1) In this clause—

"adoption", in relation to a child, is a reference to a child who—

(i) is not the natural child or the step-child of the employee or the employee's spouse;

(ii) is less than 5 years of age; and

(iii) has not lived continuously with the employee for 6 months or longer;

"continuous service" means service under an unbroken contract of employment and includes—

(i) any period of parental leave; and

(ii) any period of leave or absence authorised by the employer or by this workplace agreement;

"expected date of birth" means the day certified by a medical practitioner to be the day on which the medical practitioner expects the employee or the employee's spouse, as the case may be, to give birth to a child;

"parental leave" means leave provided for by subclause (2).(a);

"spouse" includes a *de facto* spouse.

Entitlement to parental leave

(2) (a) Subject to subclauses (4), (5).(a) and (6).(a), an employee, other than a casual employee, is entitled to take up to 52 consecutive weeks of unpaid leave in respect of—

(i) the birth of a child to the employee or the employee's spouse; or

(ii) the placement of a child with the employee with a view to the adoption of the child by the employee.

(b) An employee is not entitled to take parental leave unless he or she—

(i) has, before the expected date of birth or placement, completed at least 12 months' continuous service with the employer; and

(ii) has given the employer at least 10 weeks written notice of his or her intention to take the leave.

(c) An employee is not entitled to take parental leave at the same time as the employee's spouse but this paragraph does not apply to one week's parental leave—

(i) taken by the male parent immediately after the birth of the child; or

(ii) taken by the employee and the employee's spouse immediately after a child has been placed with them with a view to their adoption of the child.

(d) The entitlement to parental leave is reduced by any period of parental leave taken by the employee's spouse in relation to the same child, except the period of one week's leave referred to in paragraph (b).

Maternity leave to start 6 weeks before birth

(3) A female employee who has given notice of her intention to take parental leave, other than for an adoption, is to start 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 work.

Medical certificate

(4) An employee who has given notice of his or her intention to take parental leave, other than for adoption, is to provide to the employer a certificate from a medical practitioner stating that the employee or the employee's spouse, as the case may be, is pregnant and the expected date of birth.

Notice of spouse's parental leave

(5) (a) An employee who has given notice of his or her intention to take parental leave or who is actually taking parental leave is to notify the employer of particulars of any period of parental leave taken or to be taken by the employee's spouse in relation to the same child.

(b) Any notice given under paragraph (a) is to be supported by a statutory declaration by the employee as to the truth of the particulars notified.

Notice of parental leave details

(6) (a) An employee who has given notice of his or her intention to take parental leave is to notify the employer of the dates on which the employee wishes to start and finish the leave.

(b) An employee who is taking parental leave is to notify the employer of any change to the date on which the employee wishes to finish the leave.

(c) The starting and finishing dates of a period of parental leave are to be agreed between the employee and employer.

Return to work after parental leave

(7) (a) On finishing parental leave, an employee is entitled to the position he or she held immediately before starting parental leave.

(b) If the position referred to in paragraph (a) is not available, the employee is entitled to an available position—

(i) for which the employee is qualified; and

(ii) that the employee is capable of performing, most comparable in status and pay to that of his or her former position without loss of income within any area of CPAWA.

(c) Where, immediately before starting parental leave, an employee was acting in, or performing on a temporary basis the duties of, the position referred to in paragraph (a), that paragraph applies only in respect of the position held by the employee immediately before taking the acting or temporary position.

Effect of parental leave on employment

(8) Absence on parental leave—

(a) does not break the continuity of service of an employee; and

(b) is not to be taken into account when calculating the period of service for the purpose of this Agreement.

(9) Accrued Leave

An employee going on parental leave, will be paid out in lieu of any accrued or pro rata annual leave or accrued long service leave owing to the employee at the time of taking parental leave

(10) Any absence from duty during a pregnancy for medical reasons relating to that pregnancy and certified by a suitably qualified medical practitioner will not be debited against the 52 week maternity leave entitlement.

(5) Bereavement Leave

(1) On the death of—

(a) the spouse or *de facto* spouse of an employee;

(b) brother or sister

(c) the child, including a grand child or step-child of an employee;

(d) the parent, including a grand parent, step-parent or in- law relative of an employee; or

(e) any other person, immediately before that person's death, lived with the employee as a member of the employee's family,

the employee is entitled to paid bereavement leave of 2 working days.

(2) The two days need not to be consecutive.

(3) Bereavement leave is not available while the Employee is on any other period of leave.

(4) An employee who claims to be entitled to paid leave under subclause (1) is to provide to the employer, if so requested by the employer, evidence that would satisfy a reasonable person as to—

(a) the death that is the subject of the leave sought; and

(b) the relationship of the employee to the deceased person.

(6) Long Service Leave

Notwithstanding the long service leave provisions under the Award, the following provisions shall apply to employees covered by this Agreement—

(a) A period of long service leave taken shall count as service for the purposes of calculating further long service leave entitlements.

(b) Employees engaged by the Employer on or after 1 July 1999, shall accrue their initial period of long service leave at the rate of three months leave in respect of 10 years of continuous service. Subsequent entitlements shall be accrued in accordance with the provisions of the Award.

(c) At the request of the employee and with the agreement of the employer, an employee faced with pressing financial needs may be paid in lieu of taking a portion of long service leave.

(7) Hours

The following provisions will apply in lieu of subclauses (1), (2) and (3) in Clause 11.—Hours of the Award.

(a) The ordinary working hours (exclusive of meal intervals) shall not exceed 37.1/2 in any week nor 10 in any day. Such hours shall be worked consecutively on Monday to Friday inclusive between the hours of 7.00am and 6.30pm, by arrangement with the relevant supervisor.

(b) Each meal interval shall not be less than one half hours duration unless the employer and the employee agree that a lesser period may be taken.

(c) The flexibility available to the parties within the provisions of this Clause shall be subject at all times to the needs of the clients and the relevant programme.

(8) Commitments.

(1) Employees under this Agreement give an ongoing commitment to maintaining and promoting the culture and ethos of the Cerebral Palsy Association, and to pursuing the maintenance and continuous improvement of a high quality service to its clients and members.

(2) Commitment to Professional Development

Staff will be expected to maintain, during their employment , all registration or eligibility to practice requirements appropriate to their respective professions. Staff shall also complete the CPAWA induction modules in their own time.

(9) Jury Service

(1) Reimbursement for jury service

(a) An employee required to attend for jury service during his/her ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of his/her attendance for such jury service and the amount of wages he/she would have received in respect of the ordinary time he/she would have worked had he/she not been on jury service.

(2) Notification of jury service

(a) An employee shall notify his/her employer as soon as possible of the date upon which he/she is required to attend for jury service.

(3) Proof of attendance at jury service

(a) Further, the employee shall give his/her employer documentary proof of his/her attendance, the duration of such attendance and the amount received in respect of such jury service.

(10) Self Funded Career Break

(1) By agreement with the Employer an employee may request that a percentage of his / her salary be placed in a trust fund to be established by the Cerebral Palsy Association Ltd.

(2) The employee may request that a percentage of salary be held in trust for a maximum period of 4 years, after which the employee may request payment of the money held in trust in a lump sum or as "salary" on a normal fortnightly basis.

(3) The employee may apply for an unpaid career break which shall be regarded for all purposes as leave without pay. Such leave may be for study, family reasons or to support other leave such as parenting leave.

(4) Participation in the self funded career break scheme and approval to take leave in the 5th year is subject to approval of the Employer having regard to the needs of the organisation and its clients, but having approved an employee's participation in the scheme, approval to take the leave shall not unreasonably be withheld.

(5) The conditions for participating in this scheme shall be agreed in writing between the respective parties. This shall include conditions whereby the parties can withdraw and an understanding as to the obligations in respect of the costs of administering the scheme.

7.—AVOIDANCE AND RESOLUTION OF INDUSTRIAL DISPUTES, QUESTIONS AND DIFFICULTIES

(1) Preamble

Subject to the provisions of the Industrial Relations Act 1979 (as amended) any question, dispute or difficulty, including any matter arising under this Agreement, or any matter raised by the Union, the employer or an employee / employees, shall be settled in accordance with the procedures set out herein.

The parties agree that no bans, stoppages or limitations will be imposed prior to, or during the time this procedure is being followed.

This clause in no way limits the rights of employers, employees and the Union under the Occupational Health, Safety and Welfare Act 1984 or other related legislation.

(2) Procedure

Where the matter is raised by an employee, or a group of employees, the following steps shall be observed.

(a) The employee(s) concerned shall discuss the matter with the immediate supervisor. If the matter cannot be resolved at this level the supervisor shall, within two working days, refer the matter to a more senior officer nominated by the employer and the employee(s) shall be advised accordingly.

(b) The senior officer shall, if able, answer the matter raised within five working days of it being referred and if the senior officer is not so able, refer the matter to the employer for his/her attention, and the employee(s) shall be advised accordingly.

(c) (i) If the matter has been referred in accordance with paragraph (b) above the employee(s) or the shop steward shall notify the Union Secretary or nominee, to enable the opportunity of discussing the matter with the employer.

(ii) The employer shall, as soon as practicable after considering the matter before it, advise the employee(s) or, where necessary the Union of its decision. Provided that such advice shall be given within 21 calendar days of the matter being referred to the employer.

(d) Should the matter remain in dispute after the above processes have been exhausted either party may refer the matter to the Western Australian Industrial Relations Commission.

Provided that persons involved in the question, dispute or difficulty will confer among themselves and make attempts to resolve questions, disputes or difficulty before taking those matters to the Commission.

(e) Nothing in this procedure shall preclude the parties reaching agreement to shorten or extend the period specified in subclauses (2)(a), (b) or (c)(ii).

8.—REMUNERATION

(1) Employees under this Agreement are entitled to a salary /remuneration benefit based on the employees gross annual salary as at date of registration of this Agreement, subject to the following provisions—

(a) the employee agrees to take up the salary / remuneration packaging arrangement offered;

(b) a maximum of 30% of gross annual salary sacrifice is available;

(c) the employee agrees to the salary /remuneration packaging in accordance with the Salary/Remuneration Packaging clause below and the salary packaging arrangements appended to this Agreement;

(d) Award Safety Net Adjustments

Award safety net pay adjustments made to the award during the life of this Agreement shall not be available to employees in receipt of the salary packaging option under this Agreement, unless the award adjustment is granted under such terms as will result in the relevant Funding Body providing the additional funding to cover such award increase. In the event that funding is not provided, the salary packaging option will be based on the salary applicable as at the date of registration of this Agreement (see Schedule 1).

(2) Gross Annual Salary

(a) Gross Annual Salary will include the following components;

- The total of all basic salary/wages amounts
- Shift and penalty allowances
- Leave loading
- On call allowances
- Coordinators allowance
- Higher duties allowances
- Overtime Payments

(b) Gross annual salary will not include;

- Meal allowances
- Motor vehicle allowances

(3) Salary Rates

The salary rates for professional staff covered by this Agreement shall be as set out in Schedule 1 of this Agreement.

9.—SALARY/REMUNERATION PACKAGING

(1) This clause shall be read in conjunction with the other provisions of the award but the provisions of this clause, to the extent that they deal with entitlements under the award will prevail over and apply in lieu of the relevant provisions of the award.

(2) Where agreed between the employer and an employee, the employer may introduce remuneration packaging in respect of salary and benefits (including any negotiated salary allowable) and the terms and conditions of such a package shall not, when viewed objectively, be less favourable than the entitlements otherwise available under this award and shall be subject to the following provisions

(a) The employer shall ensure the structure of any agreed package complies with taxation and other relevant laws.

(b) The employer shall confirm in writing to the employee the classification level and current salary payable as applicable to that employee under Schedule 1 of this Agreement.

(c) The employer shall advise the employee in writing, of his/her right to choose payment of the salary referred to in Schedule 1 of this Agreement instead of a salary / remuneration package.

(d) The employer shall advise the employee, in writing, that award conditions, other than the salary and benefits (including any negotiated salary allowable), or those varied by this Agreement, shall continue to apply.

(e) The employee shall advise the employer, in writing, that the agreed cash component is adequate for his/her ongoing living expenses.

(f) Where undue pressure or duress is placed on a party to enter into such a package it will be open to either party to seek relief in accordance with Clause 7 of this Agreement.

(3) The packaging agreement, the terms and conditions of which shall be in writing and signed by both the employer and employee, shall detail the components of the total remuneration package for the purpose of this agreement and for the purpose of complying with time and wages records under the Act and Regulations.

(4) A copy of the Agreement shall be made available to the employee.

(5) The employee shall be entitled to inspect details of payments and transactions made under the terms of this agreement

and for this purpose where such details are maintained electronically, shall be provided with access to a computer terminal.

(6) (a) The configuration of the remuneration package shall remain in force for the period agreed between the employee and the employer. Provided that an employee may withdraw from a remuneration packaging arrangement by giving the employer reasonable notice of intention to withdraw from the end of the next quarter of the calendar year.

(b) An employee, on withdrawing from the packaging arrangement, shall revert to the appropriate award rate applicable at the time of withdrawal.

(c) An employee, who wishes to take up packaging, having previously taken up that benefit and withdrawn from it, may only be entitled to do so on giving satisfactory reasons to the employer, and if approved, the package shall be based on the rate of pay applicable to the employee when originally placed on the packaging arrangement, or as amended in accordance with this Agreement.

(d) An employee, who has previously declined to take up packaging, may, by giving the employer reasonable notice, take up the benefit at any time. The rate of pay used in calculating such benefit shall be the rate referred to in Schedule 1 of this Agreement applicable at the date of this Agreement, unless amended in accordance with this Agreement, in which case the amended rate will apply.

(7) Where at the end of the financial year the full amount allocated to a specific benefit has not been utilised, by agreement between the employer and the employee, any unused amount may be carried forward to the next financial year to be utilised by 30 September, or be paid as salary as at the end of the financial year, which will be subject to usual taxation requirements.

(8) (a) In the event that changes in legislation, Income Tax Assessment Act determinations or Rulings, particularly in respect of the Employer's fringe benefits tax exempt status, remove the Employer's capacity to maintain the salary packaging arrangements offered to employees under this Agreement, the employer shall be entitled to withdraw from the salary packaging arrangements by giving notice to each affected employee three months prior to the withdrawal taking place or notice to have effect from a date not later than the date any change in the legislation is to have effect.

(b) In the event of the Employer withdrawing from the salary packaging arrangements, the employees will revert to a salary not less than that applicable to the employees classification under Schedule 1.

(9) The employer shall as soon as practicable after being advised of the legislative change referred to in paragraph (8) hereof, advise the Union and employees and shall convene a meeting of the parties with a view to reaching an alternative agreement on salaries and salary benefits.

11.—NO PRECEDENT

This Agreement is applicable only to the parties named herein and it shall not be used in any manner whatsoever to obtain similar arrangements or benefits in any other site or enterprise.

12.—PERIOD OF OPERATION AND RENEWAL

(1) This Agreement shall apply for eighteen months from the first pay period on or after 1st July, 1999.

(2) The parties agree that negotiations for a further Agreement shall commence at least three months prior to its expiry.

(3) The Parties to this Agreement acknowledge that on the expiry of this Agreement, if a subsequent Agreement has not been reached or finalised at that date, the conditions herein shall remain in force for a further period of 6 months, at which time if an Agreement has not been achieved, either party has the right to retire from this Agreement.

13.—NO EXTRA CLAIMS

Subject to the provisions of Clause 8, herein, there shall be no extra salary claims for the life of this Agreement, except where consistent with decisions of the Western Australian Industrial Relations Commission that reflect State Wage Decisions requiring general application.

14.—NUMBER OF EMPLOYEES

There are an estimated 51 employees covered by the provisions of this Agreement as at the date of registration.

SIGNATORIES TO AGREEMENT

For and on Behalf of—

Cerebral Palsy Association of Western Australia Ltd

(signed)	28/6/99
Chairman	Date

Hospital Salaried Officers Association (Union of Workers)

(signed)	1/7/99
President	Date
D P Hill (signed)	(1/7/99)
Secretary	Date

Seal

APPENDIX

THE CEREBRAL PALSY ASSOCIATION OF WESTERN AUSTRALIA

SALARY PACKAGING ARRANGEMENT HSO PROFESSIONAL STAFF JUNE 1999

(1) Packaging

(a) Staff under this agreement shall be entitled to package up to a maximum of 30% of salary.

(b) Staff may elect to take the maximum rate of packaging available to them or a lesser amount by increments of 5%.

(c) Staff wishing to alter their band of packaging (subject to the determined maximum) may only do so at the end of each quarter.

(2) Administration Charge

(a) The Association will charge an administration fee of up to 3% of the amount packaged. This fee will automatically be deducted from the packaged amount. The 3% fee will be utilised only for the administration of the salary packaging scheme.

(3) Pay Advice Slips and Group Certificates

(a) Pay advice slips will indicate the gross salary and allowances and the amount that has been credited to the individual staff member's salary packaging account. This amount will appear in the "Before Tax Additions/Deductions" space on the pay slip.

(b) "Taxable Income" will be reduced by the amount packaged and the figure appearing under the "Tax" column will be the tax payable on the reduced "Taxable Income".

(c) Group Certificates will indicate the total taxable income and tax deducted for the year. The amount packaged will not be shown on Group Certificates.

(4) Operation of the System

(a) Each fortnight the payroll system will calculate each staff member's non cash benefit in accordance with the agreed sacrifice percentage. Such amount will be credited to that staff member's salary packaging account.

(b) At the end of each month each staff member will receive a statement of account indicating all transactions for the previous month and the end of month balance.

(c) To pay a bill through their salary packaging account staff members will be required to complete a Salary Package Payment Authority and forward this to the Salary Packaging Clerk together with the original account. In normal circumstances payment will be made within two working days of receipt by the Salary Packaging Clerk.

(d) At the end of the financial year it will be necessary for staff to utilise any unused amount in their salary packaging account as at the 30 June, within the next 3 months. (by 30 September).

(e) When a staff member terminates employment with CPAWA they may elect to either use their remaining salary package balance prior to Termination or to have the balance paid out as a salary and wages. Where the balance is paid out as salaries and wages income tax instalment deductions will be deducted from the salary by CPAWA.

(5) Superannuation guarantee charge

(a) Superannuation Guarantee payments will be based upon gross salary (see Schedule 1) as defined under the Superannuation Guarantee Charge Act 1992 as at the date of registration of the Agreement.

(6) Components of Salary Packaging

The following items will be those for which salary packaging amounts may be utilised;

- Telephone Accounts—bills from telephone service providers for the personal telephone expenses of the employee at their residence.
- Rent—personal rental expenses of the employee, such as the rent they pay for their present accommodation.
- Loan Repayments—the amount of a regular repayment required to be made to a financial or other institution or agency to repay borrowings, such as personal loans, home building mortgages.
- RAC Accounts—membership and other expenses of the employee as a result of their membership of the RAC.
- Any insurance premiums incurred by the employee, such as home and contents, motor vehicle, life and medical benefits.
- Water Authority Accounts, personal employee expenses payable to the WA Water Authority or any similar country agency.
- Rates—State or Local Government land rates and taxes incurred by the employee.
- Educational Expenses—any expenses incurred by the employees as part of an educational activity, undertaken by themselves or dependent child.
- Child Care Fees—expenses incurred by the employee for the care of their child/children.
- Maintenance Payments—any fixed payment incurred by an employee in respect of private or court/law enforced agreements for maintenance payments.
- Utilities (such as Western Power & Alinta Gas)—expenses incurred by the employee for these types of utility or energy purchases.
- Household Repairs and Maintenance—expenses incurred by the employee for household repairs and maintenance for which an invoice is produced.
- Domestic Support—expenses incurred by the employee in respect of a cleaner or ironing service where an invoice is produced.
- Travel and Accommodation Costs—payments to travel agents, airlines, hotels and the like would be included under this category.
- Membership Subscription—payment of expenses of membership of any organisation to which the employee belongs.
- Medical, Dental and Pharmaceutical Accounts—doctor, dentist and chemist bills (and bills from other medical service providers) incurred in respect of self, spouse or dependant.
- Veterinary Accounts.
- Credit Card Accounts—any expenses incurred by an employee and charged to them via a credit card (for example, Visa, Bankcard). The employee must have documentation to support the expenses charged to the credit card. It is important to note under no circumstances will there be payment for any cash advances. Payments made from any packaged amount will only be made in respect of expenses incurred as a the result of a purchase of goods and services and will be made to the credit card provider.
- Fleetcard is a system provided by Shell/Custom Credit whereby a credit card is issued which may be used to purchase fuel and other services for a nominated motor vehicle. Fleetcard issue a monthly bill detailing all expenses incurred. This will be payable through the employee's packaging account.
- Superannuation Contributions. Employee contributions payable to a superannuation fund.

When an account for an eligible item including electricity, gas, telephone, household insurance and water is not in the name of the employee but applies to their principal place of residence, payment may be made through their salary packaging account.

Please note that under no circumstances will a payment from a packaged amount be made directly to an employee. All payments will be made by cheque (or direct deposit) to a third party in payment of an expense incurred by that employee.

	Point	Annual	Fortnightly
Level 1	2	$30,826.00	$1,181.83
	3	$32,535.00	$1,247.35
	4	$34,673.00	$1,329.32
	5	$37,988.00	$1,456.41
	6	$40,149.00	$1,539.26
Level 2	1	$42,259.00	$1,620.15
	2	$43,685.00	$1,674.82
	3	$45,167.00	$1,731.64
	4	$46,704.00	$1,790.57

Occupations included:

Level 1—Physiotherapy, Speech Pathologist, Occupational Therapist, Social Worker and Education Officer.

Level 2—Physiotherapist, Speech Pathologist, Occupational Therapist, Social Worker and Psychologist.

DEPARTMENT OF RESOURCES DEVELOPMENT ENTERPRISE BARGAINING AGREEMENT 1999. No. PSG AG 2 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia (Incorporated)

and

Chief Executive Officer
Department of Resources Development and Another.

No. PSG AG 2 of 1999.

Department of Resources Development Enterprise Bargaining Agreement 1999.

15 July 1999.

Order.

HAVING heard Ms J Blake on behalf of The Civil Service Association of Western Australia (Incorporated) and The Federated Liquor and Allied Industries Employees' Union of Australia, Western Australian Branch, Union of Workers, and Mr T Ancliffe on behalf of the Chief Executive Officer Department of Resources Development, now therefore I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order —

1. THAT this schedule which follows, which is to be known as the "Department of Resources Development Enterprise Bargaining Agreement 1999", shall be and is hereby registered.
2. THAT the Department of Resources Development Enterprise Bargaining Agreement 1999 shall replace the Department of Resources Development Enterprise Bargaining Agreement 1995 and the Department of Resources Development Enterprise Agreement 1996.

[L.S.]

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

Schedule.

1.—TITLE

This agreement is to be known as the "Department of Resources Development Enterprise Bargaining Agreement 1999" and shall replace the Department of Resources Development Enterprise Bargaining Agreement 1995 and the Department of Resources Development Enterprise Agreement 1996.

2.—ARRANGEMENT

3.—AREA AND SCOPE

The Department of Resources Development Enterprise Bargaining Agreement 1999 ("the Agreement") will apply throughout the State of Western Australia to all persons employed by the Chief Executive Officer, Department of Resources Development who are members or eligible to be members of the Civil Service Association of Western Australia (Incorporated) or the Federated Liquor and Allied Industries Employees' Union of Australia, Western Australian Branch, Union of Workers.

4.—APPLICATION OF AGREEMENT AND PARTIES BOUND

This agreement shall apply to and bind the following parties—

(1) The Civil Service Association of Western Australia (Incorporated);

(2) Federated Liquor and Allied Industries Employees' Union of Australia, Western Australian Branch, Union of Workers;

(3) The Department of Resources Development.

4A.—EMPLOYEES COVERED BY THIS AGREEMENT

It is estimated that 115 employees could be bound by this agreement upon registration.

5.—EFFECTIVE DATE OF AGREEMENT AND RENEWAL

(1) This agreement shall operate from the date of registration and will remain in force for 24 months from that date.

(2) At least six months prior to the expiry of the term of the agreement, the parties will commence negotiations on a replacement Enterprise Bargaining Agreement.

6.—NO FURTHER CLAIMS

The parties to this agreement undertake that for the duration of the agreement there shall be no further salary or wage increases sought or granted except for those provided under the terms of this agreement or provided for in National or State Wage Case Decisions.

7.—RELATIONSHIP TO PARENT AWARDS

This agreement shall be read wholly in conjunction with the Public Service Award 1992 or the Catering Employees and Tea Attendants (Government) Award 1982. In the case of any inconsistencies this agreement shall have precedence to the extent of the inconsistencies. Where the Agreement is silent, the Award shall apply.

8.—DEFINITIONS

In this agreement the following expressions shall have the following meaning—

(1) "Chief Executive Officer" means the Chief Executive Officer of the Department of Resources Development, or the person acting as Chief Executive Officer or person having the delegated authority of the Chief Executive Officer.

(2) "CSA" means the Civil Service Association of WA Inc.

(3) "CSCLR" means the Cabinet Standing Committee on Labour Relations.

(4) "Department" or "DRD" means the Department of Resources Development.

(5) "Employee" means someone employed under the Public Sector Management Act 1994 on a full-time, part-time or casual basis within the Department of Resources Development.

(6) "Employer" means the Chief Executive Officer of the Department of Resources Development.

(7) "SBU" means Single Bargaining Unit.

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

9.—SINGLE BARGAINING UNIT

For the purposes of negotiating this Industrial Agreement a Single Bargaining Unit has been formed as a representative of all parties. The SBU will monitor the implementation of the agreement and be responsible for its replacement.

10.—JOINT CONSULTATIVE COMMITTEE

(1) A Joint Consultative Committee has been established to facilitate workplace change through a consultative process and in particular to provide information to the SBU.

(2) The parties to this agreement agree that consultation will provide employees with an opportunity to participate in decisions which impact on productivity and their working lives and therefore support the principle of consultation. It is agreed that effective consultation is dependent upon—

(a) a commitment to working together to achieve common goals,

(b) a mutual commitment from management and employees to achieving workable and acceptable solutions, and

(c) information sharing.

11.—PERFORMANCE MEASUREMENT MECHANISM

(1) The Department has developed a comprehensive Performance Measurement Mechanism based on thirty six Critical Success Factors (CSFs) that impact on overall departmental performance. These CSFs are key areas of activity in which DRD must be successful in order to achieve its program outcomes.

(2) The system developed covers all critical areas of the Department and is clearly linked to the corporate, strategic and operational plans of the Department.

(3) The system enables a comprehensive representation of the various CSFs that relate to the Department's key outcomes and outputs to be separately measured and the results to be brought together to provide an overall view of the Department's performance. In total, there are 55 separate measures that are used in this process. When brought together, an

overall assessment of the Department's performance can be made by way of an index. This index can also be used to monitor changes over time and determine corporate performance trends.

(4) The result obtained from this measurement process can lead to the payment of a performance based salary increase.

(5) The development of the process has been undertaken with the assistance of external consultants to ensure that it contains sufficient rigour to protect it from subjectivity and bias. A significant portion of the measures used rely on survey of clients and key stakeholders.

(6) At the end of each financial year, external consultants will undertake an assessment of the Department's performance for that year, in accordance with the Performance Measurement Mechanism. All documentation associated with the process will be subject to scrutiny by the external consultants, and their recommendation will be submitted to the Chief Executive Officer.

(7) If the performance of the Department is at a satisfactory level, the Chief Executive Officer will recommend to the CSCLR a salary increase that is in accordance with Government Wages Policy and based on the scale which forms part of the system. Any approved increase in salary will be paid to all employees covered by this agreement, and will date from 1 July immediately following the year being measured.

(8) A copy of the consultants report and details of the Chief Executive Officer's recommendation will be forwarded to the CSCLR for their approval before payment may be made.

(9) All employees are required to commit to the ongoing running of the Performance Measurement Mechanism.

12.—NO CHANGE TO CONDITIONS

The conditions of employment for persons employed or engaged under the Catering Employees and Tea Attendants (Government) Award 1982 are not altered by this agreement.

13.—CONTRACT OF SERVICE

(1) Period of Probation

(a) Every new Level 1 employee appointed to the Department of Resources Development, unless being transferred from another Western Australian public sector agency, shall be on probation for a period of six months, unless otherwise determined by the Chief Executive Officer.

(b) At any time during the period of probation the Chief Executive Officer may annul the appointment and terminate the services of the employee by the giving of one weeks notice or payment in lieu thereof. The probationary employee may give one weeks notice of resignation.

(c) Prior to the expiry of the period of probation, the Chief Executive Officer shall—

(i) have a report completed in respect to the employee's Level of performance, efficiency, and conduct, and

(ii) annul the appointment, or

(iii) confirm the permanent appointment, or

(iv) extend the period of probation by up to six months, to a maximum period of probation of 12 months.

(2) Fixed Term Contract

The Chief Executive Officer may engage employees on a fixed term contract of up to five years duration.

(3) Termination of Employment

(a) An employee shall give the Chief Executive Officer written notice of intention to resign of not less than—

(i) one month, or

(ii) such other period as specified in the employee's contract of service, where applicable.

(b) An employee who fails to give the required written notice forfeits the sum of $250, unless agreement is reached between the employee and the Chief Executive Officer for a shorter period of notice than that specified.

(4) Retirement

Every employee who has attained the age of 55 years shall be entitled to retire from the Department of Resources Development.

14.—HOURS OF WORK

(1) Employees classified Level five and below may elect to work either 40 hours per week or 37.5 hours per week.

(2) Employees wishing to change their choice of working hours during the term of this agreement must obtain the written approval of their Director, prior to negotiating a changeover date with the Human Resources Branch.

(3) Employees classified Level 6 and above are required to work the hours necessary to do their job and 40 hours per week is the minimum to be worked. In meeting the requirements of project facilitation and management, staff classified Level 6 and above are required to respond to the needs of resource developers and departmental clients and stakeholders as and when those needs arise. Accordingly, it will not be unusual for staff to be required to undertake after hours and weekend work in excess of the minimum amount.

(4) Employees working a 40 hour week will receive additional salary as shown in column 4 of Schedule 1.

(5) Employees classified Level five and below are eligible, subject to agreement by their supervisor, to work flexitime as detailed in the Departmental "Hours of Duty" policy as amended from time to time. Significant change will warrant consultation with employees and the Union.

(6) Employees classified Level 6 and above may not work a formal "flexitime" arrangement, but may have flexible starting and finishing times, to be negotiated with their supervisor.

15.—PART-TIME EMPLOYMENT

This clause is to be read in conjunction with Clause 9.—Part Time Employment of the Public Service Award 1992.

(1) All conditions of this agreement will apply to employees who are employed to work less than the standard full time hours during which their entitlements will be calculated on a daily accrual basis.

(2) Variations to part-time employment can be negotiated between the parties, however the Chief Executive Officer has the right to specify changes to the number of hours worked, with one months notice.

16.—CASUAL EMPLOYMENT

(1) "Casual Officer" means an officer engaged by the hour for a period not exceeding one calendar month in any period of engagement, as determined by the Chief Executive Officer.

(2) An employee may be engaged by the hour and paid a loading of 20% in addition to the normal hourly rate in lieu of annual leave, leave loading, bereavement leave, sick leave, long service leave and payment for public holidays. Casual employees are not entitled to payment of overtime rates.

(3) The employment of a casual employee may be terminated at any time, and for any reason, by the employee or the Chief Executive Officer giving one hour's notice.

17.—ANNUAL INCREMENTS

An employee shall proceed to the maximum of the employee's salary range by annual increments in accordance with the following provisions—

(1) Before any increase in salary is paid to an employee, the officer in charge shall complete a report in respect of the employee's Level of performance, efficiency and conduct and where the Chief Executive Officer is satisfied with the report, the increase in salary shall be paid.

(2) Where the Chief Executive Officer considers the report of the officer in charge to be an adverse report the following provisions shall apply—

(a) the report shall be brought to the notice of the employee and shall be initialled by the employee;

(b) the employee shall put any explanation or reasons for disagreeing with the report in writing;

(c) the Chief Executive Officer shall immediately consider the report and the employee's explanation or the reasons and may approve the increase in salary or determine that the increase shall not be paid for a specific period.

(3) Where an increase is not paid for a specific period, the officer in charge shall complete a further report before the expiry of that specific period in accordance with the procedures outlined above.

(4) The non-payment of an increase will change the normal anniversary date of any further increase to 12 months after the last increase was approved.

18.—OVERTIME ALLOWANCE

(1) For the purposes of this Clause, the following terms shall have the following meanings—

(a) "Overtime" means all work performed at the direction of the Chief Executive Officer, outside the prescribed hours of duty.

(b) "Prescribed hours of duty" means an employee's normal working hours as prescribed by the Chief Executive Officer in accordance with Clause 14.—Hours of Work of this Agreement.

(c) "Public Holiday" means the days prescribed as Public Holidays in this agreement.

(d) "Fortnightly salary" means an employee's substantive salary, exclusive of any allowances such as a special allowance, or higher duties allowance unless otherwise approved by the Chief Executive Officer. Provided that a special allowance or higher duties allowance shall be included in "fortnightly salary" when overtime is worked on duties for which these allowances are specifically paid.

(2) Overtime

(a) An employee who works overtime for a greater period than 30 minutes, shall be entitled to payment or time off in lieu of payment, in accordance with this agreement, or any combination of payment or time off in lieu as approved by the Chief Executive Officer.

(b) Payment for overtime and time off in lieu shall be calculated on an hourly basis in accordance with the following formula—

(i) Weekdays and Saturdays

(aa) For the first three hours worked outside the prescribed hours of duty on any one weekday or Saturday at the rate of time and one half;

(bb) After the first three hours on any one week day or Saturday at the rate of double time.

(ii) Sundays

For all hours on any Sunday, at the rate of double time.

(iii) Public Holidays

(aa) For hours worked during prescribed hours of duty on any Public Holiday at the rate of time and one half (in addition to the normal pay for that day);

(bb) For hours worked outside of the prescribed hours of duty on any Public Holiday at the rate of double time and a half.

(c) Payment for overtime shall not be approved for employees whose maximum salary or maximum salary and allowance in the nature of salary exceeds that as determined for Level 5.

19.—HIGHER DUTIES ALLOWANCE

(1) Where an employee is directed to act in an office which has a higher salary range than the employee's substantive position and performs the full duties and accepts the full responsibility of the higher position for a continuous period of ten (10) consecutive working days or more, the employee shall be paid an allowance, for that period in excess of 10 days, equal to the difference between the employee's own salary and the salary the employee would receive if the employee was permanently appointed to that position. This provision means that the first 10 days of any period of higher duties are not paid at the higher rate.

(2) Where the full duties of a higher office are temporarily performed by two (2) or more employees, or when an employee is acting in a higher position but is not carrying out the full duties of the position, the amount of the allowance to be paid will be determined by the Chief Executive Officer.

(3) Where an employee, who is in receipt of a higher duties allowance and has been so for a continuous period of twelve (12) months or more, proceeds on a period of approved leave of absence of not more than four (4) weeks, the employee shall continue to receive the allowance for the period of leave.

20.—ANNUAL LEAVE

(1) Definitions—

(a) "Accrued leave"—is the leave an employee is entitled to from previous calendar years.

(b) "Pro-rata leave"—is the proportion of leave that an employee is entitled to in the current year, either from the date of commencement, or to the date of cessation.

(2) Each employee is entitled to four weeks paid leave for each year of service. Annual leave shall be calculated on a calendar year basis commencing on January 1 in each year.

An employee who commences with the Department of Resources Development after 1 January in any year is entitled to pro-rata annual leave for that year.

(3) An employee may take annual leave during the calendar year in which it accrues or anytime thereafter, but the time during which the leave may be taken is subject to the approval of the Chief Executive Officer.

(4) An employee who has been permitted to proceed on annual leave and who ceases duty before completing the required continuous service to accrue the leave, must refund the value of the unearned pro-rata portion, calculated at the rate of salary as at the date the leave was taken, but no refund is required in the event of the death of an employee.

(5) The Chief Executive Officer may direct an employee to take accrued annual leave and may determine the date on which such leave shall commence.

(6) An employee may apply to receive payment for annual leave, accrued up until 31 December of the previous year, rather than take the leave as time off work. In such circumstances, the amount of payment will be the dollar value of the leave had it been taken at the time payment is received. Approval for payment will be granted by the Chief Executive Officer, based on the financial capacity of the Department to fund the payment.

(7) Application to receive payment for annual leave must be made in writing to the Chief Executive Officer, and once made cannot be revoked.

(8) Annual leave loading, as prescribed in subclause (11) of Clause 19.—Annual Leave of the parent award, shall not apply under this agreement.

21.—LONG SERVICE LEAVE

(1) Employees may elect to receive long service leave entitlements at either the completion of each seven years, or each 10 years, of continuous services.

(2) Employees wishing to change their choice of long service leave entitlement during the term of this agreement must obtain the written approval of their Director, prior to negotiating a changeover date with the Human Resources Branch.

(3) Employees electing to receive long service leave entitlements on the completion of 10 years continuous service will receive additional salary as shown in column 5 of Schedule 1—Wages of this agreement.

(4) Each employee is entitled to 13 weeks paid long service leave on full pay or 26 weeks on half pay, or a combination thereof, at the completion of each period of nominated continuous service. Leave may be taken in periods as approved subject to a minimum of two weeks leave at any time.

(5) Continuous service does not include any period during which the employee is absent on leave without pay, maternity

leave, parental leave, workers compensation or any period where an employee is taking long service leave nor any period that was taken into account in calculating a payment in lieu of long service leave.

(6) The Chief Executive Officer may direct an employee to take accrued long service leave and may determine the date on which such leave shall commence. Should the employee not comply with the direction, disciplinary action may be taken against the employee.

(7) An employee may apply to receive payment for accrued long service leave rather than take the leave as time off work. In such circumstances, the amount of payment will be the dollar value of the leave had it been taken at the time payment is received. Approval for payment will be granted by the Chief Executive Officer, based on the financial capacity of the Department to fund the payment.

(8) Application to receive payment for long service leave must be made in writing to the Chief Executive Officer, and once made cannot be revoked.

22.—SICK LEAVE

(1) The Chief Executive Officer shall credit each employee with the following sick leave credits, which shall be cumulative—

On the day of initial appointment:	6 days
On completion of 6 months continuous service:	6.5 days
On the completion of 12 months continuous service:	12.5 days
On the completion of each further period of 12 months continuous service:	12.5 days

except that employees who commence with the Department and transfer in existing sick leave credits, will retain their original anniversary date for crediting sick leave.

(2) Medical Certificate

(a) An application for sick leave exceeding two consecutive working days shall be supported by the certificate of a registered medical practitioner or, if appropriate, a registered dentist.

(b) The amount of sick leave granted without the production of a medical certificate, or because of the illness of an immediate family member, shall not exceed, in the aggregate, five working days in any one credit year.

(3) An employee, subject to having sufficient credits, shall be entitled to take up to five days sick leave, per credit year, when an immediate family member is ill. In such cases, an application for sick leave exceeding two consecutive working days shall be supported by the certificate of a registered medical practitioner or, if appropriate, a registered dentist. An immediate family member in this instance includes spouse, defacto spouse, child or stepchild, parent, step parent or a family member who lives with the employee.

(4) Where the Chief Executive Officer has reason to doubt the cause of the illness or the reason for the absence, the Chief Executive Officer may take steps to resolve the matter.

(5) Where an employee is ill during a period of annual leave and produces medical evidence to the satisfaction of the Chief Executive Officer that as a result of the illness the employee was confined to his/her place of residence or a hospital for a period of at least seven consecutive calendar days, the Chief Executive Officer may grant sick leave for the period during which the employee was so confined and reinstate annual leave equivalent to the period of confinement.

(6) Where an employee is ill during a period of long service leave and produces medical evidence to the satisfaction of the Chief Executive Officer that as a result of illness the employee was confined to his/her place of residence or a hospital for a period of at least 14 consecutive calendar days, the Chief Executive Officer may grant sick leave for the period during which the employee was so confined and reinstate long service leave equivalent to the period of confinement.

(7) No sick leave shall be granted with pay, if the illness has been caused by the misconduct of the employee or in any case of absence from duty without sufficient cause.

23.—SHORT LEAVE

(1) The Chief Executive Officer may, upon sufficient cause being shown, grant an employee short leave on full pay not exceeding two consecutive working days, but any leave granted under the provisions of this cause shall not exceed, in the aggregate, three working days in any one calendar year.

(2) Employees may elect to forfeit their entitlements to short leave, and in doing so will receive additional salary as shown in Column 6 of Schedule 1—Wages of this Agreement. If an employee elects to forfeit short leave, that election cannot be changed during the term of this agreement

24.—BEREAVEMENT LEAVE

Employees are entitled to two days' bereavement leave which may be taken on the death of an immediate family member. An immediate family member in this instance means spouse, defacto spouse, child or stepchild, parent, sibling, step parent or a family member (who lived with the employee).

25.—TRAVEL ALLOWANCE

(1) This clause is to be read in conjunction with Clause 42.—Travelling Allowance of the Public Service Award.

(2) Where travel does not involve an overnight stay, an employee may claim the appropriate meal allowance as prescribed by the circular to departments and authorities as issued by the Department of Productivity and Labour Relations or seek reimbursement of actuals.

26.—PUBLIC HOLIDAYS

(1) The following days shall be allowed as holidays with pay—

New Year's Day, Australia Day, Good Friday, Easter Monday, Christmas Day, Boxing Day, Anzac Day, Sovereign's Birthday, Foundation Day, Labour Day, provided that the Chief Executive Officer may approve another day to be taken as a holiday in lieu of any of the above mentioned days.

(2) When any of the days mentioned above falls on a Saturday or on a Sunday, the holiday shall be observed on the next succeeding Monday.

(3) When Boxing Day falls on a Sunday or Monday, the holiday shall be observed on the next succeeding Tuesday.

(4) In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

(5) An employee may elect to take the Public Service holiday which falls on Easter Tuesday and the additional Public Service holiday as substitute days during the Christmas shutdown or to forfeit the holidays and receive additional salary as shown in column 7 of Schedule 1—Wages of this Agreement. If an employee elects to forfeit the Public Service holiday, that election cannot be changed during the term of this agreement.

27.—PARTIAL SHUTDOWN AT CHRISTMAS

(1) The partial Christmas shutdown is at the discretion of the Chief Executive Officer, but will not be in excess of four working days.

(2) Unless otherwise provided, employees will be required to take annual/long service leave during this period. The Chief Executive Officer shall, as soon as possible in the new calendar year, advise employees of the period of the partial close down and the number of working days involved.

(3) When taking leave during the year employees must be aware of the requirement to retain credits to cover the required number of days over the compulsory partial close down period.

(4) New employees, employees who have exhausted their annual leave credits at the commencement of this agreement, or employees who have been granted approval to utilise all leave credits shall be entitled to go into debit to cover the amount of leave involved, provided a refund is made by the employee, on termination, if credits to the value of the leave taken in advance have not been accrued.

28.—FLEXIBLE WORKING ARRANGEMENTS

The Department will develop guidelines in consultation with the Union, under which new flexible working arrangements

will be considered and, if acceptable, implemented as provided for in the Human Resources Strategic Plan.

29.—ADDITIONAL PAID ANNUAL LEAVE

(1) This clause entitles an employee to apply for up to an additional eight weeks paid annual leave per annum in exchange for a reduction in salary spread over the 12 month period, equivalent to the value of the approved additional paid annual leave.

(2) The employee must use normal annual leave in the first instance and the additional paid annual leave cannot be accrued. It is expected that the employee will utilise all leave within the 12 month period. In the event that the employee cannot take all the additional leave within the defined period, he / she will be reimbursed that proportion of the paid leave, within one month.

(3) The additional paid annual leave will not attract leave loading.

(4) Any leave taken during the 12 month period will be paid at the reduced rate of salary.

(5) The Department will assist the employee to satisfy themselves of any superannuation and taxation consequences.

30.—SALARY PACKAGING

(1) An employee may, by agreement with the employer, enter into a salary packaging arrangement.

(2) Salary packaging is an arrangement whereby the entitlements under this Agreement, contributing toward the Total Employment Cost (as defined) of an employee, can be reduced by and substituted with another, or other benefits.

(3) For the purpose of this clause, Total Employment Cost (TEC) is defined as the cost of salary and other benefits aggregated to a total figure or TEC, less the cost of Compulsory Employer Superannuation Guarantee contributions.

The Total Employment Cost for the purposes of salary packaging, is calculated by adding—

(a) The base salary;

(b) Other cash allowances, e.g. annual leave loading;

(c) Non cash benefits, e.g. superannuation, motor vehicles etc;

(d) Any Fringe Benefit Tax liabilities currently paid; and

(e) Any variable components, e.g. performance based incentives (where they exist).

(4) Where an employee enters into a salary packaging arrangement they will be required to enter into a separate written agreement with the employer that sets out the terms and conditions of the arrangements.

(5) Where an employee enters into a salary packaging arrangement the salary rate as specified in (relevant salary schedule in this EBA) as the basis to calculate entitlements in respect of—

(a) leave loading;

(b) shift penalty rates;

(c) overtime rates;

(d) redundancy rates;

(e) early retirement; and

(f) any other salary related entitlements.

(6) The salary packaging arrangement must be cost neutral in relation to the total cost to the employer.

(7) The salary packaging arrangement must comply with relevant taxation laws and the employer will not be liable for additional tax, penalties or other costs payable or which may become payable by the employee.

(8) In the event of any increase or additional payments of tax or penalties under the salary packaging arrangement associated with the employment of the employee or the provision of employer benefits under the salary packaging agreement, such tax, penalties and any other costs shall be borne by the employee.

(9) In the event of significant increases in Fringe Benefit Tax liability or administrative costs relating to arrangements under this clause, the employee may vary or cancel a salary packaging arrangement.

(10) The cancellation of salary packaging will not cancel or otherwise affect the operation of this Agreement.

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

(12) The Dispute Settlement Procedures contained in this Agreement shall be used to resolve any dispute arising from the operations of this clause. Where such a dispute is not resolved, the matter may be referred by either party to the Western Australian Industrial Relations Commission.

31.—SALARIES

(1) Salaries will be paid in accordance with Schedule 1—Wages of this Agreement, for employees under the coverage of the CSA or Schedule two for employees under the coverage of the Federated Liquor and Allied Industries Employers Union Of Australia.

(2) Salaries will be increased by the amount approved through the process described in the section titled Performance Measurement Mechanism. The increase will be effective from 1 July immediately following the year being measured.

(3) Salaries will be increased up to a maximum of 3½% effective from 1 July 1999, and up to a further 3½% maximum effective from 1 July 2000 subject to the results obtained by the Performance Measurement Mechanism.

32.—COPIES OF AGREEMENT

Every party to this agreement and each employee covered by this agreement shall receive a copy of the agreement, upon request.

33.—DISPUTE RESOLUTION

In keeping with the spirit of this agreement the parties are committed to the principle of conciliation and direct negotiation in any issues or disputes arising out of this agreement. Any issues or disputes should, if possible, be resolved promptly by direct informal consultation between the parties involved. In the event that the issues or disputes cannot be resolved informally the following processes shall apply—

(1) STAGE 1.

Discussion between the employee and their immediate supervisor.

(2) STAGE 2.

Discussion between the employee, their immediate supervisor and the Branch/Division Manager.

(3) STAGE 3.

Discussion between the employee, his/her immediate supervisor, and/or Branch/Division Manager and the Chief Executive Officer (in person) or the person acting in the position of Chief Executive Officer (in person).

(4) STAGE 4.

If a dispute has not been resolved within 10 days under Stages 1—three the dispute must be put in writing to the Director, Corporate Services. The Director or his/her delegate, shall be required to convene a meeting of relevant parties to the dispute in an attempt to arrive at a satisfactory resolution. If no resolution can be reached within five days the matter may be referred by either party to the Industrial Commission.

Nothing in this agreement prohibits a party with a dispute from proceeding to a subsequent stage if he or she does not wish to raise the matter with the employee/s concerned.

SCHEDULE 1—WAGES

					The total salary is obtained by adding the base salary and columns 4, five 6 ,7 as appropriate			
		Base Salary			Amended Conditions (optional)		Forfeited Conditions (optional)	
	LEVEL	Column 1	Column 2		Column 4	Column 5	Column 6	Column 7
			Based on a maximum increase of 3.5%		40 hr week	10 years LSL	Short Leave	Public Holidays
			refer clause 11 & 31		refer clause 14	refer clause 21	refer clause 23	refer clause 26
			1.7.1999	1.7.2000				
		per annum	per annum	per annum	per annum	per annum	per annum	per annum
LEVEL 1	U/17 yrs	12845	13295	13760	728	138	49	98
	17 yrs	15012	15537	16081	851	161	57	114
	18 yrs	17511	18124	18758	993	188	67	133
	19 yrs	20269	20978	21713	1150	218	77	154
	20 yrs	22762	23559	24383	1291	245	87	173
	21/1st yr	25004	25879	26785	1418	269	95	190
	22/2nd yr	25775	26677	27611	1462	277	98	196
	23/3rd yr	26544	27473	28435	1505	285	101	202
	24/4th yr	27308	28264	29253	1549	294	104	208
	25/5th yr	28077	29060	30077	1592	302	107	214
	26/6th yr	28846	29856	30901	1636	310	110	220
	27/7th yr	29731	30772	31849	1686	320	113	226
	28/8th yr	30343	31405	32504	1721	326	116	231
	29/9th yr	31248	32342	33474	1772	336	119	238
LEVEL 2	1st yr	32332	33464	34635	1834	348	123	246
	2nd yr	33162	34323	35524	1881	356	126	253
	3rd yr	34035	35226	36459	1930	366	130	259
	4th yr	34958	36182	37448	1983	376	133	266
	5th yr	35923	37180	38482	2037	386	137	274
LEVEL 3	1st yr	37250	38554	39903	2113	400	142	284
	2nd yr	38284	39624	41011	2171	412	146	292
	3rd yr	39349	40726	42152	2232	423	150	300
	4th yr	40443	41859	43324	2294	435	154	308
LEVEL 4	1st yr	41943	43411	44930	2379	451	160	320
	2nd yr	43119	44628	46190	2445	464	164	328
	3rd yr	44329	45881	47486	2514	477	169	338
LEVEL 5	1st yr	46658	48291	49981	2646	502	178	355
	2nd yr	48233	49921	51668	2735	519	184	367
	3rd yr	49870	51615	53422	2828	536	190	380
	4th yr	51567	53372	55240	2924	554	196	393
LEVEL 6	1st yr	54297	56197	58164	3079	584	207	414
	2nd yr	56153	58118	60152	3185	604	214	428
	3rd yr	58074	60107	62210	3294	624	221	442
	4th yr	60125	62229	64407	3410	646	229	458
LEVEL 7	1st yr	63270	65484	67776	3588	680	241	482
	2nd yr	65446	67737	70107	3712	704	249	499
	3rd yr	67814	70187	72644	3846	729	258	517
LEVEL 8	1st yr	71662	74170	76766	4064	770	273	546
	2nd yr	74418	77023	79718	4220	800	283	567
	3rd yr	77836	80560	83380	4414	837	296	593
LEVEL 9	1st yr	82104	84978	87952	4656	883	313	625
	2nd yr	84988	87963	91041	4820	914	324	647
	3rd yr	88277	91367	94565	5006	949	336	672
CLASS 1		93251	96515	99893	5288	1002	355	710
CLASS 2		98225	101663	105221	5571	1056	374	748
CLASS 3		103196	106808	110546	5852	1109	393	786
CLASS 4		108170	111956	115874	6135	1163	412	824

Specified Callings

Employees who possess a relevant tertiary Level qualification and who are employed in the callings of Librarian (Level 2/4) or Environmental Officer (Level 5) shall be entitled to annual salaries detailed below—

		Base Salary			The total salary is obtained by adding the base salary and columns 4, five 6 ,7 as appropriate Amended Conditions (optional)		Forfeited Conditions (optional)	
	LEVEL	Column 1	Column 2		Column 4	Column 5	Column 6	Column 7
			Based on a maximum increase of 3.5%		40 hr week	10 years LSL	Short Leave	Public Holidays
			refer clause 11 & 31		refer clause 14	refer clause 21	refer clause 23	refer clause 26
			1.7.1999	1.7.2000				
		per annum	per annum	per annum	per annum	per annum	per annum	per annum
Level 2/4	1st yr	32332	33464	34635	1834	348	123	246
	2nd yr	34035	35226	36459	1930	366	130	259
	3rd yr	35923	37180	38482	2037	386	137	274
	4th yr	38283	39623	41010	2171	412	146	292
	5th yr	41943	43411	44930	2379	451	160	320
	6th yr	44329	45881	47486	2514	477	169	338
Level 5	1st yr	46658	48291	49981	2646	502	178	355
	2nd yr	48233	49921	51668	2735	519	184	367
	3rd yr	49870	51615	53422	2828	536	190	380
	4th yr	51567	53372	55240	2924	554	196	393

SCHEDULE 2—WAGES—TEA ATTENDANTS

CATERING EMPLOYEES AND TEA ATTENDANTS (Government) AWARD 1982

Tea Attendants

Base Full Time Salary (per week)

Base Salary (1.7.98)	Base Salary as at 1.7.99 (based on max increase of 3.5%)	Base salary as at 1.7.2000 (based on max increase of 3.5%)
$341.27	$353.21	$365.57

In addition to the above wage rates, service pay will be paid for each year of service at the following rates per week—

$57.06	1st year
$62.32	2nd year
$66.91	3rd year

Staff employed on a part-time basis under the Catering, Employees and Tea Attendants (Government) Award 1982 shall continue to receive an additional 15% on top of their weekly pay as provided in their Award.

FOCUS SHOPFITTERS INDUSTRIAL AGREEMENT. AG 92 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Focus Shopfitters Pty Ltd.

AG 92 of 1999.

Focus Shopfitters Industrial Agreement.

COMMISSIONER S J KENNER.

22 July 1999.

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 Focus Shopfitters Industrial Agreement as filed in the Commission on 26 May 1999 in the terms of the following schedule be and is hereby registered as an industrial agreement.

(Sgd.) S.J. KENNER,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Focus Shopfitters Industrial Agreement.

2.—ARRANGEMENT

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 Focus Shopfitters 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"), and will apply to work on sites where the unions have a registered agreement with the Principal Contractor, or has an agreement in writing with the Principal Contractor. There are approximately six (6) 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 Clause 46 Settlement of Disputes and Appendix —Resolution of Disputes Requirements of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act 1979, as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Unions and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate and allowances resulting in the wage rates in 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**

(i) The Company will immediately increase its level of payment to $60 per week per employee or 7% Ordinary Time Earnings, whichever is the greater.

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 shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by the employee.

(ii) "Ordinary Time Earnings" (which for the purposes of the Superannuation Guarantee (Administration) Act 1992 will operate to provide a notional earnings base) shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including tool allowance, industry allowance, trade allowances, shift loading, special rates, qualification allowances (eg. first aid, laser safety officer), multistorey allowance, site allowance, asbestos eradication allowance, leading hand allowances, in charge of plant allowance and supervisory allowances where applicable. The term includes any regular over-award pay as well as casual rates received and any additional rates and allowances paid for work undertaken during ordinary hours of work, including fares and travel.

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, prorata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an inability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than—

course fees

course books and materials

payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

3. The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (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.—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.—UNION MEMBERSHIP

The employer will encourage, as far as possible, all employees covered by the agreement, to be financial members of the BLPPU and the CMETU.

22.—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: 21/5/99

.....

WITNESS

CMETU

.....

Date: 21/5/99

.....

WITNESS

The Company:

.....

SIGNATURE

Date: 10/5/99

Company Seal

.....

PRINT NAME

.....

WITNESS

APPENDIX A—WAGE RATES

	Date of Signing Hourly Rate $	1 August 1999 Hourly Rate $
Labourer Group 1	16.92	17.15
Labourer Group 2	16.34	16.56
Labourer Group 3	15.90	16.12
Plaster, Fixer	17.58	17.82
Painter, Glazier	17.19	17.42
Signwriter	17.56	17.80
Carpenter	17.70	17.93
Bricklayer	17.52	17.75
Refractory Bricklayer	20.12	20.38
Stonemason	17.70	17.93
Rooftiler	17.38	17.62
Marker/Setter Out	18.21	18.46
Special Class T	18.45	18.69

APPRENTICE RATES

	Date of Signing Hourly Rate $	1 August 1999 Hourly Rate $
Plasterer, Fixer		
Year l	7.38	7.48
Year 2 (1/3)	9.68	9.81
Year 3 (2/3)	13.19	13.37
Year 4 (3/3)	15.48	15.69
Painter. Glazier		
Year l (.5/3/5)	7.22	7.32
Year 2 (1/3), (1.5/3.5)	9.45	9.58
Year 3 (2/3), (2.5/3.5)	12.89	13.06
Year 4 (3/3), (3.5/3.5)	15.13	15.33

APPRENTICE RATES—*continued*

	Date of Signing Hourly Rate $	1 August 1999 Hourly Rate $
Signwriter		
Year l (.5/3/5)	7.38	7.48
Year 2 (1/3), (1.5/3.5)	9.65	9.78
Year 3 (2/3), (2.5/3.5)	13.17	13.35
Year 4 (3/3), (3.5/3.5)	15.46	15.66
Carpenter		
Year l	7.44	7.54
Year 2 (1/3)	9.73	9.86
Year 3 (2/3)	13.27	13.45
Year 4 (3/3)	15.57	15.78
Bricklayer		
Year l	7.36	7.46
Year 2 (1/3)	9.63	9.76
Year 3 (2/3)	13.14	13.31
Year 4 (3/3)	15.41	15.62
Stonemason		
Year l	7.44	7.54
Year 2 (1/3)	9.73	9.86
Year 3 (2/3)	13.27	13.45
Year 4 (3/3)	15.57	15.78
Rooftiler		
6 months	9.91	10.04
2nd 6 months	10.90	11.04
Year 2	12.73	12.90
Year 3	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 person's ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/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	$520,000	NIL
Above	$520,000 to $2.17m	$1.90
Above	$2.17m to $4.55m	$2.25
Over	$4.55m	$2.85

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17m	$1.70
Above	$2.17m to $4.55m	$1.90
Over	$4.55m	$2.45

4.2 Projects Located Within West Perth (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17m	$1.70
Above	$2.17m to $4.55m	$1.90
Over	$4.55m	$2.45

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17m	$1.60
Above	$2.17m to $4.55m	$1.80
Over	$4.55m	$2.05

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 $2.17m	$1.30
Above	$2.17m to 6m	$1.60
Above	$6m to $11.98m	$1.85
Above	$11.98m to $24.43m	$2.05
Above	$24.43m to $60.5m	$2.35
Over	$60.5m	$2.55

"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 eastem 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 Procedure
- 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. Productivity Allowance

In return to increase productivity and/or timely completion of projects it is agreed that a productivity allowance of $1.00 per hour worked shall be paid toemployees engaged upon projects (new construction only) which exceed two stories in height or building where the structure exceeds 10 metres in height (excluding spires, flagpoles and the like).

14. Structural Frame Allowance

It is agreed that a structural frame allowance of $1.00 per hour all purpose shall be paid to all employees engaged upon projects (new construction only) which exceed two stories in height or building where the structure exceeds 10 metres in height (excluding spires, flagpoles and the like).

15. Provision of Canteen

It is agreed that a canteen accommodation shall be provided where a project exceeds $35 million in value and where the operation of the canteen is financially self supporting in respect of consumables. Canteen to come into operation when on site manning levels exceed 50 and to cease when manning levels reduce to below 50.

16. Provision of Nurse

It is agreed that a qualified nurse shall be engaged where the forecast long term staffing levels for a project exceed 100 (one hundred) or when actual numbers exceed 100 not withstanding that forecasts may have been below that level. The nurse shall commence duties when staffing levels reach (fifty) and shall terminate when levels reduce to 50 (fifty). The requirement for a provision of a nurse shall be waived if the project is adjacent to a hospital with a public emergency department.

17. This agreement shall only apply to building contracts entered into on or tendered for on or after 1 January 1999.

18. Application to Apprentices

The rates prescribed in this agreement shall apply to all apprentices commencing employment after 31 December 1997 in the same proportion as the percentage of a tradesperson's wage rate as prescribed by the appropriate award or Enterprise Bargaining Agreement, being

1st year	42%
2nd year	55%
3rd year	75%
4th year	88%

FORWARD ENGINEERS AGRICULTURE WORKSHOP ENTERPRISE AGREEMENT 1999. No. AG 116 of 1999.

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

Forward Engineers Pty Ltd.

No. AG 116 of 1999.

Forward Engineers Agriculture Workshop Enterprise Agreement 1999.

COMMISSIONER S J KENNER.

3 August 1999.

Order.

HAVING heard Mr G Sturman 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—

(1) THAT the Forward Engineers Agriculture Workshop Enterprise Agreement 1999 as filed in the Commission on 17 June 1999 in the terms of the following schedule be and is hereby registered as an industrial agreement.

(2) THAT the Forward Engineers Agriculture Workshop Enterprise Agreement 1998 No AG 62 of 1998 be and is hereby cancelled.

(Sgd.) S. J. KENNER,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Forward Engineers Agriculture Workshop Enterprise Agreement 1999.

2.—ARRANGEMENT

3.—APPLICATION AND INCIDENCE OF AGREEMENT

This Agreement shall apply in the Agriculture Workshop of Forward Engineers Pty Ltd, 17-95 Adams Drive, Welshpool, Western Australia and the employees of Forward Engineers to whom the Metal Trades (General) Award No 13 of 1965 applies. Approximately 70 employees are covered by this Agreement.

4.—PARTIES BOUND

(1) Forward Engineers Pty Ltd
17-95 Adams Drive
Welshpool WA 6106

(2) The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers
Western Australian Branch
1111 Hay Street
West Perth WA 6005

5.—DATE AND PERIOD OF OPERATION

(1) This Agreement shall operate from the first pay period to commence on or after 14 April 1999 and remain in force until 13 October 1999. Two months prior to its expiry, the parties shall meet to negotiate a new Agreement.

(2) In the event of a replacement Agreement not being negotiated, this Agreement shall remain in force in accordance with the provisions of the Western Australian Industrial Relations Act 1979.

6.—RELATIONSHIP TO PARENT AWARD

This Agreement shall be read and interpreted wholly in conjunction with the Metal Trades (General) Award No 13 of 1965, provided that where there is any inconsistency between the two documents, this Agreement shall prevail.

7.—DISPUTE SETTLEMENT PROCEDURE

In the event of a question, difficulty or dispute, the matter shall be dealt with in accordance with the provisions of Clause 34.—Avoidance of Industrial Disputes contained in the Metal Trades (General) Award 1996 No 13 of 1965.

8.—WAGES

From the first pay period on or from 14 April 1999 a wage increase of 3% will apply on the actual hourly rate of pay paid to employees covered at the time of making Agreement, and will apply for all purposes of the Award. The minimum rates of pay which apply to employees are as follows—

C13	$11.22/hour
C12	$12.44/hour
C10	$13.72/hour

9.—NO EXTRA CLAIMS

Claims for further wage increases shall not be made during the life of this Agreement.

10.—JOURNEY COVER

The employer will provide employees with journey insurance cover for lost wages in the event of an accident while travelling to and from work and shall include death and disability cover up to $100,000.

11.—WORKPLACE AGREEMENTS

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

SIGNATORIES TO AGREEMENT

Signed for and on behalf of Forward Engineers Pty Ltd

…….

7/6/1999

For and on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch

…….

11/6/1999

HSOA PEEL HEALTH CAMPUS ADMINISTRATIVE, CLERICAL AND ALLIED HEALTH STAFF AGREEMENT 1998.
No. AG 126 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Health Solutions (WA) Pty Ltd.

No. AG 126 of 1999.

HSOA Peel Health Campus Administrative, Clerical and Allied Health Staff Agreement 1998.

23 July 1999.

Order.

HAVING heard Ms C.L.L. Thomas on behalf of the Applicant and Mr I.L. Oakley on behalf of the Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the agreement made between the parties as lodged in the Commission on the 9th day of July 1999 entitled HSOA Peel Health Campus Administrative, Clerical and Allied Health Staff Agreement 1998 and as subsequently amended by direction of the Commission be registered in the terms of the following Schedule as an industrial agreement in replacement of the Peel Health Campus (HSOA) Enterprise Agreement 1997 (AG 227 of 1997) which is hereby cancelled.

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

Schedule.

1.—TITLE

This agreement may be cited as *the HSOA Peel Health Campus Administrative, Clerical and Allied Health Staff Agreement 1998* ("the Agreement").

2.—ARRANGEMENT

3.—PARTIES

The parties to this agreement shall be Health Solutions (WA) Pty Ltd ACN 065 481 049, trading as Peel Health Campus ("the employer") and the Hospital Salaries Officer's Association of Western Australia ("the union").

4.—AREA AND SCOPE

(1) This agreement shall apply to all employees eligible for membership of the Hospital and Salaried Officers Association of Western Australia (Union of Workers) employed at Peel Health Campus, whose conditions of employment are covered by the Hospital Salaried Officers (Private Hospitals) Award 1980.

(2) Peel Health Campus agrees for the term of this Agreement to be bound by the provisions of this agreement and as such commits not enter into Workplace Agreements under the Workplace Agreement Act 1993 with employees who would otherwise fall within the scope of this Agreement.

5.—TERM

The term of this agreement shall be from the date of registration until 30 November 2000.

6.—REPLACEMENT

(1) This agreement replaces and cancels the Peel Health Campus (HSOA) Enterprise Agreement 1997.

(2) Notwithstanding the provisions of Clause 5, this agreement shall continue to operate until it is replaced by a new agreement.

(3) Provided that the parties may at any time agree to vary or cancel the agreement in accordance with the provisions of the *Workplace Relations Act* 1996.

(4) Renegotiation of this agreement is to commence no later than three months prior to the expiry of the agreement with the objective being to have a further agreement finalised by the expiry of the term of this agreement.

(5) The parties will co-operate to ensure that representatives on the bargaining committee for the replacement agreement are provided with adequate education and training in order to carry out their role.

7.—RELATIONSHIP TO AWARD

This Agreement shall be read and interpreted in conjunction with the Hospital Salaried Officers (Private Hospitals) Award 1980 ("the award"). Where there is inconsistency between this Agreement and the Award, this Agreement shall prevail to the extent of any inconsistency.

8.—DEFINITIONS

"Casual employee" means an employee engaged on an hourly basis with no guarantee of continual or additional employment. A casual employee shall not be continuously rostered for a period exceeding 6 weeks.

"Full time employee" means an employee engaged to work 38 hours a week;

"Ordinary rate(s)" means the base classification rate excluding shift and weekend penalties;

"Part time employee" means an employee regularly employed to work less hours than those prescribed for full time employees;

"Temporary employee" means an employee engaged for a specific period or task, such period shall not exceed 12 months.

9.—EMPLOYEE'S CLASSIFICATION AND DUTIES

(1) Probation

(a) The first three months of employment with the employer will be probationary during which time, notwithstanding Clause 30—Notice of Termination, either party may terminate the contract by giving one week's notice in writing (one hour in the case of casuals) or payment or forfeiture in lieu thereof. A lesser period of notice may be agreed, in writing between the parties.

(b) The employer shall provide the employee with an appraisal of their performance on at least a monthly basis during the probationary period.

(c) If the employer concludes that the employee is unlikely to be a satisfactory appointment to the staff, the employer will give the employee opportunity to respond to such concerns as the employer may have.

(d) After considering such response the employee may wish to make the employer may—

(i) Confirm the appointment of the employee; or

(ii) Extend the probationary period for an additional period not exceeding three months, to enable a further assessment of the employee or

(iii) Terminate the employment

(e) Where the employee's period of probation has been extended, the employer shall notify the employee in writing of the fact and the period of extension

(f) This subclause shall not apply to existing employees with more than three months service.

(2) The employee will be required to work in accordance with his/her job description and the employer's policies and procedures.

(3) The employer may vary the employee's duties if the variation is reasonable and the duties are within the employee's skill, competence and training provided that such duties are not designed to promote deskilling.

10.—CASUAL EMPLOYEES

(1) Casual employees shall be paid an ordinary rate of 1/38th of the rate of their classification plus 20% additional loading.

(2) A casual employee shall not be entitled to leave entitlements prescribed in this Agreement.

11.—PART TIME EMPLOYEES

(1) A part time employee shall receive payment for wages, annual leave, long service leave, sick leave and family leave in the same ratio as the number of ordinary hours worked relate to full time employees.

(2) A part time employee may agree to work additional hours (*ie* in conjunction with an existing shift) or additional shifts. Any additional hours or shifts shall be paid at ordinary rates provided the total number of hours does not exceed 10 hours per day or 38 hours per week, when overtime rates shall prevail.

12.—HOURS

(1) Subject to this clause, ordinary hours shall be arranged by the employer to best meet the organisation's needs. Ordinary hours may be worked over any day of the week Monday to Sunday inclusive.

(2) The ordinary hours of work for a full time employee shall not exceed 76 hours in each fortnight.

(3) The ordinary hours of a shift shall not exceed ten hours. However the ordinary hours of a shift may be extended to twelve hours, by mutual agreement, where operational requirements dictate.

(4) The roster shall in each case provide for a 9 hour break between shifts.

(5) Ordinary hours shall not be worked on more than 10 days in each fortnight.

(6) A minimum of two days off in each fortnight will be taken consecutively.

(7) There will not be the ability to accrue time off in accordance with "Accrued Days Off" provision under the parent Award

13.—ACCRUED TIME OFF

Time off may only be accrued under the provisions of this Agreement and shall be taken at a time mutually convenient to the employee and employer, or in conjunction with a period of annual leave.

14.—OVERTIME

(1) All time worked beyond or in excess of the ordinary rostered hours on any day or time worked in excess of 38 hours per week, shall be deemed overtime and be paid for at the rate of time and one half for the first three hours and double time thereafter.

(2) Where an employee is required to work overtime and such overtime is worked for a period of at least two hours in excess of the required daily hours of work, the employee shall be provided with a meal free of cost.

(3) Time Off In Lieu

Where the employer and employee agree, the employee may take time off in lieu of payment for overtime. Time off in lieu shall accrue at the rate of accrual in accordance with sub-clause (1) and shall be taken at a mutually convenient time.

Where there is no agreement to take time off in lieu, the employee shall be entitled to payment at the appropriate overtime rate(s).

15.—ON CALL

(1) For the purposes of this Agreement an employee is on call when he or she is required by the employer to remain at such a place as will enable the employer to readily contact him or her during the hours for which he or she has been placed on call. An employee is also on call when required to carry a mobile telephone or pager and to remain within a specified radius of the hospital.

(2) An employee who is rostered to be on call between rostered shifts shall be paid—

(a)	from Monday to Friday shall receive an allowance of	$12.00
(b)	on a Saturday shall received an allowance of	$18.00
(c)	on a Sunday, public holiday or any other day on which the employee is not rostered on duty shall receive an allowance of	$20.00

Provided that payment in accordance with this paragraph shall not be made with respect to any period for which payment is otherwise made in accordance with the provisions of this Agreement when the employee is recalled to work.

(3) An employee shall not be required to remain on call whilst on annual leave or the day before commencing leave unless by agreement between the employee and the employer.

(4) Minimum Call In

An employee on-call and called in to work shall be paid a minimum of 2 hours pay.

An employee on-call and called in to work shall be paid while on recall at standard overtime rates *ie*. time and a half for the first three hours and double time thereafter (regardless of shift penalty or public holiday). For payment purposes the time of recall relates to the time spent at the premises of the employer and does not include time travelling to and from the premises.

16.—MEAL AND TEA BREAKS

(1) No employee shall be rostered to work more than five hours without a meal break.

(2) Meal breaks shall not be less than 30 minutes and shall not be counted as time worked.

(3) Provided that where an employee is required to remain available or required to work during the meal break she or he shall be paid for the duration of the meal break at ordinary rates. Such time shall not count as ordinary time and shall not be included in the calculation of overtime or leave entitlements.

(4) A refreshment break of fifteen minutes duration shall be allowed without deduction of pay during each shift worked of 5 hours or less. Two fifteen minute refreshment breaks shall be allowed where the shift is of more than 5 hours duration.

17.—ROSTER

(1) A roster of hours to be worked by each employee shall be in ink and posted by the employer in a place where it is readily accessible and visible to the employees covered by it.

(2) The roster shall be posted at least 14 days before it comes into operation and may be altered by the employer giving 48 hours' notice or otherwise by agreement between the employer and employee or employees concerned.

18.—SHIFT & WEEKEND PENALTIES

(1) Where on any weekday an employee works a complete rostered afternoon shift commencing at 1200 or after, and finishing after 1800, the employee shall be paid a loading of 12.5% on the ordinary rates of pay.

(2) Where on any weekday an employee works a complete roster night shift between the hours of 1800 and 0730, the employee shall be paid a loading of 12.5% on the ordinary rates of pay.

(3) Clause (1) does not apply when the employee commences her/his ordinary hours of work after 1200 and completes those hours at or before 1800 on that day.

(4) Where an employee is rostered to work ordinary hours between midnight Friday and midnight Saturday, the employee shall be paid a loading of 50% on the ordinary rate of pay for the actual hours worked during this period.

(5) Where an employee is rostered to work ordinary hours between midnight Saturday and midnight on the following Sunday, the employee shall be paid a loading of 50% on the ordinary rate of pay for the actual hours worked during this period.

19.—WAGES

(1) Salaries/Wages

The minimum rate of salaries to be paid to employees covered by this Agreement shall be as follows—

(2) Minimum Salaries

CLASSIFICATION	1997 EBA	From 01/09/98	Fortnightly	Hourly	From 20/03/2000	Fortnightly	Hourly
Under 17	12,237	12,543	480.88	6.3274	12,919	495.30	6.5697
17	14,289	14,646	561.51	7.3883	15,085	578.34	7.6097
18	16,680	17,097	655.48	8.6247	17,610	675.14	8.8834
19	19,306	19,789	758.68	9.9826	20,383	781.46	10.2824
20	21,681	22,223	852.00	11.2105	22,890	877.57	11.5470
Level 1: 1	23,816	24,411	935.88	12.3142	25,143	963.95	12.6836
Level 1: 2	24,551	25,165	964.79	12.6946	25,920	993.74	13.0755
Level 1: 3	25,282	25,914	993.51	13.0725	26,691	1023.30	13.4645
Level 1: 4	26,011	26,661	1022.15	13.4493	27,461	1052.82	13.8529
Level 2: 1	26,742	27,411	1050.90	13.8276	28,233	1082.42	14.2424
Level 2: 2	27,475	28,162	1079.69	14.2064	29,007	1112.09	14.6328
Level 2: 3	28,317	29,025	1112.78	14.6418	29,896	1146.17	15.0812
Level 2: 4	28,900	29,623	1135.71	14.9436	30,512	1169.79	15.3920
Level 2: 5	29,760	30,504	1169.48	15.3879	31,419	1204.56	15.8495
Level 3: 1	30,777	31,546	1209.43	15.9136	32,492	1245.70	16.3908
Level 3: 2	31,567	32,356	1240.49	16.3222	33,327	1277.71	16.8120
Level 3: 3	32,399	33,209	1273.19	16.7525	34,205	1311.37	17.2549
Level 3: 4	33,724	34,567	1325.25	17.4375	35,604	1365.01	17.9607
Level 4: 1	34,418	35,278	1352.51	17.7962	36,336	1393.07	18.3299
Level 4: 2	35,459	36,345	1393.42	18.3345	37,435	1435.21	18.8843
Level 4: 3	36,527	37,440	1435.40	18.8868	38,563	1478.45	19.4532
Level 4: 4	38,047	38,998	1495.13	19.6728	40,168	1539.99	20.2630
Level 5: 1	38,838	39,809	1526.22	20.0818	41,003	1572.00	20.6842

(3) Salaries—Specific Callings and Other Professionals

Employees who are employed in the calling of Dietitian, Occupational therapist, Social Worker, Speech Pathologists, Physiotherapist, or any other professional calling as agreed between the Union and the employer, shall be entitled to annual salaries as follows—

CLASSIFICATION	1997 EBA	From 01/09/98	Fortnightly	Hourly	From 20/03/2000	Fortnightly	Hourly
Level 3/5 Inc 1	30,777	31,546	1209.43	15.9136	32,492	1245.70	18.3908
Level 3/5 Inc 2	32,399	33,209	1273.19	16.7525	34,205	1311.37	17.2549
Level 3/5 Inc 3	34,418	35,278	1352.51	17.7962	36,336	1393.07	18.3299
Level 3/5 Inc 4	36,527	37,440	1435.40	18.8868	38,563	1478.45	19.4533
Level 3/5 Inc 5	39,926	40,924	1568.97	20.6443	42,152	1616.05	21.2638
Level 3/5 Inc 6	42,196	43,251	1658.19	21.8182	44,549	1707.95	22.4730

(4) The employer shall be responsible for determining the relevant classification and grading of employees having regard to the duties and responsibilities of the positions.

(5) Incremental progression will be calculated in periods of calendar years from the date of commencement of work with the employer and shall be by automatic progression subject to satisfactory performance.

(6) Movement between classifications is by appointment only.

(7) Employees in receipt of a base salary in excess of that prescribed for Level 5 Increment 1 and Level 3/5 Increment 6 may by agreement in writing with the employer receive an all in rate in full satisfaction of the monetary entitlement prescribed by this agreement. Provided that the rate shall not when viewed objectively, and having regard to the whole of the employee's terms and conditions of employment, be less favourable to the employee than the entitlements otherwise available under this Agreement.

(8) A fortnight's salary shall be computed by dividing the annual salary rate by 313 and multiplying the result by 12.

(9) The hourly rate shall be calculated as one-seventy sixth of the fortnight's salary.

(10) Wages shall be paid fortnightly by electronic funds transfer into a bank or building society account nominated by the employee, provided that wages shall be paid one clear day prior to any weekend.

(11) The employer shall provide to the employee on or before each pay day, a time and wages record detailing the manner in which the employee's wages, superannuation and holidays have been calculated, so as to enable the employee to ascertain their correct entitlements.

(12) The wage rates outlined in subclause (2) and (3) hereof incorporate a 2.5% increase on existing rates with effect on 1 September 1998 for existing employees and commencement of employment for new employees and a further 3% increase with effect from 30 March 2000.

(13) No further wage increases shall be payable during the life of this Agreement.

Higher Duties

An employee required to perform the duties of a position of a higher classification than their own position shall be entitled to an added responsibility allowance.

(a) Where an employee performs all the duties of the higher classified position he/she shall be entitled to the higher rate of pay that position normally attracts.

(b) Where an employee performs some, but not all, of the duties of the higher position a rate of pay less than the rate the position normally attracts can be paid on agreement between the employer and employee. In such circumstance the employee will be provided with written advice of the additional duties and confirmation of the agreed rate of remuneration prior to assuming such duties.

(c) To qualify for the allowance an employee must occupy the higher classified position, or undertake the additional responsibilities for a minimum period of one complete shift.

20.—CALCULATION OF PENALTIES

Where an employee works hours which would entitled that employee to payment of more than one of the penalties payable in accordance with the overtime, public holidays, shift

and weekend penalty provisions of this agreement, only the highest of any such penalty shall be payable.

21.—LAUNDRY AND UNIFORMS

(1) Following the initial issue of uniform/s (dependant on employee classification), the employer shall pay an allowance of $4.00 per week to the employee who shall then be required to purchase such sufficient number of uniforms to meet ongoing requirements.

(2) The responsibility of laundering uniforms shall be met by the employee. An allowance of $1.05 per week shall be paid for this purpose.

22.—ANNUAL LEAVE

Entitlement

(1) (a) Each employee shall be entitled to four weeks annual leave after each year of continuous service. The entitlement to annual leave accrues *pro rata* on a weekly basis.

(b) Employees who work shift work, in accordance to subclause (2), will also be entitled to additional annual leave.

(c) In subclause (a), "service" shall not include any period of unpaid leave other than the first three months of unpaid sick leave and the first month of workers' compensation leave.

Shift Work

(2) (a) Shift workers who are rostered to work their ordinary hours on Sundays shall be entitled to received additional annual leave as follows—

(i) If 35 ordinary shifts on such days have worked – one week

(ii) If less than 35 ordinary shifts on such days have been worked the employee shall be entitled to have one additional day's leave for each seven ordinary shifts worked, provided that the maximum additional leave shall not exceed five working days.

(b) An employee shall be paid for any period of leave prescribed by this subclause in accordance with subclause (3) hereof.

Rate of Pay

(3) (a) The employee shall be paid for any period of annual leave prescribed in this clause at the ordinary rate of wage the employee would have received as his or her payment at the time of taking the leave and, in addition, any shift and weekend penalties which the employee would have received had the employee not proceeded on annual leave.

Provided that an employee on higher duties for a period of four consecutive weeks or less at the time of taking the leave shall be paid at the ordinary rate of wage the employee would have received had he/she not been on higher duties.

(b) Where it is not possible to calculate the shift and weekend penalties the employee would have received, the employee shall be paid at the rate of the average of such payments made each week over the four weeks prior to taking the leave.

(c) Provided that the employee when proceeding on annual leave shall not be paid less than the sum of—

(i) the employee's ordinary rate of wage for the period (ie excluding shift and weekend penalties); and

(ii) a loading of 17.5% in respect of the annual leave accrued under subclauses (1) and (2) above.

Time of Payment

(4) By agreement between the employer and employee, an employee proceeding on annual leave may be paid for the whole of that period of annual leave prior to taking the leave.

Taking Annual Leave

(5) (a) The employee may, with the approval of the employer, be allowed to take the annual leave prescribed by this clause before the completion of twelve month's continuous service.

(b) The annual leave prescribed in this clause may be split into portions by mutual agreement between the employer and the employee, including being taken as single days.

(c) The employer may require the employee to take annual leave to coincide with the close down of elements of the employers operations during the Christmas/New Year and Easter periods. In such circumstances the employer shall give the employee as much notice as practicable but not less than 1 months notice of such requirement and the period of time involved.

(d) Where the employer and employee have not agreed when the employee is to take annual leave, the employer shall give the employee at least 1 months notice of the period of time when it will be convenient to the employer for the employee to take the leave.

(e) Leave shall not accumulate except with the consent of the employer and in no case shall it accumulate for more than 18 months.

Termination

(6) If the employment terminates, the employee shall be paid a pro rata entitlement in respect of each completed week of service for which annual leave has not already been taken. Provided that leave loading shall not apply to pro rata leave on termination but shall apply to leave resulting from a completed year of service.

23.—PUBLIC HOLIDAYS

(1) For the purposes of this clause "Public Holiday" means any of the following days, or days observed in lieu thereof—

New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

(2) An employee may be required to work on a public holiday.

(3) An employee rostered to work ordinary hours on a public holiday shall be entitled to a choice of the following—

(a) double time and a half for the actual time worked on the holiday; or

(b) time and a half for the actual time worked with an equivalent period of time off, paid at the ordinary rate.

(4) An employee not required to work on a public holiday, solely because that day is a public holiday shall take the time off without loss of pay.

(5) The leave provisions of this clause do not apply to casual employees.

24.—LONG SERVICE LEAVE

The employee shall be entitled to 13 weeks long service leave after each period of 15 years continuous service in accordance with the terms of the *Long Service Leave Act, 1958-1973 (WA)* provided that—

(1) An employee may, by agreement with the employer, take pro rata long service provided that the employee has completed at least ten years service immediately prior to taking this leave.

(2) At the request of the employee and with the agreement of the employer, an employee faced with pressing personal needs, may be paid in lieu of taking a portion of long service leave.

(3) Long service leave may be taken in weekly multiples. Where an employee's remaining portion of accrued untaken leave entitlements is less than a week, such a portion may be taken.

(4) Provided that a casual employee shall not be entitled to long service leave.

25.—SICK LEAVE

(1) The employee shall accrue 10 days paid sick leave per annum.

(2) The entitlement shall accrue pro rata on a weekly basis.

(3) If the employee is unable to attend or remain at work on the grounds of personal ill health or injury, the employee shall be entitled to be paid at ordinary rates to the extent of his or her accrued entitlement for the period of absence from duty.

(4) Unused portions of sick leave entitlement shall accumulate from year to year and may be taken in any subsequent year.

(5) The employee shall advise the employer as soon as reasonably practicable and if possible prior to the commencement of the shift of the inability to attend work, the nature of the illness or injury and the estimated duration of the absence.

(6) The employee is allowed a maximum of four days absence without a medical certificate in any one accruing year.

(7) If the employee suffers personal ill health or injury whilst on annual leave, he may be paid sick leave in lieu of annual leave subject to—

(a) providing a medical certificate stating the illness or injury necessitated confinement to home or hospital for seven consecutive days or more;

(b) the portion of annual leave coinciding with the paid sick leave is to be taken at a time agreed by employer and employee or shall be added to the next period of annual leave;

(c) payment for replaced annual leave shall be at the rate of salary applicable at the time the leave is subsequently taken provided that the annual leave loading shall be deemed to have been paid with respect to the replaced annual leave.

(8) Paid leave may be withheld if the illness or injury is the result of the employee's own misconduct.

(9) Where an employee receives payment under this clause and subsequently receives payments in respect of the same period under the *Workers Compensation and Assistance Act*, WA the employee shall reimburse to the employer the payments made under this clause and the employer shall reinstate the employee's sick leave or other entitlements accordingly.

26.—FAMILY LEAVE

(1) Use of Sick Leave

(a) An employee with responsibilities, in relation to either members of their immediate family or members of their household who need their care and support, shall be entitled to use, in accordance with this subclause, up to 5 days per annum of their sick leave entitlement to provide care and support for such persons when they are ill.

(b) The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned.

(c) The entitlement to use sick leave in this way is subject to—

(i) the employee being responsible for the care of the person concerned; and

(ii) the person concerned being either—

(A) a member of the employee's immediate family: *or*

(B) a member of the employee's household.

(2) the term *"immediate family"* includes—

(a) a spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee; and

(b) a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

(3) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

Unpaid Leave for Family Purposes

(4) An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care to a family member who is ill.

27.—PARENTAL AND ADOPTION LEAVE

An employee shall be entitled to unpaid parental and adoption leave in accordance with Division 5 of Part VIA of the *Workplace Relations Act 1996* (Cth).

Interpretation

(1) In this clause—

"adoption", in relation to a child, is a reference to a child who—

(a) is not the natural child or the step-child of the employee or the employee's spouse;

(b) is less than 5 years of age; and

(c) has not lived continuously with the employee for 6 months or longer;

"continuous service" means service under an unbroken contract of employment and includes—

(a) any period of parental leave; and

(b) any period of leave or absence authorised by the employer or this agreement, an employee's contract of employment or the *Minimum Conditions of Employment Act*, 1993;

"expected date of birth" means the day certified by a medical practitioner to be the day on which the medical practitioner expects the employee or the employee's spouse, as the case may be, to give birth to a child;

"parental leave" means leave provided for by this clause'

"spouse" includes a *de facto* spouse.

Entitlement to parental leave

(2) (a) Subject to the provisions of this clause, an employee, other than a casual employee, is entitled to 52 consecutive weeks of unpaid leave in respect of—

(i) the birth of a child to the employee or the employee's spouse; or

(ii) the placement of a child with the employee with a view to the adoption of the child by the employee.

(b) An employee is not entitled to take parental leave unless he or she—

(i) has, before the expected date of birth or placement, completed at least 12 months' continuous service with the employer; and

(ii) has given the employer at least 10 weeks' notice of his or her intention to take leave.

Provided that an employee shall not be in breach of these notice requirements where failure to give such notice results from confinement or adoption occurring earlier than the expected date.

(c) An employee is not entitled to take parental leave at the same time as the employee's spouse but this paragraph does not apply to one weeks' parental leave—

(iii) Taken by the male parent immediately after the birth of the child; or

(iv) Taken by the employee and the employee's spouse immediately after a child has been placed with them with a view to their adoption of the child.

(d) The entitlement to parental leave is reduced by any period of parental leave taken by the employee's spouse in relation to the same child, except the period of one week's leave referred to in sub-clause (c).

Maternity leave to start 6 weeks before birth

(3) A female employee who has given notice of her intention to take parental leave, other than for an adoption, is to start 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 work.

Medical certificate

(4) An employee who has given notice of his or her intention to take parental leave, other than for adoption, is to provide to the employer a certificate from the medical practitioner stating that the employee or the employee's spouse, as the case may be, is pregnant and the expected date of birth.

(5) (a) An employee who has given notice of his or her intention to take parental leave or who is actually taking parental leave is to notify the employer of particulars of any period of parental leave taken or to be taken by the employee's spouse in relation to the same child.

(b) Any notice given under sub-clause (a) is to be supported by a statement of information to the satisfaction of the employer or a statutory declaration by the employee as to the truth of the particulars notified.

Notice of parental leave details

(6) (a) An employee who has given notice of his or her intention to take parental leave is to give the employer not less

than four weeks written notice of the dates on which the employee wishes to start and finish the leave.

(b) The period of leave may be varied, by the employee giving not less than 14 days notice in writing, unless a lesser period is agreed, provided that the period may be lengthened once only, save with the agreement of the employer.

(c) An employee shall confirm his/her intention of returning to work by notice in writing to the employer given not less than 14 days prior to the expiration of the period of parental leave.

Cancellation of maternity leave

(7) (a) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.

(b) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

Special parental leave and sick leave

(8) (a) Where the pregnancy of an employee not then on parental 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 parental leave) as a duly qualified medical practitioner certifies as necessary before her return to work, or

(iii) For illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special parental leave, to such paid sick leave as to which she is then entitled and which a duly qualified medical partitioner certifies as necessary before her return to work.

(b) Where an employee not then on parental leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special parental leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special parental leave and parental leave shall not exceed 52 weeks.

(c) For the purposes of this clause, parental leave shall include special parental leave.

Transfer to a Safe Job—

(9) Where in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at their present work, the employee shall , if the employer deems is practicable, be transferred to a safe job at the rate and on the condition attaching to that job until the commencement of parental leave.

If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as parental leave for the purposed of this clause.

Return to work after parental leave

(10) (a) On finishing parental leave for any reason, an employee is, subject to sub clause (c), entitled to the position he or she held immediately before starting parental leave.

(b) If the position referred to in sub-clause (a) is not available, the employee, is entitled to an available position—

(i) She shall be entitled to such period of unpaid leave (to be known as special parental leave) as a duly qualified medical practitioner certifies as necessary before her return to work, or

(ii) that the employee is capable of performing,

most comparable in status and pay to that of his or her former position.

(c) Where, immediately before starting parental leave, an employee was acting in, or performing on a temporary basis the duties of, the position referred to in sub-clause (a), that paragraph applies only in respect of the position held by the employee immediately before taking the acting or temporary position.

Effect of parental leave on employment

(11) Notwithstanding any Award or other provision to the contrary, absence on parental 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 Agreement.

Parental Leave and Other Leave Entitlements—

(12) Subject to subclauses (2) (c) and (d), provided the aggregate of leave including leave taken pursuant to this clause does not exceed 52 weeks—

(a) An employee may, in lieu of or in conjunction with parental leave, take any annual leave or long service leave or any part thereof to which she is then entitled.

(b) Subject to the provision of subclause (8) hereof, paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to a worker during her absence on parental leave.

Termination of Employment—

(13) (a) An employee on parental leave may terminate her employment at any time during the period of leave by notice given in accordance with this agreement.

(b) An employer shall not terminate the employment of an employee on the grounds of her pregnancy or of his or her absence on parental leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

Replacement Workers—

(14) (a) A replacement worker is a worker specifically engaged as a result of a worker proceeding on parental leave.

(b) Before an employer engages a replacement worker under this subclause, the employer shall inform that person of the temporary nature of the employment and of the rights of the worker who is being replaced.

(c) Before an employer engages a person to replace a worker temporarily promoted or transferred in order to replace a worker exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the right of the worker who is being replaced.

(d) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement worker.

(e) A replacement worker shall not be entitled to any of the rights conferred by this clause except where her employment continues beyond the twelve months' qualifying period.

28.—BEREAVEMENT LEAVE

(1) On the death of a spouse or de facto spouse, child or step-child, parent or parent in law, brother, sister, grandparent or any other person who immediately before that person's death lived with the employee as a member of the employee's family, the employee is entitled to bereavement leave, without loss of ordinary time earnings, of up to three days.

(2) Bereavement leave shall at the discretion of the employee be taken at any time up to and including the three days following the day of the funeral.

(3) Reasonable additional leave may be granted where an employee has assumed significant responsibility for the arrangements to do with the ceremonies resulting from the death, or where cultural obligations necessitate a longer period of bereavement leave.

(4) Payment for such leave may be subject to the employee providing proof of the death.

(5) Bereavement leave is not to be taken where the employee is absent on another form of leave or would not otherwise have been on duty unless the absence has been taken to enable the employee to be with a dying relative.

29.—COMPACTION OF LEAVE

By agreement between the employer and employee a part time employee or an employee whose ordinary hours have changed from part time to full time may take annual leave and

long service leave entitlements as reduced periods of full time equivalent time off.

30.—NOTICE OF TERMINATION

Employer Giving Notice

(1) The contract of service may be terminated by the employer on any day by giving to the employee the required period of notice in writing and the contract shall expire at the end of that period of notice.

(a) The required period of notice shall be—

Employee's period of continuous service with the employer	Period of notice
Not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

The required period of notice is increased by one week if the employee is over 45 years old and has completed at least 2 years continuous service with the employer.

(b) Provided that the contract of service of an employee engaged as a casual may be terminated by the employer giving the employee one hour's notice. Such notice need not be in writing.

(c) Payment in lieu of the required period of notice may be made by the employer if the required notice is not given. The employer may terminate the contract of service by providing part of the required notice and payment in lieu of the balance.

(d) Nothing in this clause affects the employer's right to dismiss an employee without notice for serious misconduct, which justifies instant dismissal. In such cases wages shall be paid up to the time of dismissal only.

Employee Giving Notice

(2) (a) The contract of service may be terminated on any day by the employee giving to the employer two weeks notice in writing and the contract shall expire at the end of that period of notice.

(b) Provided that the contract of service of an employee engaged as a casual may be terminated by the employee giving the employer one hour's notice. Such notice need not be in writing.

(c) If an employee fails to give the required notice or leaves during the notice period, the employer may, at its discretion, deduct from any monies due to the employee, an amount equal to ordinary time earnings for the period of notice not given.

31.—SUPERANNUATION

(1) The employer shall contribute on behalf of each employee will make superannuation contributions it is required to make by virtue of the Superannuation Guarantee Charge Act and the *Superannuation Guarantee (Administration) Act 1992*.

(2) An employee shall be entitled to nominate the complying superannuation fund or scheme to which contribution may be made by or in respect of the employee.

(3) The employer shall notify the employee of their entitlements to nominate a complying superannuation fund or scheme.

(4) The employee and the employer shall be bound by the nomination of the employee unless the employee and the employer agree to change the complying superannuation fund or scheme to which contribution are to be made.

(5) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by an employee.

(6) All contributions into the nominated fund or scheme shall be paid monthly and within 30 days of the end of each month.

(7) For the purpose of this clause the employee earnings base shall include base classification rate, shift penalties together with any other all purpose allowance of penalty payment for work in ordinary time and shall include in respect of casual employees the casual loading prescribed by this Agreement, but shall exclude any payment for overtime worked, vehicle allowances, fares or travelling time allowances (excluding travelling related to distant work), commission or bonus as well as—

(a) periods of unpaid leave or unauthorised absences; or

(b) annual leave or any other payment paid out on termination.

(8) The employer shall continue to contribute to the nominated fund or scheme o on behalf of an employee in recut of payment under the *Workers Compensation and Assistance Act*.

32.—OCCUPATIONAL HEALTH & SAFETY

(1) The employer and employee are committed to the successful management of occupational health and safety in the workplace.

(2) Section 20 of the *Occupational Safety and Health Act* 1984 (WA) requires that each employee—

- Take reasonable care to ensure his or her own safety and health at work;
- Avoid adversely affecting the safety or health of any other person through any act or omission at work;
- Comply, as far as being reasonably able, with instruction given by his or her employer regarding personal safety and health at work;
- Use such protective clothing and equipment as is provided by the employer as has been instructed;
- Care for such personal protective equipment as is supplied by the employer;
- Report any situations at the workplace that may constitute a hazard;
- Report any injury or harm to health of which the employee is aware that arises in the course of, or in connection with his or her work.

(3) It is a condition of employment that the employee complies, as far as being reasonably able, with his/her responsibilities under the Act and with any instruction given by the employer regarding personal safety and health at work.

(4) In particular, the employee shall make him or herself available at reasonable times to attend and participate in occupational health and safety education and training.

33.—ANTI-DISCRIMINATION

(1) The parties to this agreement agree that—

(a) it is their intention to achieve the principle object in paragraph 3 (j) of the *Workplace Relations Act 1996*, which is to respect and value the diversity of the work force by helping to prevent and eliminate discrimination at their enterprise on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin; and

(b) any dispute concerning these provisions and their operation will be progressed initially under the dispute resolution procedure in this agreement; and

(c) nothing in these provisions allows any treatment that would otherwise be prohibited by anti-discrimination provisions in applicable Commonwealth, State or Territory legislation; and

(d) nothing in these provisions prohibits—

(i) the payment of junior rates of pay.

34.—RESOLUTION OF DISPUTES

(1) In the case of any question, dispute or difficulty arising under this Agreement the following steps shall be taken.

(a) **Step 1**

As soon as practicable after the dispute has arisen, it shall be considered jointly by the appropriate supervisor and the employee or employees concerned.

(b) **Step 2**

If the dispute is not resolved it shall be considered jointly by the appropriate supervisor, the Senior Manager, the employee or employees concerned and where the employee(s) so request(s), the relevant union workplace representative or official.

(c) **Step 3**

If the dispute is not resolved it shall be considered jointly by the Executive Director, the employee or employees concerned and where the employee(s) so request(s), the relevant union workplace representative or official.

(d) **Step 4**

If the dispute is still not resolved the employer and employee may jointly or individually refer the problem to the Western Australian Industrial Commission or to an agreed third party for the purposes of conciliation and, if required, adjudication.

(2) At all times normal work will continue whilst a question or dispute is being resolved in accordance with this clause.

(3) Reasonable time limits shall be allowed for each stage of the procedure.

(4) Any settlement reached which is contrary to the terms of this Agreement shall not have effect unless and until the conflict is resolved to allow for it.

(5) Nothing in this clause shall be read so as to exclude an organisation party to or bound by the Agreement from representing its members.

35.—INTRODUCTION TO CHANGE / REDUNDANCY

Introduction to Change

Where the employer decides to introduce changes that are likely to have major effect on the employee(s) the employee(s), the employer shall consult with the employee(s) who may be affected, and the Union.

Redundancy

The employer acknowledges the right of the Union to negotiate a separate and specific agreement prior to any redundancies occurring.

36.—NUMBER OF EMPLOYEES

There is an estimated 42 employees covered by the provisions of this Agreement at the date of registration.

37.—SIGNATURES OF PARTIES AND WITNESSES

Signed for and on behalf of

HEALTH SOLUTIONS (WA) PTY LTD—

I. Gorton (signed)

Managing Director

Date: 20th May '99

Signed for and on behalf of

HOSPITAL SALARIES OFFICER'S ASSOCIATION OF WESTERN AUSTRALIA (UNION OF WORKERS)

(Common Seal)

M.J. Hartland (signed)
President
Date: 01/06/99

D.P. Hill (signed)
Secretary
Date: 31st May 1999

JAMES TURNER ROOFING INDUSTRIAL AGREEMENT.
AG 87 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

James Turner Roofing Pty Ltd.

AG 87 of 1999.

James Turner Roofing Industrial Agreement.

COMMISSIONER S J KENNER.

22 July 1999.

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 James Turner Roofing Industrial Agreement as filed in the Commission on 26 May 1999 in the terms of the following schedule be and is hereby registered as an industrial agreement.

(Sgd.) S.J. KENNER,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the James Turner Roofing Industrial Agreement.

2.—ARRANGEMENT

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 James Turner Roofing 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 with a minimum contract value of $200,000, or where the Principal Contractor has a current Industrial Agreement with the BLPPU or the CMETU, covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award"). There are approximately five (5) 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 Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Unions and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate and allowances resulting in the wage rates in 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 into the Western Australian Construction Industry Redundancy Fund.

2. **Superannuation**

(i) The Company will immediately increase its level of payment to $60 per week per employee or 7% Ordinary Time Earnings, whichever is the greater.

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 shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by the employee.

(ii) "Ordinary Time Earnings" (which for the purposes of the Superannuation Guarantee (Administration) Act 1992 will operate to provide a notional earnings base) shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including tool allowance, industry allowance, trade allowances, shift loading, special rates, qualification allowances (eg. first aid, laser safety officer), multistorey allowance, site allowance, asbestos eradication allowance, leading hand allowances, in charge of plant allowance and supervisory allowances where applicable. The term includes any regular over-award pay as well as casual rates received and any additional rates and allowances paid for work undertaken during ordinary hours of work, including fares and travel.

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 employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an inability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than—

course fees

course books and materials

payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

3. The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (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; or

(b) The Company's employees shall have the option of converting accured sick leave entitlement in excess of ten days to a cash payment to be paid on the last day prior to the Christmas break.

(c) 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.—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.—UNION MEMBERSHIP

The employer will encourage, as far as possible, all employees covered by the agreement, to be financial members of the BLPPU and the CMETU.

22.—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: / /

.....

WITNESS

CMETU

.....

Date: / /

.....

WITNESS

The company:

.....

Signature

Date: / /

Company seal

.....

Print name

.....

WITNESS

APPENDIX A—WAGE RATES

	Date of Signing Hourly Rate $	1 August 1999 Hourly Rate $
Labourer Group 1	16.92	17.15
Labourer Group 2	16.34	16.56
Labourer Group 3	15.90	16.12
Plaster, Fixer	17.58	17.82
Painter, Glazier	17.19	17.42
Signwriter	17.56	17.80
Carpenter/Roofer	17.70	17.93
Bricklayer	17.52	17.75
Refractory Bricklayer	20.12	20.38
Stonemason	17.70	17.93
Rooftiler	17.38	17.62
Marker/Setter Out	18.21	18.46
Special Class T	18.45	18.69

APPRENTICE RATES

	Date of Signing Hourly Rate $	1 August 1999 Hourly Rate $
Plasterer, Fixer		
Year l	7.38	7.48
Year 2 (1/3)	9.68	9.81
Year 3 (2/3)	13.19	13.37
Year 4 (3/3)	15.48	15.69
Painter. Glazier		
Year l (.5/3/5)	7.22	7.32
Year 2 (1/3), (1.5/3.5)	9.45	9.58
Year 3 (2/3), (2.5/3.5)	12.89	13.06
Year 4 (3/3), (3.5/3.5)	15.13	15.33
Signwriter		
Year l (.5/3/5)	7.38	7.48
Year 2 (1/3), (1.5/3.5)	9.65	9.78
Year 3 (2/3), (2.5/3.5)	13.17	13.35
Year 4 (3/3), (3.5/3.5)	15.46	15.66

APPRENTICE RATES—*continued*

	Date of Signing Hourly Rate $	1 August 1999 Hourly Rate $
Carpenter		
Year l	7.44	7.54
Year 2 (1/3)	9.73	9.86
Year 3 (2/3)	13.27	13.45
Year 4 (3/3)	15.57	15.78
Bricklayer		
Year l	7.36	7.46
Year 2 (1/3)	9.63	9.76
Year 3 (2/3)	13.14	13.31
Year 4 (3/3)	15.41	15.62
Stonemason		
Year l	7.44	7.54
Year 2 (1/3)	9.73	9.86
Year 3 (2/3)	13.27	13.45
Year 4 (3/3)	15.57	15.78
Rooftiler		
6 months	9.91	10.04
2nd 6 months	10.90	11.04
Year 2	12.73	12.90
Year 3	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 person's ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/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	$520,000	NIL
Above	$520,000 to $2.17m	$1.90
Above	$2.17m to $4.55m	$2.25
Over	$4.55m	$2.85

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17m	$1.70
Above	$2.17m to $4.55m	$1.90
Over	$4.55m	$2.45

4.2 Projects Located Within West Perth (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17m	$1.70
Above	$2.17m to $4.55m	$1.90
Over	$4.55m	$2.45

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17m	$1.60
Above	$2.17m to $4.55m	$1.80
Over	$4.55m	$2.05

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 $2.17m	$1.30
Above	$2.17m to 6m	$1.60
Above	$6m to $11.98m	$1.85
Above	$11.98m to $24.43m	$2.05
Above	$24.43m to $60.5m	$2.35
Over	$60.5m	$2.55

"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 eastem 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 Procedure
- 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. Productivity Allowance

In return to increase productivity and/or timely completion of projects it is agreed that a productivity allowance of $1.00 per hour worked shall be paid toemployees engaged upon projects (new construction only) which exceed two stories in height or building where the structure exceeds 10 metres in height (excluding spires, flagpoles and the like).

14. Structural Frame Allowance

It is agreed that a structural frame allowance of $1.00 per hour all purpose shall be paid to all employees engaged upon projects (new construction only) which exceed two stories in height or building where the structure exceeds 10 metres in height (excluding spires, flagpoles and the like).

15. Provision of Canteen

It is agreed that a canteen accommodation shall be provided where a project exceeds $35 million in value and where the operation of the canteen is financially self supporting in respect of consumables. Canteen to come into operation when on site manning levels exceed 50 and to cease when manning levels reduce to below 50.

16. Provision of Nurse

It is agreed that a qualified nurse shall be engaged where the forecast long term staffing levels for a project exceed 100 (one hundred) or when actual numbers exceed 100 not withstanding that forecasts may have been below that level. The nurse shall commence duties when staffing levels reach (fifty) and shall terminate when levels reduce to 50 (fifty). The requirement for a provision of a nurse shall be waived if the project is adjacent to a hospital with a public emergency department.

17. This agreement shall only apply to building contracts entered into on or tendered for on or after 1 January 1999.

18. Application to Apprentices

The rates prescribed in this agreement shall apply to all apprentices commencing employment after 31 December 1997 in the same proportion as the percentage of a tradesperson's wage rate as prescribed by the appropriate award or Enterprise Bargaining Agreement, being

1st year	42%
2nd year	55%
3rd year	75%
4th year	88%

JANDAKOT WOOL SCOURING COMPANY PTY LTD AGREEMENT 1999.
No. AG 110 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Jandakot Wool Scouring Company Pty Ltd

and

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

No. AG 110 of 1999.

Jandakot Wool Scouring Company Pty Ltd Agreement 1999.

15 July 1999.

Order.

HAVING heard Ms L Avon-Smith on behalf of Jandakot Wool Scouring Company Pty Ltd and Mr D Kelly on behalf of The Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, Western Australian Branch, now therefore I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order —

1. THAT this schedule which follows, which is to be known as the "Jandakot Wool Scouring Company Pty Ltd Agreement 1999", shall be and is hereby registered on the 15th day of July 1999.
2. THAT the Jandakot Wool Scouring Company Pty Ltd Agreement 1999 shall replace the Jandakot Wool Scouring Agreement 1997 with effect on and from the 15th day of July 1999.

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

Schedule.

1.—TITLE

This Agreement shall be known as the "Jandakot Wool Scouring Company Pty Ltd Agreement 1999" and shall replace the Jandakot Wool Scouring Agreement 1997.

2.—ARRANGEMENT

3.—PREVIOUS AGREEMENTS

Upon registration of this Agreement, the Jandakot Wool Scouring Agreement 1997 (No. AG 80 of 1998) is cancelled by agreement of the parties.

4.—PARTIES BOUND

The parties to this Agreement are:—

(1) Jandakot Wool Scouring Company Pty Ltd (the "Company"); and

(2) The Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, Western Australian Branch (the "Union").

This Agreement shall be binding on approximately 61 employees of Jandakot Wool Scouring Company Pty Ltd who are eligible to be members of the above union and are bound by the Wool Scouring and Fellmongery Industry Award No. 32 of 1959.

5.—DATE AND PERIOD OF OPERATION AND REVIEW

(1) This Agreement shall operate from the date of registration on 15 July 1999 and shall remain in force until 1 July 2000.

(2) The parties agree to commence negotiating a new Agreement three calendar months prior to the expiration of this Agreement. The increase in the minimum rate of pay prescribed in Clause 9 of this Agreement will remain and form the new minimum rates for future agreements or continue to apply in the absence of a future agreement.

6.—RELATIONSHIP TO PARENT AWARD

This Agreement shall be read in conjunction with the Wool Scouring and Fellmongery Industry Award No. 32 of 1959 provided that where there is any inconsistency this Agreement shall prevail.

7.—INTENT

This Agreement is designed to enable the parties to work together in a co-operative manner and one of mutual respect to achieve improved work practices, a safe working environment and assist the Company to meet its customers' needs. These aims will be achieved by—

(1) providing high standards of occupational health and safety;

(2) increase job satisfaction for employees;

(3) improve the service to customers and therefore improve job security; and

(4) resolve any conflict in accordance with agreed procedures.

The parties are committed to adhering to the provisions of this Agreement at all times. The parties agree that this Agreement is not intended to increase casualisation of the workforce.

8.—NO FURTHER CLAIMS

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

9.—WAGES AND CLASSIFICATIONS AND TIME TABLE FOR PAYMENT

(1) The weekly adult wage rates for ordinary hours payable from the first pay period commencing on or after 1 June 1998 are—

Classification	Weekly Wage ($)	Annual ($)
Shift Foreman, in charge of wool scouring machine	467.20	24,288.41
Leading Hand in charge of Presses	443.50	23,065.29
Grease Separator Operator	443.50	23,065.29
Centre Hand	443.50	23,065.29
General Hand	440.20	22,893.69
Picking over scoured wool and sewing bales	416.70	21,666.11

(2) The weekly adult wage rates for ordinary hours payable from the first pay period commencing on or after 1 July 1999 are: (a 1.5% increase on actual currently being paid)

Classification	Weekly Wage ($)	Annual ($)
Shift Foreman, in charge of wool scouring machine	474.09	24,652.74
Leading Hand in charge of Presses	450.22	23,411.27
Grease Separator Operator	450.22	23,411.27
Centre Hand	450.22	23,411.27
General Hand	446.87	23,237.10
Picking over scoured wool and sewing bales	422.91	21,991.10

(3) The weekly wage in clause 9.2 above is calculated as follows;

Annual wage divided by 52, rounded to 2 decimal places.

10.—STAGGERED MEAL/TEA BREAKS

To enable maximum use of plant and equipment, meal and tea breaks may be staggered to meet the needs of the business.

11.—SHIFT CHANGE-OVER

(1) Time worked by shift foremen in excess of the ordinary working hours shall not be paid where it is for the purpose of effecting the customary rotation of shifts and is less than 15 minutes.

(2) Where a shift foreman is required to stay back more than 15 minutes, all time in excess of his / her ordinary shift shall be paid at overtime rates.

12.—SMOKING POLICY

The employees agree to adhere to the Company's Smoking Policy. Smoking is banned throughout the factory and will be restricted to employees' own time, i.e. lunch break and tea break.

13.—SAFETY POLICY

(1) Both the Company and the employees give a commitment to make every effort to improve the health and safety of the workplace.

(2) The employees agree to adhere to Safety Policy in respect to the use of correct safety equipment, replacement of guards after cleaning or repair of machinery and general good housekeeping.

14.—LOYALTY PAYMENT

(1) Employees covered by this Agreement will become entitled to a loyalty payment in accordance with this clause.

(2) The number of completed years service for the calculation of the loyalty payment shall be as at 30 June 1999. Employees must be employed at the payment dates to be entitled to the loyalty payment.

(3) The loyalty payment is to be made in two equal payments. The first payment to be made to employees in the first pay period on or after 31 December 1999 and the second payment in the first pay period on or after 1 July 2000.

Completed Years of Continuous Service	Loyalty Payment
Less than 1 year	nil
1 year	nil
2 years	500.00
3 years	800.00
4 years	900.00
5 years	1,000.00
6 years	1,100.00
7 years	1,200.00
8 years	1,300.00
9 years	1,400.00
10 years	1,500.00
11 years	1,600.00
12 years	1,700.00
13 years	1,800.00
14 years	1,900.00
15 years	2,000.00
16 years	2,100.00
17 years	2,200.00
18 years	2,300.00
19 years	2,400.00
20 years	2,500.00
21 years	2,600.00
22 years	2,700.00
23 years	2,800.00
24 years	2,900.00
25 years	3,000.00
26 years	3,100.00
27 years	3,200.00
28 years	3,300.00
29 years	3,400.00
30 years	3,500.00
31 years	3,600.00
32 years	3,700.00

15.—SHIFT LOADING / ANNUAL LEAVE

(1) With effect from 1 July 1999, when an employee works on a rotating shift cycle in the Scouring, Woolgrease and Packing Departments, the employee shall be paid a 15% shift loading for all hours worked during the cycle.

(2) The parties agree that during the life of this agreement, they will examine the option of a fifth week of annual leave for shift employees working rotating shifts.

16.—PROVISION OF UNIFORMS

(1) The Company will provide uniforms and safety footwear to all employees covered by this agreement.

(2) All employees will be required to be dressed in Company supplied uniforms and appropriate safety footwear at all times during their working hours.

(3) Employees, at their own expense, are required to keep uniforms clean, presentable and in good repair at all times.

(4) One pair of safety footwear will be supplied and replaced on a fair wear and tear basis subject to old safety footwear being returned.

(5) Employees are to receive 6 sets of uniforms in total, by selecting their requirements from the range specified by the company.

(6) Uniforms will be issued as follows—

1st Issue of uniforms on 1 July 1999 or upon completion of probationary period;

- Initial issue of 3 uniforms.
- Maintenance and Woolgrease departments to hand in their existing uniforms for new items.

2nd Issue of Uniforms —

- To be issued 3 months after the first issue
- Another issue of 3 uniforms

Subsequent Years

- Employees can claim up to 3 new sets of uniforms in any twelve month period following the year of initial issue
- Items will be replaced on a fair wear and tear basis subject to old items being returned washed and clean.

(7) If items of uniform are subject to abuse and neglect the employee will be required to bear the cost of replacement.

(8) As the uniforms remain the property of the Company, employees will be required to return the uniforms to the Company upon cessation of employment.

(9) This clause does not apply to casuals and probationary employees.

17.—DISPUTE SETTLEMENT PROCEDURE

This dispute settlement procedure will apply to any questions, disputes or difficulties that arise under this Agreement.

(1) Where problems occur the parties will agree to work towards resolving any such problems, taking into account the welfare and needs of all involved.

(2) The employee will, in the first instance, direct the matter to line management should a problem arise.

(3) If this approach fails to resolve the matter, the employee can request that a Union official or an alternative representative of his/her choice, meet with the Assistant Manager to resolve the issue.

(4) If the matter continues unresolved the Secretary of the Union, or a representative of the employees' choosing and the General Manager will meet to attempt to resolve the dispute.

(5) The parties involved in the dispute will confer among themselves and make reasonable attempts to resolve questions, disputes or difficulties before referring those matters to the Western Australian Industrial Relations Commission.

JANDAKOT WOOL WASHING PTY LTD AGREEMENT 1999.
No. AG 109 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Jandakot Wool Washing Pty Ltd

and

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

No. AG 109 of 1999.

Jandakot Wool Washing Pty Ltd Agreement 1999.

15 July 1999.

Order.

HAVING heard Ms L Avon-Smith on behalf of Jandakot Wool Washing Pty Ltd and Mr D Kelly on behalf of The Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, Western Australian Branch, now therefore I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order —

THAT this schedule which follows, which is to be known as the "Jandakot Wool Washing Pty Ltd Agreement 1999", shall be and is hereby registered on the 15th day of July 1999.

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

Schedule.

1.—TITLE

This Agreement shall be known as the "Jandakot Wool Washing Pty Ltd Agreement 1999".

2.—ARRANGEMENT

3.—PARTIES BOUND

The parties to this Agreement are:—

(1) Jandakot Wool Washing Pty Ltd (the "Company"); and

(2) The Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, Western Australian Branch (the "Union").

This Agreement shall be binding on approximately 61 employees of Jandakot Wool Washing Pty Ltd who are eligible to be members of the above union and are bound by the Wool Washing and Fellmongery Industry Award No. 32 of 1959.

4.—DATE AND PERIOD OF OPERATION AND REVIEW

(1) This Agreement shall operate from the date of registration on 15 July 1999 and shall remain in force until 1 July 2000.

(2) The parties agree to commence negotiating a new Agreement three calendar months prior to the expiration of this Agreement. The increase in the minimum rate of pay prescribed in Clause 8.—Wages and Classification and Time Table for Payment, of this Agreement will remain and form the new minimum rates for future agreements or continue to apply in the absence of a future agreement.

5.—RELATIONSHIP TO PARENT AWARD

This Agreement shall be read in conjunction with the Wool Washing and Fellmongery Industry Award No. 32 of 1959 provided that where there is any inconsistency this Agreement shall prevail.

6.—INTENT

This Agreement is designed to enable the parties to work together in a co-operative manner and one of mutual respect to achieve improved work practices, a safe working environment and assist the Company to meet its customers' needs. These aims will be achieved by—

(1) providing high standards of occupational health and safety;

(2) increase job satisfaction for employees;

(3) improve the service to customers and therefore improve job security; and

(4) resolve any conflict in accordance with agreed procedures.

The parties are committed to adhering to the provisions of this Agreement at all times. The parties agree that this Agreement is not intended to increase casualisation of the workforce.

7.—NO FURTHER CLAIMS

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

8.—WAGES AND CLASSIFICATIONS AND TIME TABLE FOR PAYMENT

(1) The weekly adult wage rates for ordinary hours payable from the first pay period commencing on or after 1 July 1999 are—

Classification	Weekly Wage ($)	Annual ($)
Shift Foreman, in charge of Wool Washing machine	474.09	24,652.74
Leading Hand in charge of Presses	450.22	23,411.27
Grease Separator Operator	450.22	23,411.27
Centre Hand	450.22	23,411.27
General Hand	446.87	23,237.10
Picking over scoured wool and sewing bales	422.91	21,991.10

(2) The weekly wage in subclause (1) above is calculated as follows; Annual wage divided by 52, rounded to 2 decimal places.

9.—STAGGERED MEAL / TEA BREAKS

To enable maximum use of plant and equipment, meal and tea breaks may be staggered to meet the needs of the business.

10.—SHIFT CHANGE-OVER

(1) Time worked by shift foremen in excess of the ordinary working hours shall not be paid where it is for the purpose of effecting the customary rotation of shifts and is less than 15 minutes.

(2) Where a shift foreman is required to stay back more than 15 minutes, all time in excess of his / her ordinary shift shall be paid at overtime rates.

11.—SMOKING POLICY

The employees agree to adhere to the Company's Smoking Policy. Smoking is banned throughout the factory and will be restricted to employees' own time, i.e. lunch break and tea break.

12.—SAFETY POLICY

(1) Both the Company and the employees give a commitment to make every effort to improve the health and safety of the workplace.

(2) The employees agree to adhere to Safety Policy in respect to the use of correct safety equipment, replacement of guards after cleaning or repair of machinery and general good housekeeping.

13.—LOYALTY PAYMENT

(1) Employees covered by this Agreement will become entitled to a loyalty payment in accordance with this clause.

(2) The number of completed years service for the calculation of the loyalty payment shall be as at 30 June 1999. Employees must be employed at the payment dates to be entitled to the loyalty payment.

(3) The loyalty payment is to be made in two equal payments. The first payment to be made to employees in the first pay period on or after 31 December 1999 and the second payment in the first pay period on or after 1 July 2000.

Completed Years of Continuous Service	Loyalty Payment
Less than 1 year	nil
1 year	nil
2 years	500.00
3 years	800.00
4 years	900.00
5 years	1,000.00
6 years	1,100.00
7 years	1,200.00
8 years	1,300.00
9 years	1,400.00
10 years	1,500.00
11 years	1,600.00
12 years	1,700.00
13 years	1,800.00
14 years	1,900.00
15 years	2,000.00
16 years	2,100.00
17 years	2,200.00
18 years	2,300.00
19 years	2,400.00
20 years	2,500.00
21 years	2,600.00
22 years	2,700.00
23 years	2,800.00
24 years	2,900.00
25 years	3,000.00
26 years	3,100.00

Completed Years of Continuous Service	Loyalty Payment
27 years	3,200.00
28 years	3,300.00
29 years	3,400.00
30 years	3,500.00
31 years	3,600.00
32 years	3,700.00

14.—SHIFT LOADING/ANNUAL LEAVE

(1) With effect from 1 July 1999, when an employee works on a rotating shift cycle in the Scouring, Woolgrease and Packing Departments, the employee shall be paid a 15% shift loading for all hours worked during the cycle.

(2) The parties agree that during the life of this agreement, they will examine the option of a fifth week of annual leave for employees working rotating shifts.

15.—PROVISION OF UNIFORMS

(1) The Company will provide uniforms and safety footwear to all employees employees, covered by this agreement.

(2) All employees will be required to be dressed in Company supplied uniforms and appropriate safety footwear at all times during their working hours.

(3) Employees, at their own expense, are required to keep uniforms clean, presentable and in good repair at all times.

(4) One pair of safety footwear will be supplied and replaced on a fair wear and tear basis subject to old safety footwear being returned.

(5) Employees are to receive 6 sets of uniforms in total, by selecting their requirements from the range specified by the company.

(6) Uniforms will be issued as follows—

1st Issue of uniforms on 1 July 1999 or upon completion of probationary period—

- Initial issue of 3 uniforms;
- Maintenance and Woolgrease departments to hand in their existing uniforms for new items.

2nd Issue of Uniforms—

- To be issued 3 months after the first issue;
- Another issue of 3 uniforms.

Subsequent Years—

- Employees can claim up to 3 new sets of uniforms in any twelve month period following the year of initial issue;
- Items will be replaces on a fair wear and tear basis subject to old items being returned washed and clean.

(7) If items of uniform are subject to abuse and neglect the employee will be required to bear the cost of replacement.

(8) As the uniforms remain the property of the Company, employees will be required to return the uniforms to the Company upon cessation of employment.

(9) This clause does not apply to casuals and probationary employees.

16.—DISPUTE SETTLEMENT PROCEDURE

This dispute settlement procedure will apply to any questions, disputes or difficulties that arise under this Agreement.

(1) Where problems occur the parties will agree to work towards resolving any such problems, taking into account the welfare and needs of all involved.

(2) The employee will, in the first instance, direct the matter to line management should a problem arise.

(3) If this approach fails to resolve the matter, the employee can request that a Union official or an alternative representative of his/her choice, meet with the Assistant Manager to resolve the issue.

(4) If the matter continues unresolved the Secretary of the Union, or a representative of the employees' choosing and the General Manager will meet to attempt to resolve the dispute.

(5) The parties involved in the dispute will confer among themselves and make reasonable attempts to resolve questions, disputes or difficulties before referring those matters to the Western Australian Industrial Relations Commission.

METRO MEAT INTERNATIONAL LIMITED (KATANNING) AMIEU PROCESSING AGREEMENT (1999).
No. AG 123 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Metro Meat International

and

Australasian Meat Industry Employees' Union, Industrial Union of Workers, Perth West Australian Branch.

No. AG 123 of 1999.

COMMISSIONER J F GREGOR.

13 July 1999.

Order.

REGISTRATION OF A SECTION 41 INDUSTRIAL AGREEMENT
No. AG 123 of 1999.

HAVING heard Mr D. Sash, of Counsel on behalf of the first named party and Mr Hopperton on behalf of the second named party; and

WHEREAS an agreement has been presented to the Commission for Registration as an Industrial Agreement; and

WHEREAS the Commission is satisfied that the aforementioned agreement complies with the Industrial Relations Act, 1979;

NOW THEREFORE the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the agreement titled the Metro Meat International Limited (Katanning) AMIEU Processing Agreement (1999) filed in the Commission on 1 July 1999 and as subsequently amended by the parties, signed by me for identification, be and is hereby registered as an Industrial Agreement.

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

1.—THE AGREEMENT

1.1 TITLE

This Agreement will be known as the Metro Meat International (Katanning) AMIEU Processing Agreement (1999)

1.2 APPLICATION OF AGREEMENT

1.2.1 This Agreeement has been negotiated betweeen Metro Meat International Limited (the employer) and the Australasian Meat Industry Employees Union, WA Branch (the Union) representing all employees engaged in the processing of meat and associated products and activities by the Company at its Katanning plant.

1.2.2 This Agreement is binding on the Union and will apply to its officers and members, the employer and the employees of the employer at Katanning who are members (or eligible to be members) of the Union, the total number of which is approximately 250.

1.2.3 This Agreement shall apply in relation to any employment to which it is applicable to the exclusion of any other award or Agreement

1.2.4 All matters relating to employment under this Agreement including engagement, retrenchment, training and promotion will be based upon a number of criteria including competency, merit, work performance, attitude and all else being equal length of service.

1.2.5 Any reference to "the employer" in this Agreement will include reference to the successor, assignee or transmittee of such employer or part thereof within the meaning of S.149(d) of the Workplace Relations Act 1996 and will include reference to such employer or part thereof notwithstanding any change in its name or status.

1.3 PERIOD OF OPERATION

1.3.1 This Agreement will come into operation on the date the employers premises at Katanning is acquired by the Western Australian Meat Marketing Co-operative, or its nominee, and shall remain in force until 30 June 2001 provided that if such acquisition does not occur before the 30 September 1999 this Agreement shall lapse and have no effect.

1.3.2 The parties bound by this Agreement agree that negotiations to discuss replacing this Agreement will commence three (3) months prior to the expiration of the Agreement.

1.3.3 Should negotiations not achieve agreement the wages and conditions of employment will continue as at the date of expiration.

1.4 WAGE INCREASES/ NO EXTRA CLAIMS

1.4.1 Subject to sub-clause 1.4.2 the rates of pay set out in sub-clause 3.1 of this Agreement shall be increased by the amount of any future Safety Net, National Wage Case increase granted by the Commission in relation to the State Meat Award during the life of this Agreement. Payment of such increases when granted shall be back dated to the first pay period commencing on or after the date the application for the increase was lodged in the Commission.

1.4.2 Any "flow on" increase included in the State Meat Award in respect to any Safety Net, National Wage Case increase that had been granted by the Australian Industrial Relations Commission prior to the commencement of this Agreement shall be excluded.

1.4.3 It is a condition of this Agreement that the Union, its members, and all persons eligible to be members, bound by this Agreement and the Employer undertake not to pursue any extra claims, other than those provided for in sub-clause 1.4.1 of this Agreement.

1.5 NATIONAL STANDARDS

This Agreement will not operate so as to cause employees to suffer a reduction in ordinary time earnings or in national standards such as standard hours of work, annual leave and long service leave or any other national standard.

1.6 OBJECTIVES

1.6.1 The parties to this Agreement are committed to—

1.6.1.1 continuing a harmonious industrial relations environment through a commitment to consultation and recognition of the role of the Union and its joint consultative committee organisation in all aspects of this Agreement;

1.6.1.2 increasing the efficiency and productivity of the company to assist its international and domestic competitiveness, and

1.6.1.3 working together to increase job security, job satisfaction, training opportunities and access to higher paid jobs and career paths for employees.

1.6.2 In meeting these objectives the parties have agreed to consider a broad agenda through the consultative processes established by this Agreement. This agenda will include—

1.6.2.1 continuous review of work and management practices affecting efficiency and job satisfaction at a plant level,

1.6.2.2 measures designed to improve plant utilisation and ensure security of employment,

1.6.2.3 training issues including a review of all skill requirements, incentives for training, implementation of training programmes and multi-skilling,

1.6.2.4 occupational health and safety issues with a view to reducing the number of injuries and illnesses suffered by employees including the provision of appropriate safety equipment, apparel and the development of rehabilitation programmes.

1.6.3 Matters relating to significant changes in technology including structure of operations or other exceptional circumstances will be considered by the parties by way of consultation. If, as a result of this consultation, a change to this Agreement is necessary the parties will co-operate to implement those changes. Should the parties fail to reach agreement, the matter will be referred to the Commission for conciliation and/or arbitration.

1.7 POSTING OF AGREEMENT

This Agreement will be posted by the employer on notice boards accessible to all employees and copies will be made available on request to all employees.

1.8 SINGLE BARGAINING UNIT

1.8.1 This Agreement has been negotiated directly between the parties through a consultative process involving officers of the Union, delegates and the employees at the Katanning operation. Senior and site based management directly involved with the processing operations have represented the employer in the consultative process.

1.8.2 This Agreement will be a complete document representing the position at the Katanning plant and there will be no reference to any other Agreement, registered or unregistered. Any matter not covered in the Agreement will be discussed by the employer and the Union and, if necessary, referred to the Joint Consultative Committee established pursuant to Clause 9.1 of this Agreement.

1.9 DEFINITIONS

1.9.1 Commission

Shall mean the Western Australian Industrial Relations Commission

1.9.2 Company or Employer

Shall mean Metro Meat International Limited

1.9.3 Ordinary Rate/s or Ordinary Pay

Shall mean the base rate of pay for the appropriate level in which the employee is employed in accordance with sub-clause 3.1 of this Agreement unless otherwise specified.

1.9.4 Ordinary Time Earnings or Actual Ordinary Earnings

Shall mean all earnings earned within the ordinary hours of work unless specified otherwise.

1.9.5 Redundant

Shall mean being no longer required by the employer to continue doing a job because, for a reason that is not a usual reason for change in the employer's work-force, the employer has decided that the job will not be done by any person.

1.9.6 Shed Delegate

Shall mean the recognised Union representative for the plant as a whole.

1.9.7 Shift Work

Shall mean where the ordinary hours of work, or any part thereof, occur outside the hours 4.00 am to 8.00 pm Monday to Friday.

1.9.8 Union

Shall mean The Australasian Meat Industry Employees' Union (AMIEU)

1.9.9 Union Delegate

Shall mean the recognised Union representative for a department or section of the plant

1.9.10 Week

Week shall mean seven consecutive days.

1.10 INCENTIVE SCHEME

1.10.1 In addition to the earnings provided for in this Agreement the employer will implement an incentive payment scheme as set out in Appendix 1 to this Agreement.

1.10.2 Once implemented the incentive scheme may only be modified by agreement between the employer and the majority affected of employees covered by the change or between the employer and Union.

1.10.3 Should any disagreement arise in respect to the amendment or operation of the scheme it shall be resolved by applying the disputes settling procedure provided for in this Agreement.

2.—CONDITIONS OF EMPLOYMENT

2.1 CONTRACT OF EMPLOYMENT

2.1.1 Engagement

Employees shall be employed on either a full time or casual basis in accordance with the terms of this Agreement and shall be informed of their employment status at the time of engagement

2.1.2 Transfer to or from Casual Employment.

The employer may, with one weeks notice, transfer any employee from full time employment to casual employment (or vice versa) to suit production requirements and to take account of livestock supply.

2.1.3 Casual Employees—Special Provisions

Casual employees will be used to cover absent full time employees or to do work that is not done regularly or if done regularly is done for less than a full day or week

2.1.3.1 Casual employees shall be employed by the hour and will be paid on the basis of one fortieth ($1/40^{th}$) of the weekly rate for the level in which they are employed for each ordinary hour worked plus a twenty percent (20%) loading.

2.1.3.2 The twenty percent (20%) loading is paid in full compensation for the nature of casual employment and in lieu of all paid leave and public holidays. The casual employee shall not be entitled to the benefit of sub-clauses 2.5 Redundancy, 5.1 Annual Leave, 5.2 Sick Leave, 5.4 Bereavement Leave, 5.5 Public Holidays or 5.6 Special Leave

2.1.4 Probationary Period

Employees may, at the employer's discretion, be engaged for an initial probationary period of up to sixty (60) working days or shifts to assess suitability for the position. The time spent as a probationary employee will count as time worked for the purposes of accruing any entitlement under this Agreement and during the probationary period the contract of employment may be terminated by giving notice at the end of the employee's day or shift by either the employee or employer.

2.1.5 Employment and Engagement

2.1.5.1 Employees shall attend and offer for engagement at a place specified by the employer at the normal starting time on each rostered ordinary working day or shift unless notified in advance that on a particular day or days or shift or shifts the employee is not required to attend.

2.1.6 Traineeships

2.1.6.1 Application

(i) Subject to paragraph (ii) hereof, this clause shall apply to persons—
  (a) who are undertaking a Traineeship; and
  (b) who are employed;
  (c) whose employment is covered by this agreement.

(ii) At the conclusion of the Traineeship, this clause shall cease to apply to the employment of the Trainee and this Agreement shall apply to the former Trainee whilst their employment continues.

2.1.6.2 Objective

The objective of this clause is to assist in the establishment of a system of training for Trainees which provides approved training in conjunction with employment.

The Traineeship system aims to assist the future employment prospects of Trainees particularly young people and the long term unemployed and is designed to allow Trainees to achieve a credential which is complementary to the National Certificate in Food Processing.

2.1.6.3 Definitions

"Agreement" means this Agreement.

"Competency Based Training" is a way of approaching vocational education and training that placed primary emphasis on what a person can actually do as a result of training (the outcome) and as such represents a shift away from an emphasis on the processes and time involved in training (the inputs).

"Parties to a Traineeship Scheme" means the Employer and the Trainee.

"Recognition of Prior Learning (RPL)" is a process which recognises that knowledge and skills gained through life experience, work experience, including informal and formal training can equal some or all of the minimum training requirements specified within the course of instruction.

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

"Traineeship Agreement" means an agreement made subject to the terms of this Clause between the Employer and the Trainee for a Traineeship and which is registered with the West Australian Training Council or under the provisions of the West Australian Vocational Education Training and Employment Act 1991. A Traineeship Agreement shall be made in accordance with the relevant approved Traineeship Scheme and shall not operate unless this condition is met.

"Traineeship Scheme" means an approved Traineeship applicable to a group or class of employees or to an industry or sector of an industry or an enterprise. A Traineeship Scheme shall include a standard format which may be used for a Traineeship Agreement by the West Australian Training Council.

2.1.6.4 Training Conditions

(i) The Trainee shall attend an approved training course or training program prescribed in accordance with the Traineeship Agreement or as notified to the Trainee by the West Australian Training Council.

(ii) A Traineeship shall not commence until the relevant Traineeship Agreement, made in accordance with a Traineeship Scheme, has been signed by the Employer and the Trainee and lodged for registration with the West Australian Training Council. Provided that if the Traineeship Agreement is not in the standard format a Traineeship shall not commence until the Traineeship Agreement has been registered with the West Australian Training Council. The employer shall ensure that the Trainee is permitted to attend the training course or program provided for in accordance with the Traineeship Agreement and shall ensure that the Trainee receives the appropriate on and off the job training.

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

(iv) The overall training program will be monitored by Officers of the West Australian Training Council. The monitoring and assessment process shall be binding on the employer and shall involve the use of training records or work books as required in accordance with the terms of the training Agreement.

(v) The employer shall not require a Trainee to perform any task unless that person has achieved the level/s of competency to do so.

(vi) The ratio of registered trainees to existing employees (including those persons engaged as permanent or casuals who may or may not enter into a Traineeship arrangement) shall be determined through consultation and written agreement at the site between the Joint Consultative Committee and the employer after due consideration of the total enterprise training and employment needs.

Provided that if agreement cannot be reached, the ratio of registered Trainees to existing employees shall not exceed 20%.

2.1.6.5 Employment Conditions

(i) A Trainee shall be engaged as a permanent employee, with the skill level undertaken by the Trainee determining the nominal duration of the Traineeship as follows—

Level 1	6 months
Level 2	12 months
Level 3	24 months

Traineeship arrangements shall be subject to a satisfactory probationary period of up to three (3) month which may be reduced at the discretion of the employer. By agreement in writing, and with the consent of the West Australian Training Council, the employer and the Trainee, the duration of the Traineeship may be varied and/or reduced in recognition of the level of competence achieved by the Trainee.

(ii) Stand down shall be in accordance with this Agreement. This shall not prevent the West Australian Training Council in conjunction with the employer and the Consultative Committee developing stand down arrangements pertaining to trainees. Trainees who are supernumerary to the workforce shall not

be used in a training capacity to the extent that they replace or disadvantage existing employees.

(iii) Cancellation of Traineeship shall be in accordance with the terms outlined in the Traineeship Agreement.

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

(v) Where the employment of a Trainee by the employer is continued for a period of six (6) weeks after the completion of the Traineeship period, such traineeship period shall be counted as service for the purpose of this Agreement or any other legislative entitlements.

(vi) (a) The Traineeship Agreement may restrict the circumstances under which the Trainee may work additional hours and shiftwork in order to ensure the training program is successfully completed.

(b) No Trainee shall work additional hours or shiftwork on their own unless consistent with the provisions of this Agreement.

(c) No Trainee shall work shiftwork unless the parties to the Traineeship scheme agree that such shiftwork makes satisfactory provisions for approved training. Such training may a cycle in excess of a week, but must average over the relevant period no less than the amount of training required for non shift trainees.

(d) The Trainee wage shall be the basis for the calculation of any additional hours prescribed by this Agreement, unless otherwise agreed by the parties to a Traineeship Scheme, or unless the Trainee and/or existing employee is on a higher rate or this Agreement makes specific provision for a Trainee to be paid at a higher rate, in which case the higher rate shall apply.

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

(viii) A Trainee who fails to either complete the Traineeship or who cannot for any reason be placed in full time employment with the employer on successful completion of the Traineeship, shall not be entitled to any severance payments payable pursuant to termination, change and redundancy provisions or provisions similar thereto.

(ix) All existing employees are able to participate in traineeship arrangements and will not be displaced from employment as a result of the engagement of new employees with little or no previous relevant experience in the meat industry.

2.1.6.8 Employment of Trainees

Trainees employed with no or little industry experience will not be expected to perform in accordance with the speed of the chain. Once a Trainee has been assessed as being competent to perform a specific task, the Trainee may at the discretion of the employer perform that task, and be part of a production team.

2.1.7 Work to be Performed

2.1.7.1 The employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training and any such direction issued by the employer will be consistent with the employer's responsibility to provide a safe and healthy work environment.

2.1.7.2 The employee will perform such work as the employer requires, and will comply with all health, hygiene and safety requirements during the ordinary hours of work and during any additional hours if required and all such work must be carried out to the satisfaction of the employer.

2.1.7.3 If there is a delay or interruption to work for any reason whatsoever, then at the request of the employer, employees will resume work in time to complete the tasks commenced, avoid any loss of product and to process production originally scheduled for the day. Provided that in such circumstances employees shall not be obligated to work beyond a time which is two (2) hours beyond the expiration of their ordinary hours of work on that day or shift.

2.1.8 Payment for Work Performed

2.1.8.1 Nothing in this Agreement shall affect the right of the employer to terminate summarily the employment of any employee for malingering, inefficiency, neglect of duty or misconduct, in which case wages shall be paid up to the time of dismissal only.

2.1.8.2 Nothing in this agreement shall affect the right of the employer to deduct payment for any day or part of a day upon which any employee cannot be usefully employed because of any form of industrial action, through any breakdown of machinery, loss of essential services, unavailability of suitable raw material for processing or any other cause beyond the employers control provided that, except in the case of industrial action, the employee will not be required to remain at the employers workplace during any period of non payment.

2.1.8.3 Should an employee not attend or not perform duties as directed, (except where otherwise expressly provided for in this agreement), they shall lose pay for the actual time of such non-attendance or non-performance.

2.1.9 Calculation of Continuous Service

2.1.9.1 In the case of unpaid absences (including absences for the purpose of receiving workers compensation benefits) continuity of service shall not be broken unless and until the services of the employee are formerly terminated during the absence. However, during such unpaid period of absence no entitlements under this Agreement shall accrue and the unpaid period of absence shall not be taken into account when calculating such entitlements.

2.1.9.2 Continuity of service will exist in any case where the employer terminates the employee solely to avoid obligations under this agreement .

2.1.10 Termination of Employment

2.1.10.1 Notice of Termination by Employer

a) In order to terminate employment of an employee (other than a casual or probationary employee or for slackness of trade), the employer shall give to the employee the following minimum periods of notice—

Period of Completed Continuous Service	Period of Notice
Not more than 1 year	1 week
1 year but less than 3 years	2 weeks
3 years but less than 5 years	3 weeks
5 years and over	4 weeks

b) In addition to the notice specified in sub paragraph (a), if the employee is over forty-five (45) years of age at the time of the giving of the notice and has no less than two years completed continuous service, the employee shall be entitled to an additional week's notice

c) Notice prescribed in this sub clause may be given at any time during the week but if given at any time during the employee's rostered working hours shall apply from the rostered finishing time for the day.

d) Payment may be made (either partially or totally) in lieu of notice but any such payment shall be at the ordinary rate for the classification in which the employee was employed in accordance with sub-clause 3.1 at the time notice of termination was given.

e) If payment is made partially or totally in lieu of notice the period of notice shall be calculated from the actual time the notice was given.

f) In cases where termination of employment is only temporary because of slackness of trade (e.g. seasonal closures) one week's notice or pay in lieu thereof shall be required.

g) Nothing shall prevent the employer exercising its rights under sub clauses 2.1.8.1, 2.1.8.2 or 2.1.10.5 of this agreement during any period of notice.

2.1.10.2 Notice of Termination by Full Time Employee

a) The notice of termination required to be given by a full time employee will be not less than one (1) weeks

notice provided that if it is given during the employee's rostered ordinary working hours it shall apply from the rostered finishing time for that day or shift.

b) If the employee fails to give the required notice, or having given such notice leaves before the notice expires, the employee shall have an amount equivalent to the amount of notice unserved deducted from any outstanding monies owed to the employee on termination.

2.1.10.4 Casual Employees—Required Notice

The required period of notice in respect to a casual employee will be one hour. If the required period is not given, one hour's wages will be paid by the employer or forfeited by the employee.

2.1.10.5 Notice May Be Waived

By agreement between the employer and the employee any notice period or part thereof prescribed in this sub-clause may be shortened or waived.

2.1.10.6 Instant Dismissal

Any period of notice prescribed in this sub-clause shall not apply in the case of dismissal for misconduct that justifies instant dismissal.

2.1.10.7 Abandonment of Employment

In the event that any employee is absent for more than three (3) consecutive working days without notifying the employer, they will be considered to have abandoned their employment and their services may be terminated immediately by the employer.

2.1.11 Suspension

Notwithstanding the provisions of this clause the employer may suspend any employee without pay for a maximum of ten (10) ordinary working days for any misdemeanour which otherwise would warrant dismissal.

2.1.12 Medical

Employees must submit to and pass any medical examination required to maintain the employers export status and any expenses associated with such examination will be met by the employer.

2.1.13 Q Fever Vaccination

It is a condition of employment that employees agree to undergo testing and if necessary vaccination against Q fever. All expenses relating to the procedure will be paid for by the employer.

2.1.14 Drug and Alcohol Testing

The employer reserves the right to test employees for drugs and alcohol on both a random or "for cause" basis.

The parties to this Agreement undertake to meet as soon as is practical after this Agreement is registered to agree on a common rehabilitation policy that will be adopted in the case of a positive test result.

2.2 HOURS OF WORK

2.2.1 Full Time Employees

2.2.1.1 The ordinary hours of work for full time employees shall not exceed ten (10) hours per day or shift or forty (40) hours per week Monday to Friday between the hours of 4 a.m. and 8 p.m.

2.2.1.2 Subject to sub-paragraph 2.2.1.3 the ordinary hours for full time employees maybe rostered by the employer on up to five (5) consecutive days Monday to Friday inclusive between the hours of 4.00am and 8.00pm, except where shifts are operated when they may be operated at anytime of the day.

2.2.1.3 The maximum number of ordinary hours that may be rostered on a Friday is six (6).

2.2.2 Casual Employees

2.2.2.1 The minimum and maximum ordinary hours of work for a casual employee shall be as follow—

- Daily minimum—Four (4) ordinary hours
- Daily maximum—Ten (10) ordinary hours
- Weekly maximum—Forty (40) ordinary hours.

2.2.2.2 The ordinary hours of work for casual workers may be rostered on any or all of the days of the week between the hours of 4 a.m. and 8 p.m.

2.2.3 Alterations to starting and finishing

Starting and finishing times of the rostered ordinary hours of work may be set and/or altered either by agreement with the majority of employees in the plant or department or section whose employment is covered under the terms of this Agreement, or if no agreement is forthcoming, by the employer with a minimum of one (1) week's notice.

2.2.4 Work to be Consecutive

With the exception of meal breaks and rest breaks, the ordinary hours of work shall be consecutive.

2.2.5 Employees are required to be "on the job" ready to commence work at the nominated commencement time of ordinary hours and to remain "on the job" (with the exception of approved breaks) until the nominated finishing time. Wash up, cleaning of equipment, showering and changing will be during paid relief breaks or in the employee's own time.

2.3 ADDITIONAL HOURS

2.3.1 With the exception of extra production days (sub-clause 2.4) all time worked in excess of, or outside of, the employee's rostered ordinary hours of work shall be additional hours and shall be paid for at the rates of pay prescribed in subclause 3.1 of this agreement.

2.3.2 Other loadings (eg. shift loading) shall not apply during any additional hours.

2.3.3 An employee may be recalled to work for emergent reasons for non production work after completing ordinary hours and in such circumstances shall be paid for a minimum of two (2) hours at the appropriate additional hourly rate.

2.3.4 Employees shall work additional hours as requested by the employer, unless prior exemption has been obtained, provided that any additional hours beyond five (5) hours in any weekly pay period shall be voluntary.

2.4 EXTRA PRODUCTION DAYS

2.4.1 The employer may, at its discretion call for extra production days outside and in excess of the rostered ordinary hours of work or any required additional hours subject to the following limitations and obligations—

- at least forty eight (48) hours prior notice shall be given
- work on extra production days will be voluntary and will be paid at the appropriate ordinary hourly rates set out in sub-clause 3.1.

2.4.2 No earnings on extra production days shall be taken into account when calculating any other entitlement under this agreement.

2.5 REDUNDANCY

2.5.1 Where an employee's position is redundant the employer will consult with the employee concerned immediately a decision is made—

a) With respect to the likely effect on the employee;

b) To ensure continuity of employment where ever possible

2.5.2 Subject to sub-clause 2.5.3 in addition to the period of notice prescribed in sub clause 2.1.10.1, if an employee (other than a casual) is terminated due to redundancy the employee shall be entitled to two (2) weeks pay for each year of completed continuous service to a maximum of eight (8) weeks pay

2.5.3 Notwithstanding the provisions of sub-clause 2.5.2 existing employees at the commencement of this Agreement whose entitlement to redundancy at the commencement of the Agreement (applying the provisions of the Metro Meat International Limited, Katanning Division AMIEU Meat Processing Agreement 1997 to their pre-existing length of service) would be greater than is provided by sub-clause2.5.2 shall continue to hold that entitlement but shall only accrue further entitlement in respect to any additional period of service up to a combined maximum of eight (8) weeks i.e. those employees with an entitlement of eight (8) weeks or more at the commencement of this Agreement will not accrue any further entitlement.

Provided that no severance pay shall be payable if the employee has less than two (2) years completed continuous service at the date of termination.

For the purposes of this sub clause "weeks' pay" shall mean the employees normal base classification rate as set out in sub clause 3.1 of this Agreement.

2.5.4 Interview Leave

If an employee has been informed that they are to be made redundant, they will receive eight (8) hours paid leave to seek other employment during any period of notice which has been given by the employer and is being worked out by the employee. The eight (8) hours leave need not be consecutive.

2.5.5 Transfer to lower paid jobs

If an employee is transferred to a lower level for reasons set out in paragraph 2.5.1 hereof, the employee shall be entitled to the same period of notice of transfer as would have applied should the employment 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 employee's former classification rate and the new lower classification rate for the number of weeks of notice still owing.

2.5.6 Alternative Employment

The provisions of this sub-clause shall not apply where the employer arranges acceptable alternative employment for an employee who would have otherwise been terminated due to redundancy.

2.6 PAYMENT OF WAGES

2.6.1 Wages will be paid by electronic funds transfer, by deposit of those wages into the employee's nominated bank account (or other similar account to be nominated by the employee) by 10 am. on each Friday in respect to the previous weeks earnings.

2.6.2 On each pay day each employee will receive a statement on a pay envelope or pay slip showing the total amount of ordinary wages, overtime, allowances and all deductions made therefrom.

2.6.3 At the request of the employee the employer agrees to deduct and remit Union dues from the employees earnings without charge to the employee or Union

2.7 MEAL BREAKS

2.7.1 Employees shall be allowed a period of between thirty (30) minutes and sixty (60) minutes for a meal break on each day or shift (including extra production days) and such time shall not be counted as part of the ordinary hours of work.

2.7.2 The time and duration of meal breaks shall be fixed by agreement so as to suit the operational requirements of the plant provided that the meal break must commence no later than six (6) hours after the employees normal commencing time and shall not, except as outlined in clause 2.7.4, be altered unless twenty four (24) hours notice is given to the employee.

2.7.3 If the employee is called upon to work during a scheduled meal interval the employee shall be paid as additional hours at the appropriate rate for the period so employed and such payment shall continue until a meal break is allowed. provided that any such period shall constitute ordinary hours of work.

2.7.4 The employer may direct that any meal break be brought forward or delayed by up to thirty (30) minutes.

2.8 RELIEF BREAKS

2.8.1 Employees shall be entitled to paid relief breaks calculated at the rate of five (5) minutes for each continuous completed ordinary hour worked. The times of taking and the duration of each break shall be established by agreement. but must be compatible with operational requirements

2.8.2 If an employee works overtime immediately subsequent to expiration of the ordinary hours of work the employee shall be allowed an additional paid rest break of fifteen (15) minutes duration after each two (2) consecutive hours of overtime worked.

2.8.3 The employer may direct that any relief break prescribed by this sub clause be brought forward or delayed by up to thirty (30) minutes.

2.9 SHIFT WORK

2.9.1 Shifts may be introduced following consultation with the Joint Consultative Committee.

2.9.2 Hours of Work

2.9.2.1 The ordinary hours of work of employees engaged on shift work shall not be less than twenty four (24) hours or exceed forty (40) hours per week with a daily minimum of eight hours (8) and a daily maximum of ten (10) hours.

2.9.2.2 Subject to sub-clause 2.9.1 shift work may be rostered on up to five (5) consecutive days, any day of the week.

2.9.3 Loading

2.9.3.1 A flat loading of $2.00 per hour will be paid in addition to all other earnings for each ordinary hour or part thereof performed by an employee engaged on shift work outside the hours 4.00 am to 8.00 pm Monday to Friday.

2.9.3.2. Unless expressly provided as otherwise by this Agreement shift workers shall be entitled to the same benefits and conditions as other employees covered by this agreement.

2.10 REQUIREMENT TO WORK SHIFT WORK

The employer shall advise employees upon employment of any requirement to work shift work. Employees shall not be transferred to or from shift work other than by agreement or with at least one (1) week's prior notice by the employer to so transfer.

2.11 EMPLOYEES FACILITIES

The employer will provide the following facilities for employees—

2.11.1 Boiling water in sufficient quantities to make an adequate supply of hot drinks for each employee immediately each meal break or rest break commences.

2.11.2 Changing rooms, dining rooms, toilets, wash basins, showers, etc in accordance with the provisions of the Code of Practice for Workplaces made pursuant to the Occupational Health and Safety Act.

2.11.3 Adequate supplies of cool drinking water at convenient locations.

2.11.4 Adequate supplies of antibacterial soap and sterile drying equipment in all washrooms.

2.11.5 Adequate and appropriate heating facilities for employees meals and a refrigerator in each lunch room.

3.—CLASSIFICATION AND RATES OF PAY

3.1. WAGE RATES

The following shall be the ordinary rates of pay for each level of employee—

	Ordinary Hours			Additional Hourly Rates
Employees Level	Fulltime Employee Weekly Rate $ Per Week	Fulltime Employee or Shiftworker Hourly Rate $ Per Hour	Casual Employee Hourly Rate $ Per Hour	Hours P/Week $ Per Hour
1	375.20	9.38	11.25	14.06
2	400.00	10.00	12.00	15.00
3	450.00	11.25	13.50	16.88
4	475.20	11.88	14.26	17.81
5	500.00	12.50	15.00	18.75
6	550.00	13.75	16.50	20.63
7 & 7A	600.00	15.00	18.00	22.50
Jnr U/17 years	180.80	4.52	5.42	6.78
Jnr 17-18 years	252.80	6.32	7.58	9.48
Trainees—Level 1	180.80	4.52	N/A	6.78
Trainees—Level 2	252.80	6.32	N/A	9.48
Trainees—Level 3	325.20	8.13	N/A	12.20

Notes—

(1) The employer may appoint the employee to a higher level at any time.

(2) The above rates shall be used as the basis for calculation of all entitlements under this agreement unless specified otherwise elsewhere in the agreement.

(3) The ordinary weekly rates are the minimum pay levels a permanent employee must receive subject to sub clauses 2.1.7.3, 2.1.8.2, 2.1.8.3, 2.1.11 and/or 5.6 whereupon the reduction in the minimum outlined above shall be commensurate with the duration of the stand down, deduction of payment, non performance of work, period of unpaid leave and/ or suspension.

3.2. GRADING OF EMPLOYEES

3.2.1 The classification structure set out below is designed to provide employees with a clear career path, promote multi-skilling and to remove and prevent any demarcation barriers.

3.2.2 The structure is based upon the principle that each employee is graded at a particular level having regard to their skill, competency, experience, and qualifications, not the tasks they may be actually performing on any day or shift. Consequently the employee may be required to perform any tasks within their skill and competency but shall be paid the ordinary level rate of pay appropriate to their classification level, regardless of the work they actually perform.

3.2.3 The approval discretion for the employee's grading level shall be with the Plant Manager following consideration of any recommendation from the Joint Consultative Committee. New employees will commence at level one (1) unless approved otherwise by the employer.

3.2.4 Employees will be notified of their initial grade at the time of appointment. Prior skills will be recognised to the extent of the skills appropriate to the position being filled. Recommendations for promotion will be made by the Joint Consultative Committee to the Plant Manager who has the right of final endorsement.

3.2.5 Providing adequate opportunity is first given to an employee to upgrade their skills, the employer may transfer an employee to a lower grade if they cease to hold the skill, competency, experience or qualification required for the grade to which they have been appointed..

3.2.6 All existing employees at the commencement of this agreement shall continue on their current grading except pieceworkers who will be regraded to level 7A, or unless reclassified in accordance with sub-clause 3.2.5.

3.3 CLASSIFICATION STRUCTURE

3.3.1 Level 1

Undergoes Induction Training which may include Work and Documentation Procedures, Quality Assurance, Training, Conditions of Employment etc.

Has had less than 3 months experience in the meat industry—(new employee).

Is undergoing formal training through a trainee scheme set up by the Company covering set modules.

Works under direct supervision.

Remains at this level until performance determines his or her service is terminated or upgraded.

Promotion Criteria is assessment of Competency or appropriate certification of Level 2 skills and a position becoming vacant in Level 2.

Tasks performed are of a general labouring nature.

3.3.2 Level 2

Performing routine manual work under direct supervision.

Has completed level (1) of Certificate in Meat Processing.

Works under direct supervision.

Has an understanding of Quality Control, Meat Handling, Health and Hygiene, Processing Techniques.

Typical duties may include —

ie. trimmer, whizzard knife operator, chiller room hand, strapping machine operator, stockman, running off casings, packing and cleaning tripe, running up stock.

3.3.3 Level 3

Upgrade of Level 2—using discretion and judgement particularly in reference to quality assurance. This may include forklift driver, strapping machine operator, basic packing, basic trimming, general basic tasks on slaughter floor/boning room environment.

- Possesses basic knife skills.
- Have numeracy and literacy skills.
- Be able to competently use relevant tools and equipment.
- Works in a team environment.
- Undertakes Further Training so as to be able to advance to Level 4.

3.3.4 Level 4

An employee at this level has completed level 1 of the Certificate in Meat Processing, has completed tasks in level 2/3 to the satisfaction of the Company Assessor and can work under general supervision and can perform most functions in a particular area in a department.

Is aware of requirements to produce hygienic product and carry out all hygiene procedures as required by AQIS to produce clean product.

Typical duties may include slash pack boning, operate restrainer, knocking, saw operator, slicing, rodding and tying weasand, cleaning duties.

3.3.5 Level 5

An employee at this level works above the skill of level 4. They have received on and off the job training, they must—

- Have a sound knowledge of the Company Quality Assurance and customer specification requirements.
- Be capable of working without supervision.
- Can provide on the job training to other employees if required.
- Perform basic maintenance of equipment.
- Have completed Level 2 of the Certificate in Meat Processing.

Tasks at this level may include precision boning, precision slicing,, legging, gutting.

3.3.6 Level 6

An employee on this level works above and beyond the skill of an employee on Level 5 and has received on and off the job training and must—

- Have superior knife skills.
- Be able to competently perform all tasks associated with either slaughtering or boning or slicing.
- Be responsible for assuring their own and others work.
- Be able to work with no supervision.
- Train other employees.
- Perform routine maintenance.
- Have and utilise literacy and numeracy skills.

3.3.7 Level 7

An employee at this level has an appropriate qualification and has received on and off the job training and therefore possess skill above level 6. Typically an employee at this level would be capable of acting as a team leader and possess training and assessing skills.

The employee must—

- Be able to lead selective working teams and identify and correct any deficiencies generated from the team
- Have off the job training in areas of Quality Assurance, OH&S, Client specifications.
- Be able to perform competently all meat processing tasks in the slaughtering and boning departments and train employees in these tasks.
- Perform routine maintenance.

3.3.8 Level 7A

All existing pieceworkers holding seniority at the commencement of this Agreement. Employees at this level may be asked to carry out any or all of the duties for other levels provided they have the required competency and skill. There will be no new appointments to this level.

4.—ADDITIONAL PAYMENTS

4.1 OCCUPATIONAL SUPERANNUATION

4.1.1 Subject to the provisions of this sub clause contributions to occupational superannuation shall be made in accordance with the Superannuation Guarantee and Administration Act.

4.1.2 Salary Sacrifice

Employees may specify that a set weekly amount be paid as additional employee contributions to superannuation on a salary sacrifice basis in lieu of wages to the extent of the specified amount. Provided that if the employee does so choose, the amount of salary sacrifice shall not be taken into account when

calculating any other benefit or entitlement under this agreement.

4.2 MEAL ALLOWANCE

Unless notified of a request to work overtime on the working day prior or earlier an employee if required on any day or shift to work overtime for more than ninety (90) minutes directly after the rostered ceasing time of ordinary hours on that day or shift will be paid an $8.00 meal allowance in additional to any overtime payment to which the employee may be entitled and such meal allowance shall not be taken into account when calculating any other entitlement under this agreement.

4.3 TOOLS OF TRADE

4.3.1 Grindstones

The employer will provide a power driven grindstone and a sharpening bench or other suitable device for the securing of sharpening stones free of cost where the employees are required to use knives in the course of their duties

4.3.2. Employees shall be supplied with tools of trade including knives, pouches and steels. Any knife or tool provided by the employer shall remain the property of the employer and shall be returned to the employer when required. If it is not so returned or returned in an unworkable or damaged state the employer shall be entitled to deduct the replacement cost from any monies owing to the employee.

4.4 BONUS ATTENDANCE PAYMENT

Following the completion of each twelve (12) monthly period of completed continuous service under this agreement employees shall become entitled to a bonus attendance payment of $500.00 to be paid by the employer on the employees behalf at the employees nomination so as to either :—

- meet future child care and/or educational fee obligations or
- purchase meat from the Company or
- as additional superannuation contributions or
- fund health insurance premiums

Provided that the bonus family payment shall only be payable if, in the twelve (12) month period referred to, the employee has not been absent during ordinary hours or compulsory additional hours without the prior approval of the employer.

5.—LEAVE PROVISIONS

5.1 ANNUAL LEAVE

5.1.1 Period of Leave

Except as hereinafter provided, after a period of twelve months continuous service an employee (other than a casual) will be entitled to annual leave at a rate of .07693 hours leave for each completed ordinary hour of work or during each hour of paid leave up to a maximum of 160 hours. Unless emergent circumstances exist annual leave will be taken during periods of annual plant shutdown.

5.1.2 Public Holiday during Period of Leave

If any public holiday as outlined in sub clause 5.5.1 falls within an employee's period of annual leave and is observed on a day which would have been an ordinary rostered working day for the employee, the rostered ordinary hours the employee would normally have worked on that day or shift will be added to the period of annual leave.

5.1.3 Leave may be taken in shorter periods

Leave is to be taken consecutively except where any individual employee and the employer agree annual leave may be taken in periods of less than four (4) consecutive weeks.

5.1.4 Termination of Employment & Leave

If, after one month's continuous service in any annual qualifying period, an employee lawfully leaves their employment or that employment is terminated by the employer the employee will be paid outstanding annual leave and/or pro-rata annual leave calculated in accordance with sub-clause 5.1.1.

5.1.5 Notice

At least fourteen (14) days notice shall be given by either party of the intention to take or the requirement to take annual leave, provided this notice may be waived by mutual agreement.

5.1.6 Payment whilst on Annual Leave

Whilst on Annual Leave the employee shall be paid for each hour of annual leave the base ordinary hourly rate of pay for the classification in which the employee is employed in accordance with sub clause 3.1 of this agreement.

5.2 SICK LEAVE

5.2.1 Entitlement & Accrual

An employee (other than a casual) shall be entitled to paid sick leave for each completed year of continuous service to be accrued at the rate of .03846 hours of sick leave for every ordinary hour worked and/or every hour of paid leave granted and taken.

5.2.2 Notification

5.2.2.1 The employee will, prior to 12 noon on the first day of absence inform the employer of the nature of the injury or illness and the estimated duration of the absence.

5.2.2.2 Should the employee not observe the notice obligations prescribed under this sub-clause the employee shall not be entitled to be engaged on the employees next ordinary day or shift should that be the desire of the employer.

5.2.3 Proof of Illness

The employee will, if requested by the employer provide a certificate from a registered medical practitioner as proof of any absence on sick leave.

5.2.4 Payment for Sick Leave

Sick leave actually taken shall be paid for using the relevant rate of pay for the classification level which the employee is employed as per sub-clause 3.1 of this Agreement.

5.2.6 Sickness During Annual Leave

If the employee becomes ill or is injured whilst on annual leave the employee may apply and be granted sick leave in lieu of Annual Leave providing that the application is made within the first three (3) days of the return from Annual Leave and the application is supported by a medical certificate.

5.2.7 Effect Upon Workers Compensation

The provisions of this clause do not apply if the employee is absent from work and entitled to payment of Workers Compensation benefits in lieu of wages. This clause will apply during periods when the employee is engaged on alternative duties via a rehabilitation program.

5.2.8 Sick Dependant

Employees may, in their second and subsequent years of employment apply for up to twenty four (24) hours of sick leave entitlement to be converted to leave to care for sick dependants. The employer may request a medical certificate to support the application for leave and any such application will not be unreasonably refused.

5.3 LONG SERVICE LEAVE

Employees shall be entitled to Long Service Leave in accordance with the provisions of the Western Australia Industrial Relations Commission as contained in Volume 60 of the West Australian Industrial Gazette.

5.4 BEREAVEMENT LEAVE

5.4.1 An employee (other than a casual) shall on the death of a Wife, Husband, Mother, Father Sister, Brother child or stepchild, Mother-in-law or Father-in-law or any other person who immediately before the persons death, lived with the employee as a member of the employees family shall be entitled to leave for a period not exceeding the number of hours worked by the employee in two ordinary working days and shall be without deduction of pay.

5.4.2 The right to such leave shall be dependent on compliance with the following conditions—

a) The employee shall give the employer notice of the intention to take such leave as soon as reasonably practicable after the death of such relation.

b) The employee shall furnish proof of such death to the satisfaction of the employer.

c) The employee shall not be entitled to leave under this clause during any period in respect of which any other leave has been granted.

d) Husband/Wife shall include de-facto spouse.

5.4.3 Islamic Funerals

In the event of a death within the Katanning Islamic Community which necessitates a burial/funeral to be held during ordinary hours of work employees of the Islamic faith will, if they request, be granted leave without pay on the day of the funeral. Employees not seeking leave without pay will be available for work but may be stood down in accordance with sub-clause 2.1.8.2 if meaningful work is not available.

5.5 PUBLIC HOLIDAYS

5.5.1 For the purposes of this agreement the following days (or the days observed in lieu thereof) will be regarded as and allowed as public holidays namely;

a) New Years Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Christmas Day, Boxing Day, Queen's Birthday, Labour Day, Foundation Day, and

b) where any other day is proclaimed as a public holiday in Western Australia.

5.5.2 When any of the days mentioned in sub clause 5.5.1 of this clause falls on a Saturday or a Sunday and a substitute public holiday is proclaimed, the holiday will be observed on the substitute day. In such case the substituted day will be a holiday without deduction of ordinary pay and the day for which it is substituted will not be a public holiday.

5.5.3 Where an employee is absent from their employment on the last working day (or part thereof) or the first working day (or part thereof) after a public holiday(s), without reasonable excuse which is satisfactory to the employer or without the consent of the employer, the employee will not be entitled to payment for the holiday(s).

5.5.4 The provisions of this sub-clause will not apply to casual employees or if the employee would not normally have worked rostered ordinary hours on the day on which the public holiday or substituted day falls.

5.5.5 Subject to sub-clause 5.5.3, payment for public holidays shall be without loss of ordinary pay.

5.5.6 In addition to any payment due to an employee under sub-clause 5.5.5 all work actually performed on a Public Holiday shall be paid for at the relevant ordinary hourly rates as contained in sub-clause 3.1.

5.5.7 Any of the public holidays (or substitute days) referred to in sub clauses 5.5.1 and 5.5.2 may, by agreement with the majority of employees whose employment is covered under the terms of a this Agreement, be deferred or brought forward in respect to the plant as a whole, individual departments or sections thereof and/or individual employee and in such a case the replacement date shall be deemed to be a public holiday for all purposes of this agreement. Provided that the employer may defer or bring forward Australia Day, Queen's Birthday, Labour Day, Foundation Day at its discretion with at least a week's advance notice.

5.5.8 No payment shall be made for public holidays which fall during, immediately before or immediately after a period when an employee is absent without pay.

5.5.9 Islamic Holidays

Subject to the provision of a Muslim sticker on the Islamic holidays of Ramadan and Hajj employees of the Islamic faith will be granted leave without pay if they so request provided that employees not seeking leave without pay will be available for work but may be stood down in accordance with sub-clause 2.1.8.2 if meaningful work is not available. Employees seeking leave without pay agree to make themselves available for a compulsory substitute production day if required by the employer on the Saturday preceding or following the Islamic holiday. Such substitute production day shall be considered ordinary hours for the purpose of this Agreement.

5.6 SPECIAL LEAVE

5.6.1 In circumstances where genuine need and/or hardship arises an employee (other than a casual) will be entitled to request special leave from the employer. Special leave shall be without pay and will only be granted if adequate arrangements at no additional cost can be made by management to cover the employee's absence.

5.6.2 Where such leave is granted the following conditions shall apply—

- The leave will be unpaid
- All entitlements will be frozen and no further entitlements shall accrue during the period of leave.
- Public holidays falling during the period of leave will not be paid.

5.7 PARENTAL LEAVE/ MATERNITY LEAVE

Parental Leave and Maternity Leave shall apply to all staff in accordance with the relevant provisions of the Industrial Relations Act 1979.

6.—RESOLVING ISSUES

6.1 Adoption of Principles

6.1.1 To ensure the orderly conduct of and speedy resolution of issues, disagreements, conflicts and disputes, the following Six Stage Resolution Procedure will be adopted.

6.1.2 The object of the procedure is to promote the resolution of issues and disagreements through consultation, co-operation and discussion between members of the shop floor and their respective line management.

This procedure is based upon the recognition and development of the relationship between line management and their employees.

6.1.3 The procedure is designed to resolve any disagreement or concern in a fair manner and is based upon the following principles.

a) Commitment by the parties to observe this procedure. This should be facilitated by the earliest possible advice by one party to the other of any issue or concern which may give rise to conflict or dispute.

b) Throughout all stages of this procedure, all relevant facts will be clearly identified and recorded.

c) Realistic time limits will be allowed for the completion of the various stages of discussions.

d) Emphasis will be placed on an in-house settlement of issues through consultation and negotiation. If this process is exhausted without resolution of the conflict or dispute the parties will jointly or individually refer the matter to the Commission for assistance in resolving the dispute.

e) In order to achieve the peaceful resolution of issues the parties will be committed to avoid stoppages of work, lockouts or any other bans or limitations on the performance of work whilst the procedures of consultation, negotiation, conciliation and arbitration are being followed. Observance of this principle will avoid consequential loss of production and wages and disruption of supply to customers.

6.2 Six Stage Resolution Procedure

6.2.1 Stage One (1)

The employee and/or the delegate with issue of concern will discuss the matter with their immediate first line manager (eg departmental supervisor). The line manager will set aside time to hear the issue or concern in a private discussion with the employee and or delegate and after consideration provide a comprehensive answer to the delegate. The issue or concern should be documented by the person with the concern and the answer provided for by the line manager will be in writing.

6 2.2 Stage Two (2)

In the event of the employee/delegate not being satisfied with answer provided, they will take their concern to the Works Delegate who will put in writing the comprehensive complaint details and arrange a meeting with the supervisor and the delegate concerned. The same procedure as set out in Stage One (1) will apply, with all relevant facts being clearly recorded. Failing a settlement the Works Delegate will then meet with the Plant Manager or his nominee in an effort to settle the matter in dispute.

6.2.3 *S*tage Three (3)

Failing a settlement the Works Delegate will convene a meeting of the Union shop committee which will discuss the matter in dispute in an endeavour to solve the issue, then a delegation from that meeting will negotiate further with senior company management.

6 2.4 Stage Four (4)

In the event that the matter remains unresolved the works delegate will notify the Union and a paid Union Official will discuss the matter with the Plant Manager or his nominee.

6 2.5 Stage Five (5)

Failing a settlement of the dispute the works management will notify senior off site company management and discussions will be held between senior off site company management and the Union with a view to settling the particular dispute.

6 2.6 Stage Six (6)

If no negotiated settlement can be achieved and the process is exhausted without the dispute being resolved, the parties will jointly or individually refer the matter to the Commission where the parties will use their best endeavour to resolve the matter by conciliation.

6. 2.7 A procedural form to follow in accordance with this procedure is contained in Appendix 3 to this Agreement.

7.—PERSONAL PROTECTIVE EQUIPMENT AND CLOTHING

7.1 The employer shall where necessary and relevant provide employees with all protective clothing and equipment required.

7.2 Employees must at all times wear or use the appropriate safety clothing or equipment as required to carry out the specific task.

7.3 Where any clothing is provided by the employer it shall remain the property of the employer, and the employee shall take responsible care of such clothing.

7.4 The employee must prior to commencing work collect clean clothing from the laundry and return it following completion of work.

7.5 The employee shall clean and maintain personal protective equipment and tools when, and to a standard required by the employer, outside of rostered ordinary hours of work.

7.6 The employee is responsible for the care and safekeeping of all clothing and equipment issued and shall return each article to the employer on request or on cessation of employment in good order and condition. In default, the employer may deduct from monies owing, an amount equal to its replacement value, having regard to normal fair wear and tear.

7.7 The employee will not remove the employers clothing or equipment from the site and the employer will provide a secure area for the safe keeping of the clothing and equipment issued to the employee

8.—UNION ARRANGEMENTS

8.1 RIGHT OF ENTRY OF UNION OFFICIALS

Consistent with the terms of the Labour Relations Legislation Amendment Act 1997 and S.23(3)(c)(iii) of the Industrial Relations Act a representative of the Union shall not exercise the rights under this sub-clause with respect to entering any part of the premises of the employer unless the employer is the employer, or former employer, of a member of the Union.

8.1.1 On notifying the employer or its representative, the Union Secretary or any officer duly authorised by the Union for the purposes of this Agreement shall have the right to visit the business premises of the employer at any time when work is being carried out and to interview employees whose conditions of work are subject to this Agreement without unduly interfering with work in progress but, subject to sub-clause 8.1.2, this right shall not be exercised without the consent of the employer more than once in any one week in any one establishment.

8.1.2 In the case of a disagreement existing or anticipated concerning any of the provisions of this Agreement, the authorised official of the Union, on notifying the employer or a representative thereof, shall have the right to enter the business premises of the employer to view the work the subject of any such disagreement but shall not unduly interfere with the carrying out of such work.

8.2 NOTICE BOARD

The employer will erect noticeboards in lunch rooms for the purpose of posting Union notices and information to be circulated from the Joint Consultative Committee.

8.3 TIME AND WAGES RECORDS

8.3.1 Except where mechanical recording devices are used for the purpose of recording starting and finishing times, an employer will provide a timebook or timesheet in which they will cause to be entered each day's starting and finishing times, each day's hours of work of each employee (including any additional hours) and the wages received each week. Such entries will, at least once a week, be vouched for by the signature of the employee.

8.3.2 The time book or time sheet or other record kept in compliance with this clause will be on reasonable notice be provided by the employer for inspection at the works where the employee whose time has been recorded is employed at any reasonable time between 9.00am and 4.00pm Monday to Friday inclusive.

8.3.3 Such production will not be required unless the Union suspects that a breach of this Agreement is being or has been committed, and considers that the inspection is necessary in order to investigate such suspected breach.

8.3.4 The representative making an inspection will be entitled to make photocopies of entries in such time book, or time sheet, or other record, relating to the suspected breach.

8.3.5 Where the Union exercises its rights under this Agreement to inspect the time and wages records of an employee or former employee, that power shall be exercised in accordance with s49B of the Industrial Relations Act 1979 (as may be amended from time to time) and the following—

8.3.5.1 The employer may refuse the representative access to the records if—

(i) the employer is of the opinion that access to the records by the representative of the Union would infringe the privacy of persons who are not members of the Union, and

(ii) the employer undertakes to produce the records to an Industrial Inspector as soon as practicable of being notified of the requirement to inspect by the representative.

8.3.5.2 The power of inspection may only be exercised by a representative of the Union authorised for the purpose in accordance with the rules of the Union.

8.3.5.3 Before exercising a power of inspection, the representative shall give reasonable notice of not less than 24 hours to the employer.

8.3.6 It will be a breach of this Agreement if any person knowingly makes certifies or vouches for a false entry in such time book or time sheet.

8.3.7 Time books, time sheets and other records kept in compliance with this clause will be kept for at least six years after they have been completed.

8.4 INFORMATION TO BE MADE AVAILABLE

The employer shall notify the Union within seven (7) days of the end of each month the name, age and classification of each new employee (other than casuals) and a list of employees who have been terminated during the preceding month.

9.—UNION CONSULTATIVE ARRANGEMENTS

9.1 JOINT CONSULTATIVE COMMITTEE

The employer recognises the Joint Consultative Committee as the appropriate forum in which all matters pertaining to their employment at the plant will be raised. The Union will be advised and remain informed on these matters.

9.1.1 This Committee will consist of nominated employee, Union and management representatives, as determined in accordance with the Consultative Committee Constitution.

9.1.2 The Committee will meet on a regular basis to consider any issues relating to the operation of this Agreement or any other matter which may be raised by the Union or the employer.

9.1.3 The Constitution of the Joint Consultative Committee is contained in Appendix 2.

10.—SIGNATURES

The Agreement is signed

For and on behalf of Metro Meat International Limited

Signature: (Signed)

Full Name: ALEXANDER MURDOCH

Position: MANAGING DIRECTOR

Witness Signature: (Signed)
Full Name: CHEN ZENG
Position: DIRECTOR

For and on behalf of the Australasian Meat Industry Employees Union
Signature: (Signed)
Full Name: DAVID HAROLD HOPPERTON
Position: BRANCH SECRETARY
Witness Signature: (Signed)
Full Name: JOHN DA SILVA
Position: OFFICE MANAGER

METRO MEAT INTERNATIONAL (KATANNING) AMIEU PROCESSING AGREEMENT 1999

APPENDIX 1—INCENTIVE SCHEME

The following sets out details of the incentive scheme referred to in sub-clause 1.6 of the EBA document.

1. Eligibility

The following categories of employees shall not be eligible to participate in the incentive scheme and will not be included in the calculations.

- Casual employees (other than when the majority of the work force is employed pursuant to sub-clause 2.1.2 of the Agreement)
- Trainees
- Level One employees
- Employees absent (either paid or unpaid) on any day or part of a day or shift for any reason
- Light duty employees

2. Payment

2.1 Incentives will be calculated daily and paid weekly. Daily incentive details will be prominently displayed on the following production day.

2.2 Incentives are pooled and divided amongst the employment categories as indicated.

2.3 Incentive payments will not be taken into account when calculating any other entitlements.

3. Multi-Skilled Employees

Employees who at the request of the employer alternate between departments on any day or shift shall participate in the incentive payment for the department in which they spend the majority of the day or shift.

4. Incentives Payable

4.1 Base Calculation

Incentives will only be payable after a daily base figure is exceeded. The base shall be calculated by multiplying the number of ordinary working minutes available in the day or shift by the following throughput requirements.

Sheep, lamb, goat, deer slaughter:	5.682 carcases per minute
Sheep, goat, deer boning or bandsawing:	3.864 carcases per minute

4.2 Rates Payable

The following rates shall be applied to the number of carcases that exceed the base during ordinary or additional hours.

Each sheep, lamb, goat, deer slaughtered	$1.75 per head
Each sheep, lamb goat, deer boned	$1.75 per head
Each sheep, goat, deer bandsawed or mechanically boned	$0.60 per head

If a combination of product is boned and bandsawed or mechanically boned that in total exceeds the base then the excess will be apportioned between boned and bandsawed or mechanically boned by applying the ratio that the number boned has to the number bandsawed or mechanically boned.

Where portion of a carcase is boned and a portion bandsawed or mechanically boned the equivalent set out in Appendix 4 of the Metro Meat International Limited—Katanning Division AMIEU Meat Processing Agreement 1997 will be applied.

4.3 Additional Hours

When additional hours are worked any incentives earnt will be pooled separately and only divided between eligible employees who worked the additional hours. There shall be no increase to the daily base figure that must be exceeded before the incentive is earnt. (ie if the daily base has been exceeded during ordinary hours then all throughput during additional hours will be eligible for the incentive payment subject to performance criteria).

4.4 Shifts

Where more than one shift is worked on a day the daily base figure must be exceeded for each shift.

4.5 Exclusion

The bandsawing of lambs is excluded from the incentive scheme and it is agreed that suitable arrangements will be agreed between the parties to the Agreement before this work is undertaken at Katanning. In the event agreement is not reached the matter shall be resolved using the dispute settling procedure.

4.6 Example

Assume 10 hour day.
Kill - 4800 head
Boning - 3400 head
Bandsawing - 500 head
Graded Carcase - 900 head

Base

Slaughterfloor 550 minutes x 5.682 = 3125
Boning/Bandsawing 550 minutes x 3.864 = 2125

Slaughterfloor contribution (per day)

4800—3125 = 1675 head @ $1.75 = $ 2931.25

Boning Room (per day)

Sheep boned	3400 head	87%
Sheep bandsawed	500 head	13%
Total	3900 head	
Base Figure	2125 head	
Excess	1775 head	

Apportionment of excess

Boning (1775 head x 87%)1544 head
Bandsaw (1775 head x 13%) 231 head

Boning room contribution

Boning:	1544 head @ $1.75	$2702.00
Bandsawing:	231 head @ $0.60	$ 138.60
Boning Room contribution:		$2840.60

Total incentive available—

Slaughterfloor (see above)	$2931.25
Boning Room (see above)	$2840.60
Total	$5771.85

5. Level Weighting

Each level of employee will be given a weighting representing relative responsibility. Level weightings will be as follows—

Level 6, 7, 7A = number of employees x 3
Level 4,5 = number of employees x 2
Level 2 & 3 = number of employees x 1

Eg. Employee Levels	No of Employees Weighting Factor	Weighting
6 , 7, 7A	68 x 3	= 204
4 , 5	78 x 2	= 156
2 , 3	75 x 1	= 75
		435

6. Division of Pool

The level weighting will be used to divide the pool between individual employees.

Eg. Level	% of Pool		Per Employee
6 , 7 , 7A	204/435 x $5771.85/1	=	$2706.80/68 = $39.81
4 , 5	156/435 x $5771.85/1	=	$2069.90/78 = $26.54
3 , 2	75/435 x $5771.85/1	=	$995.15/75 = $13.27

7. Qualifying Criteria

Individual employees will forfeit their entitlement to receive an incentive payment in respect to any day when—

a) Key performance indicators for their department are not achieved

b) They receive a written warning regarding their performance and/or behaviour

c) They are late commencing work or resuming after a break

Entitlements that are forfeited will revert to the Company.

8. Key Performance Indicators (KPI's)

The following KPI's must be achieved.

All Departments

- No lost production time incurred attributable to the carelessness of employee(s) (eg caused by employee inattention).

Lairage

- No reworks from Meat Hygiene Assessments on slaughterfloor.
- Conformance monitoring greater than 80% at each check.

Slaughterfloor

- No reworks from Meat Hygiene Assessments.
- Conformance monitoring greater than 80% at each check.
- Skin take off (average for day)

  Sucker lamb—less than 10% employee damage

  Other stock —less than 16% employee damage
- Minimum runner recovery 100%. (excluding condemns on slaughterfloor)
- Average recovery for all offal items exceeds 90%. (excluding tripe)

Offal/Runner/Tripe Room

- Conformance monitoring greater than 80% at each check.
- Minimum full length (ie no shorts) runner recover greater than 97%. (lambs); 94% mutton
- Average recovery of all offal items exceeds 90%. (excluding tripe)

Boning Room

- Allowable limits at boneless re-inspection not exceeded.
- Conformance monitoring greater than 80% at each check.
- Boneless equivalent yield greater than 54%.
- Chemical lean tests for all boneless product within tolerance.

Chillers/Freezers

- Conformance monitoring greater than 80% at each check.
- Time parameters for placing product under refrigeration complied with.

Loadouts

- Conformance monitoring greater than 80% at each check.
- No re-work from Meat Hygiene Assessments.
- No unsatisfactory meat transfer reports
- No detention time incurred
- Minimum container storage as follows—

  FROZEN MUTTON CARCASS (or similar product)
  Weight Range 14-20 kg per CS = 40' X 9ft 6" Container = Min 15.5 MT
  Weight Range 20-35 kg per CS = 40' X 9ft 6" Container = Min 18.0 MT

  ANIMAL CASINGS

  20' Container = Min ctns 695

  BONELESS MUTTON LEGS (or similar product)
  20' Container = Min 16.5 MT (or as requested if less)

  BONELESS MUTTON TRUNK (or similar product)
  20' Container—Min 18 MT (or as requested if less)

By-Products

- Conformance monitoring greater than 80% at each check.
- Tallow FFA tests all less than 2%.

Skins; All other Areas

- 80% conformance with check lists at all times.

METRO MEAT INTERNATIONAL LIMITED
CONSULTATIVE COMMITTEE CONSTITUTION
APPENDIX 2

Union and Management are committed to improved and effective consultation in the workplace. Both parties agree that consultation will provide Union members with an opportunity to participate fully in decisions which impact on their working lives and support the principle of consultation. Management and Union also agree that effective consultation is dependant on—

Information Sharing
Facilities and training for Union and Management representatives
Commitment from both sides

It is therefore agreed that the establishment of a Union/Management Consultative Committee is the most appropriate method whereby the above principles can be practised and upheld.

Objectives of the Committee

The objectives of the committee will be—

to increase the quality of working life for all company employees, particularly in the areas of job design, skills formation, training and the working environment, both physical and mental.

to negotiate, renegotiate and monitor the effectiveness of Enterprise Agreements.

to improve job security, productivity and efficiency within the company

to increase the competitiveness of the company and its products.

Terms of Reference

The following matters will be discussed at the Committee, and where appropriate, decisions made and agreements reached will go to senior management in the form of recommendations, to enable decisions made by the company to taking into account the views of the Committee.

1. Future plans including proposals for new products.
2. Current Market conditions and general conditions of the industry.
3. The introduction of new technology/machines or new or revised work methods and the associated planning of layout, training, job numbers, skill requirements etc.
4. Company training plans developed in accordance with the Agreement.
5. The company's affirmative action policy and programs of equality of opportunity within the workplace.
6. Management practices and organisational change.
7. Effectiveness and impact of enterprise agreements.
8. The grading of employees within the classification structure.
9. Any other matters raised by the Union or management which impact on the Union members or the efficiency of the Company.

Composition

1. Management and the Union will jointly determine the size of the Committee.

2. The appointment of management representatives will be determined by management and the appointment of employee representatives will be determined by the rank and file. All Union representatives shall be employees of the enterprise concerned. Nominated State Officials of the AMIEU will be permitted to participate.

3. In the determination of employee representation on the Committee, consideration shall be given to—

the make up on the work force—in particular the proportion of women, migrants and juniors;

the size of the work force;

the number of distinct operations at the workplace

shift arrangements

the corporate structure

other existing consultative mechanisms

4. The committee, once established, may invite other persons to attend specific meetings.

Facilities and Rights for Union Representatives

It is agreed that Union representatives should have the following facilities and rights—

1. Paid time off to a maximum of 2 hours per month so as to canvass the views of the membership and to prepare items for the Agenda; to prepare for the Consultative Meeting as a group and to report back to members on proceedings of Joint Consultative Committee meetings.
2. All arrangements for meetings and time off for the stipulated purposes shall have regard for the make up of the work force and the equality of opportunity to participate.
3. Facilities such as meeting room, photocopier and word processing facilities should be made available as needed. Additional storage facilities shall be provided on request to any of the relevant work areas representatives in a place convenient to their area.
4. All Union representatives and potential Union representatives should attend a Trade Union Training Course on the subject of Enterprise Bargaining and the negotiating process.
5. A Union member will not be discriminated against by the employer or treated unfairly because of being a member of the Consultative Committee or having an interest in the Consultative Committee.

Responsibilities of Committee Members

All Committee Members have the following responsibilities—

1. To attend all meetings wherever possible and to give serious consideration to all matters raised.
2. To represent the views of their constituents.

Management Response

Senior management must formally respond in writing to the Committee's recommendations.

Normally this will take place prior to the next meeting of the Committee.

Confidentiality and Rights of Access to All Relevant Information

At all times the spirit of genuine consultation is paramount.

Management and Union representatives have the right of access to all information and documents relevant to issues being considered by the Committee. Should information and/or documents requested or required by the Committee or its representatives be denied because they are "commercial in confidence" such a decision must be fully justified by management. All reasonable effort will be made to comply with representatives requests for specific documents and/or items of information within adequate time. However, this does not diminish management's responsibility to provide all relevant information and documents in a timely manner.

Training

All members of the Committee are entitled to extra training to ensure they are able to represent their members and fully participate in the Consultative Committee.

It is agreed that—

1. Such training for Union Committee members is separate from, and in addition to, Trade Union Training Leave.
2. That the nature and extent of such training will be agreed between Union and management before it is entered into.
3. Training will be at no financial cost and without loss of pay to Union members.

METRO MEAT INTERNATIONAL LIMITED & AMIEU

AGREED DISPUTES PROCEDURE—KATANNING DIVISION

APPENDIX 3

Set out below is the procedure for resolving of issues which are in dispute or are likely to lead to a dispute. In addressing such issues Management, Union delegates and officials and employees should note—

1. No industrial action shall occur unless and until all stages 1 to 6 have been completed.
2. If unresolved at a particular Stage the issue must be referred to the next Stage as soon as possible. At no point should the issue be left unresolved or attended.
3. Nominated persons are only to become involved at the relevant Stage.
4. If a particular step is not relevant to the dispute, it may be omitted provided both parties agree.

Identification of Issue—Person or Delegate raising issue to provide a brief description of what the issue is.

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Stage 1—Issue to be discussed between Departmental Supervisor, Employee/s and relevant Union Delegate/s.

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.....
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Signed ……..……	Signed ……..……
Supervisor	Union Delegate
Date: ……	Date: ……

If unresolved at Stage 1 the issue is to be referred to Stage 2 as soon as possible

Stage 2—Issue to be discussed with Works Delegate, Departmental Delegate & Operations Manager and failing settlement issue will be discussed with the Plant Manager.

Result of Discussion—

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Signed……	Signed……..…
Plant Manager	Works Delegate
Date:……..	Date:……

If unresolved at Stage 2 issue will be referred to Stage 3 as soon as possible.

Stage 3—Issue will be discussed at meeting of Shop Committee, a delegation from which will meet with Senior Site Management including the Plant Manager.

Result of Discussion—

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Signed:……	Signed:……..…
Plant Manager	Works Delegate
Date:……..	Date:……

If unresolved at Stage 3 issue will be referred to Stage 4 as soon as possible.

Stage 4—Issue to be discussed with paid Union Official and Plant Manager.

Result of Discussion—

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Signed:…… Signed:……..…
Union Official Plant Manager

Date:…….. Date:……

If unresolved at Stage 4 issue will be referred to Stage 5 as soon as possible.

Stage 5—Issue will be discussed by State Secretary of the Union and Senior Off-Site Management.

Result of Discussion—

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Signed:…… Signed:……..…
State Secretary On behalf of the Company

Date:…….. Date:……

Stage 6—If issue remains unresolved it may be referred to WAIRC.

☐ Referred ☐ Not referred

METROPOLITAN HEALTH SERVICE BOARD AMA MEDICAL PRACTITIONERS AGREEMENT 1999. No. PSA AG 25 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Metropolitan Health Service Board

and

Western Australian Branch of the Australian Medical Association Incorporated.

No. PSA AG 25 of 1999.

6 August 1999.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT
No. PSA AG 25 of 1999.

HAVING heard Mr J. Blackburn on behalf of the first named party and Mr P. Jennings on behalf of the second named party; and

WHEREAS an agreement has been presented to the Public Service Arbitrator (the Arbitrator) for registration as an Industrial Agreement; and

WHEREAS the Arbitrator is satisfied that the aforementioned agreement complies with the Industrial Relations Act, 1979;

NOW THEREFORE the Arbitrator, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the agreement titled the Metropolitan Health Service Board AMA Medical Practitioners Agreement 1999, filed in the Commission on 8 June 1999 and as subsequently amended by the parties, signed by me for identification, be and is hereby registered as an Industrial Agreement.

(Sgd.) C.B. PARKS,
[L.S.] Public Service Arbitrator.

METROPOLITAN HEALTH SERVICE BOARD
AMA MEDICAL PRACTITIONERS AGREEMENT 1999

Part 1—Preliminaries

Part 2—Medical Officers (Service & Trainee Positions)

Part 3—Senior Medical Practitioners

Part 4—General Provisions

Part 5—Schedules

Part 6—Signing of Agreement, Common Seal

PART 1—PRELIMINARIES

1.—TITLE

This Agreement shall be known as the Metropolitan Health Service Board AMA Medical Practitioners Agreement 1999.

2.—APPLICATION

1. The parties to this Agreement are the Metropolitan Health Service Board (the employer) and the Western Australian Branch of the Australian Medical Association Incorporated (the Association).

2. This Agreement shall extend to and bind the employer and all medical practitioners employed by the employer throughout Western Australia. Provided that the Agreement

shall not apply to Medical Superintendents (or equivalent) or members of the Senior Executive Service.

3. The estimated number of employees bound by this Agreement upon registration is 451.

4. This Agreement shall replace the provisions of —

(a) the Western Australian Government Health Industry Medical Officers and Medical Practitioners' Agreement 1996 No. PSA AG 14 of 1995; and

(b) the Western Australian Government Health Industry AMA Medical Practitioners' Agreement 1998 No. PSA AG 64 of 1998.

3.—NO FURTHER CLAIMS

The parties undertake that for the period of this Agreement they will not other than as provided in this Agreement pursue any extra claims with respect to salaries and conditions to apply within the period of this Agreement to employees who are bound by it.

4.—NO STOPPAGES, BANS OR LOCKOUTS

The employees will not engage in any stoppage, ban or limitation on the performance of work required under the employee's contract of employment which is not authorised or agreed to. The employer will not lock out employees from their employment.

5.—TERM, EXPIRY AND RENEGOTIATION OF AGREEMENT

1. This Agreement shall have effect from the first pay period commencing on or after the date of registration and shall expire on 30 June 2001.

2. Negotiations for a new agreement will commence at least six months prior to the expiry date of this Agreement.

3. If a new agreement is not registered prior to the expiry of this Agreement, this Agreement shall continue in force until a new agreement is made.

6.—AGREEMENT FLEXIBILITY

In recognition of the need for maximum flexibility within this Agreement, where the employer, the Association and the majority of employee(s) concerned who attend or vote agree, mutually acceptable alternative terms and conditions may be implemented in substitution of those specified in this Agreement.

7.—TRANSITION / RETENTION OF RIGHTS

1. Any pre-existing right of permanency or other term of service in the Public Sector of Western Australia is not affected by this Agreement. Provided that nothing in this Agreement shall prevent a medical practitioner from relinquishing permanency in accordance with the provisions of this agreement.

2. Medical officers and medical practitioners shall retain accrued and pro rata entitlements to sick leave, long service leave, conference and overseas study leave, and other benefits as agreed to between the employer and the Association, as at the date of effect of this Agreement. Such entitlements shall be paid at the rate of pay applicable at the time the leave is taken.

8.—DEFINITIONS

"alternative right of private practice" means the right of private practice granted to a full or part time employee in accordance with subclauses (3) and (7)(b) of clause 25 – Private Practice.

"Board of Reference" means a panel consisting of a person nominated by the employer, a person nominated by the employee's representative and an independent Chairperson appointed by the Western Australian Industrial Relations Commission.

"Consultant" means a medical practitioner who holds the appropriate higher qualification of a University or College, endorsed by the National Specialist Qualifications Advisory Committee, or, in exceptional circumstances to satisfy areas of unmet need, such other specialist qualification recognised by the Commissioner of Health, and who, unless otherwise approved by the Commissioner of Health, is employed and practising in the specialty for which he/she is qualified.

"General Practitioner" means a medical practitioner engaged in the provision of primary, continuing whole-patient care to individuals, families and their community not being a vocationally registered general practitioner.

"Health Service Medical Practitioner" means a non-specialist medical practitioner who is not in a recognised training program and who is authorised to perform his or her duties without requiring clinical supervision by a specialist/consultant or senior medical practitioner. The classification includes a general practitioner (not vocationally registered).

"Hospital", subject to the context, includes Health Service.

"Intern" means a medical practitioner employed by a teaching hospital during the first year of relevant experience following graduation, prior to full registration by the Medical Board of WA.

"Medical Practitioner" means a medical practitioner as defined under the *Medical Act 1894* as amended from time to time .

"Private Patient" means a patient of a public hospital who is not a public patient. A private patient elects to accept responsibility to pay for medical care and the provision of hospital services. Patients who are covered under Workers' Compensation or Motor Vehicle Insurance Trust legislation or policies are deemed to be private patients for the purpose of this Agreement.

"Public Patient" means a patient in respect of whom a hospital or health service provides comprehensive care, including all necessary medical, nursing and diagnostic services and, if they are available at the hospital or health service, dental and paramedical services, by means of its own staff or by other agreed arrangements.

"Registrar" means a registered medical practitioner employed as a registrar. A registrar may be appointed by a teaching hospital with or without the Part 1 Examination of an appropriate specialist qualification acceptable to the National Specialist Qualification Advisory Committee established under the *Health Insurance Act 1973*.

"Resident Medical Officer" means a registered medical practitioner employed as a resident medical officer by a teaching hospital and in the second or subsequent years of relevant experience following graduation.

"Senior Medical Practitioner" means a medical practitioner who does not have a recognised specialist qualification but practices without clinical supervision exclusively in a NSQAC recognised specialist area or such other area recognised by the Commissioner of Health as being a specialist area; and/or who clinically supervises other medical practitioners; and/or who has significant medical administration duties (50% as guide). Promotion to the position of senior medical practitioner shall be by appointment only.

"Senior Registrar" means a registered medical practitioner employed as a senior registrar who has obtained an appropriate specialist qualification acceptable to the National Specialist Qualification Advisory Committee established under the *Health Insurance Act* 1973.

"Supervised Medical Officer" means a registered non-specialist medical practitioner, not being in a recognised training program and requiring clinical supervision by a specialist/consultant or Senior Medical Practitioner.

"Teaching Hospital" means a hospital declared to be a teaching hospital pursuant to the provisions of the *University Medical School, Teaching Hospitals Act 1955* as amended.

"Tertiary Hospital" means Royal Perth Hospital, Sir Charles Gairdner Hospital, Fremantle Hospital or King Edward Memorial Hospital/Princess Margaret Hospital for Children.

"Trainee Medical Administrator" means a registered medical practitioner appointed to a recognised Medical Administration training position and enrolled in the Royal Australian College of Medical Administrators training program.

"Trainee Psychiatrist" means a registrar or senior registrar appointed to a training position recognised by the Royal Australian and New Zealand College of Psychiatrists.

"Trainee Public Health Physician" means a registered medical practitioner appointed to the Health Department of Western Australia's Public Health Medicine training program or an advanced trainee of the Australasian Faculty of Public Health Medicine appointed to a position within public health services.

"Vocationally Registered General Practitioner" means a medical practitioner registered under section 3F of the *Health Insurance Act 1973*.

PART 2—MEDICAL OFFICERS (SERVICE & TRAINEE POSITIONS)

9.—CONTRACT OF SERVICE

1. Appointments shall be as agreed in writing between the employer and the employee and shall normally be for 52 continuous weeks.

2. Full and part time employees shall be appointed subject to a probationary period of six months. During the period of probation either party may give four weeks notice or such lesser period as is agreed between the medical officer and the employer. The probationary period shall not apply—

a. to interns, or

b. where the employee is appointed for a consecutive term.

In the case of interns a performance review process will apply no later than six months after commencement to assist the intern to satisfactorily progress.

3. a. Notwithstanding 1 above, all new appointments as Supervised Medical Officer shall be on 5 year fixed term contracts unless the employer and employee agree otherwise.

b. There shall be no automatic right of reappointment upon expiry of a contract.

A Supervised Medical Officer who, upon expiry of a fixed term contract, is unsuccessful in seeking reappointment for reasons other than misconduct shall be paid 10% of the cumulative base salary prescribed in Schedule A for that employee over the life of the contract to a maximum of 5 years.

No other termination, redundancy or severance payment shall be made except as provided for in this Agreement.

c. A Supervised Medical Officer with permanent tenure shall not be required to convert to a fixed term contract but may agree to do so. If unsuccessful in seeking reappointment at the end of that fixed term contract for reasons other than misconduct, he/she shall be paid pro rata long service leave after 5 years of continuous service in addition to the amount specified in paragraph b.

d. This subclause shall not apply to Supervised Medical Officers who are in;

- a recognised medical college approved training programme, or
- service positions which are not recognised training programmes but are designed to offer experience and/or training.

4. Subject to Clause 7(1) any contract of employment including a fixed term contract may be terminated by either the employer or the employee giving the following notice—

a. For contracts of less than 52 weeks—4 weeks' notice.

b. For contracts of 52 weeks and up to but not including 104 weeks—6 weeks' notice.

c. For contracts of 104 weeks and up to but not including 156 weeks—8 weeks' notice.

d. For contracts of 156 weeks' duration or longer—12 weeks' notice.

In lieu of the giving of the required notice the employer or the employee may pay or forfeit as the case may be salary commensurate with the residual period of notice otherwise required. Provided that the employer and the employee may agree to a lesser period of notice.

5. Notwithstanding the other provisions of this clause, the employer may, without prior notice, dismiss an employee for refusal or neglect to obey lawful orders or for serious misconduct.

6. An employee who is dismissed may appeal to a Board of Reference provided that the application is made within one month of the operative date of the dismissal.

7. An employee whose contract of employment expires or who is terminated shall be paid all monies due to such employee on the last day of service, except where unusual circumstances prevent this in which case payment shall be made as soon as possible thereafter but in any case not more than three working days thereafter.

8. Employees may be seconded on the approval of, and after consultation between the relevant employing authorities, to any Government recognised hospital or agency. In this subclause "employing authority" is as defined in the *Public Sector Management Act 1994*.

Employees in their intern year may be seconded in accordance with this subclause as appropriate to the employee's training.

10.—PART TIME EMPLOYEES

1. A part time employee is one who is engaged in regular and continuing employment for less than an average of 40 hours per week.

2. Employees may be employed on a part time basis at level 2 and above, provided that, where an employee is in a recognised training programme approved by the appropriate College for the purpose of obtaining a postgraduate qualification, the appointment of an employee(s) on a part time basis shall be subject to the College's training requirements.

3. A part time employee's minimum weekly hours shall be specified at the commencement of the employment and be worked in minimum continuous periods of three hours. An employee may work additional hours by agreement with the employer.

4. A part time employee shall, subject to Clause 29—Shift, Weekend and Public Holiday Penalties, be paid 1/40th of the rate for their classification for each ordinary hour worked. Clause 16—Payment for Overtime shall apply where the employee works in excess of 80 hours in a pay period.

5. a. A part time employee shall be entitled to pro rata annual, sick and long service leave entitlements in the same ratio as the employee's ordinary hours bear to 40.

b. If during a qualifying period the ordinary hours of a part time employee vary, the ordinary hours worked shall be averaged over the qualifying period.

c. A part time employee shall be entitled to be paid public holidays in accordance with Clause 32—Public Holidays of this Agreement provided the public holiday occurs on a day on which the employee is normally rostered to work. Where a part time employee is required to work on a public holiday the provisions of Clause 29—Shift, Weekend and Public Holiday Penalties shall apply.

6. The employer shall advise the Executive Director of the Association by 1st February each year of the number of part time positions.

11.—CASUAL EMPLOYEES

1. Casual employees may be employed for minimum periods of three hours.

2. Casual employees will not be employed at Level 1 and shall not normally be employed at Levels 2 or 3.

3. Casual employees shall be paid 1/40th of the rate for their classification for each hour worked, plus an additional 20% loading.

4. A casual employee shall not be entitled to receive leave entitlements.

5. The contract of employment of a casual employee may be terminated by either party giving three hours notice or payment or forfeiture, as the case may be, of three hours salary in lieu thereof.

6. The employer shall advise the Association by 1 February each year the number of casual employees employed during the preceding calender year.

12.—SALARIES

1. Salaries or salary ranges applicable to employees covered by this Agreement calculated on the basis of a forty hour week shall be those prescribed in Schedule A, provided that—

a. The salary of an Intern shall be at Level 1.

b. The salary of a Resident Medical Officer shall be within the range of Levels 2 to 4 inclusive, based on years of relevant experience after graduation. Level 4 shall apply to 4th and subsequent years of experience after graduation.

c. The salary of a Registrar shall be within the range of Levels 5 to 8 inclusive based on years of relevant experience in that capacity.

d. The salary of a Senior Registrar shall be within the range of Levels 9 to 10, based on years of relevant experience in that capacity and shall proceed to levels 11 and 12 if not appointed to a consultant position.

e. The salary of a trainee psychiatrist shall substantively be within the range of levels 5 to 10 inclusive based on years of relevant experience in that capacity with level 10 available only to those undertaking their elective year. However, in recognition of the shortage of trainee psychiatrists, the range payable will be increased by 2 increments to 7 to 12 inclusive as an attraction and retention strategy. Level 12 shall only be available to those undertaking their elective year.

The salary of a trainee psychiatrist who commences employment on or after 1 January 2001 shall, unless the Association and the employer(s) who shall commence a review in January 2000 agree otherwise, be employed within the range of levels 5-10 inclusive with Level 10 only being available to those undertaking their elective year.

f. The salary of a trainee medical administrator or a trainee public health physician shall be within the range of levels 6 to 9 inclusive based on years of relevant experience in that capacity.

g. The salary of a Supervised Medical Officer shall be within the range of levels 5 to 12 inclusive, based on years of relevant experience in that capacity.

h. Subject to the provisions of this Agreement, a medical officer shall be employed in accordance with the level of work performed.

2. Subject to good conduct, satisfactory performance, diligence and efficiency, an employee shall proceed from their point of entry into the salary range to the maximum of the range for the particular class of employment according to the increments in their salary range.

3. Salaries shall be paid fortnightly.

4. Contract completion payment.

An employee who completes his/her fixed term contract shall be paid an additional 2% of his/her cumulative base annual salary prescribed in Schedule A over the life of the individual contract provided that—

a. If applicable the employee completes outstanding discharge summaries to the satisfaction of the Head of Department.

b. The payment shall not be calculated on salary earned by the employee prior to entering into this Agreement.

c. In the event that employees other than Supervised Medical Officers are to be employed for more than 52 weeks at a time, the employer(s) and the Association shall review the timing of this payment.

13.—HIGHER QUALIFICATIONS

1. An employee, other than a senior registrar, who has obtained an appropriate specialist qualification (acceptable to the National Specialist Qualification Advisory Committee of Australia established under the *Health Insurance Act 1973*) shall be paid an allowance of $1214.40 per annum (as at the commencement of this Agreement).

2. The above allowance shall be adjusted at the same time and by the same proportion as any adjustment to the minimum weekly salary rate prescribed from time to time for an employee Level 8.

14.—HOURS OF DUTY

1. An employee's ordinary hours of duty shall consist of 40 hours per week to be rostered in accordance with the provisions of Clause 15—Rosters.

2. Employees' hours of duty shall be worked so as to provide the following time off duty—

a. Eight days free from ordinary hours of duty in each 28 day cycle.

b. Where practicable, at least two consecutive days off duty shall be granted and shall not be preceded by a night shift unless the medical officer is rostered to work on evening or night shift immediately following rostered days off.

c. Twelve evenings off, Monday to Friday inclusive between the hours of 6.00 pm and 8.00 am, in each 28 day cycle, provided that, by agreement between the Association and the employer, designated positions shall be exempted from the provisions of this subclause.

3. a. Where an employee is required to resume duty before having had eight consecutive hours off duty the subsequent hours worked until released from duty for eight consecutive hours, shall be deemed overtime and paid for in accordance with Clause 16—Payment for Overtime. An employee released from duty shall be entitled to be absent for eight consecutive hours without loss of pay for ordinary working hours occurring during such absence.

b. Where necessary, employers may require employees to work during their time off periods provided the rostered hours of work of any employee shall not exceed 75 hours in any period of seven consecutive days nor more than 140 hours in any 14 days or 280 hours in any period of 28 consecutive days.

4. a. Employees shall not be rostered to work more than four consecutive nights. Provided that an employee may be rostered to work a maximum of five consecutive nights where the total number of rostered hours does not exceed 50.

b. Employees shall not be rostered for duty for more than 18 consecutive hours except by agreement between the employer and employee. Where an employee works beyond 18 consecutive hours, the additional hours shall be deemed overtime and paid for in accordance with Clause 16—Payment for Overtime.

c. Employees shall be rostered for duty for minimum periods of three hours.

5. Meal breaks shall be a minimum of 30 minutes and shall not be counted as time worked, provided that where an employee is held on call within the hospital, the period on call shall be counted as part of the employee's ordinary working hours.

6. An employee shall not be compelled to work for more than five hours without a break for a meal, provided that an employee who commences work at or before 7.00 am may be required to work for six hours before having a meal break. Provided further that where rostered duty exceeds nine consecutive hours, an additional meal break shall be provided at the completion of each further period of five hours after the completion of the first meal break.

15.—ROSTERS

1. Employee's hours of duty shall be worked according to a roster or rosters which shall operate over either a 14 day or 28 day period and be exhibited at some reasonably convenient place accessible to the employees to whom it applies.

2. The roster or rosters shall set out the employees times of commencing and ending each period of duty for a period of not less than 14 consecutive days and such rosters shall be posted at least seven days in advance of their commencement of operation.

3. Except in cases of emergency or where the employee concerned so agrees, rosters shall not be amended during their currency. Provided, however, that by agreement amongst themselves and where appropriate clinically, employees may replace one another for periods of rostered duty provided that the

employees notify and receive approval from the appropriate Head of Department or nominee which shall not be unreasonably refused.

4. Rosters shall be drawn up so as to provide at least eight hours off between successive periods of duty and allow adequate time for rest and sleep.

5. Provided that—

a. The Employer and the employee may agree to a roster that does not conform with the provisions of this clause and Clause 14—Hours of Duty.

a. Special arrangements may be made by agreement between the employer and the employee should an officer need to remain on call or to work during off duty periods specified in the preceding subclauses in order to gain sufficient postgraduate medical training and experience to meet the requirements for a higher qualification.

16.—PAYMENT FOR OVERTIME

1. **Full Time Employees**

a. Time worked in excess of 160 hours in any four week cycle shall be paid at the rate of 150%.

b. Time worked in excess of 240 hours in any four week cycle shall be paid at the rate of 200%.

2. **Part Time Employees**

a. Time worked in excess of 80 hours in any two week pay period shall be paid at the rate of 150%.

b. Time worked in excess of 120 hours in any two week pay period shall be paid at the rate of 200%.

3. In lieu of payment for overtime an employee, on written request, may at the discretion of the employer, be allowed time off proportional to the payment to which the employee is entitled to be taken at a time convenient to the employer.

17.—PROTECTIVE CLOTHING

Protective clothing shall be supplied free of charge to each employee as required and shall be laundered at the expense of the employer. Any such clothing shall remain the property of the employer and must be returned at the completion of the employee's period of service.

18.—EXAMINATION LEAVE

1. Upon application employees shall be granted leave with pay in order to attend examinations within Australia and New Zealand for higher qualifications which have been approved by the employer.

2. Leave granted shall be such as to allow the employee to travel to and from the centre at which the examination is to be held by the fastest means possible. The employee will be free from duties on a working day for a study day, immediately preceding the examination.

3. Leave granted under this clause shall be in addition to the entitlement conferred by Clause 31—Annual Leave.

4. Where an employee has been granted leave under this clause, notification of the results of the examination shall be forwarded to the employer on receipt by the employee or as soon as practicable thereafter.

19.—STUDY/PROFESSIONAL DEVELOPMENT

1. Upon application an employee shall be entitled to take up to two weeks of his/her annual leave entitlement within one month of the date of the approved examination for which such employee is studying.

2. Applications for leave under this clause shall be made to the employer at least two months prior to the commencement of the leave and shall include evidence of registration for the examination.

3. Special leave with or without pay for additional study leave, conferences or other purposes, including interstate or overseas professional development, may be granted to junior medical officers for periods of up to twelve months or more at the discretion of the employer.

PART 3—SENIOR MEDICAL PRACTITIONERS

20.—CONTRACT OF SERVICE

1. All new appointments shall be—

a. on 5 year fixed term contracts (unless there is written agreement to the contrary between the employer and employee); or

b. for specific purposes approved by the Medical Advisory Committee or other appropriate committee.

2. a. Appointments shall be to a nominated hospital or health service.

b. An employee may be appointed to work at more than one hospital and/or health service.

c. An existing employee may only be—

i. appointed to work at another hospital or health service (whether in lieu of or in addition to his or her current appointment); or

ii relocated to another hospital or health service;

by agreement.

3. Appointments shall be made by the employer on the recommendation of the properly constituted appointments committee.

4. There shall be no automatic right of reappointment upon expiry of a contract.

5. Each employee shall be appointed subject to a probationary period of six months. During the probationary period either party may give four weeks notice or such lesser period as agreed between the employer and employee. The probationary period shall not apply where the employee is appointed for a consecutive term.

6. a. An employee who, upon expiry of a fixed term contract, is unsuccessful in seeking reappointment for reasons other than misconduct shall be paid 10% of the cumulative base salary prescribed in this Agreement for that employee over the life of the fixed term contract to a maximum of 5 years. No other termination, redundancy or severance payment shall be made except as provided for in this Agreement.

b. The payment prescribed in this subclause shall not apply to fixed term contracts entered into prior to 1 January 1996.

7. An employee with permanent tenure shall not be required to convert to a fixed term contract but may agree to do so. If unsuccessful in seeking reappointment at the end of that fixed term contract for reasons other than misconduct, he/she shall be paid pro rata long service leave after 5 years of continuous service in addition to the amount specified in subclause (6).

8. Subject to subclause (5) any contract of employment including a fixed term contract may be terminated by either the employer or the employee giving not less than 3 months' notice.

9. In lieu of the giving of the required notice the employer or the employee may pay or forfeit as the case may be salary commensurate with the residual period of notice otherwise required. Provided that the employer and the employee may agree to a lesser period of notice.

10. Notwithstanding the other provisions of this clause, the employer may, without prior notice, dismiss an employee for refusal or neglect to obey lawful orders or for serious misconduct.

11. An employee who is dismissed may appeal to a Board of Reference provided that the application is made within one month of the operative date of the dismissal.

12. An employee whose contract of employment expires or is terminated shall be paid all monies due to such employee on the last day of service, except where unusual circumstances prevent this in which case payment shall be made as soon as possible thereafter but in any case not more than three working days thereafter.

21.—HOURS

1. Hours of work for full time employees are to be consistent with professional practice and shall be determined in consultation between the employer and employee.

2. Solely for administrative purposes, when calculating entitlements under this Agreement, a full time employee's hours of work will nominally be 37.5 per week.

22.—SESSIONAL EMPLOYEES

1. A session is a notional half day of approximately three and a half hours spent by the employee in attending public inpatients and outpatients and in teaching, research and other

duties required by the employer. A session can be a continuous working period or be made up of any combinations of part sessions.

2. Sessions shall usually be worked on Monday to Friday between 8.00am and 6.00pm provided that, subject to the convenience of the employee and with the approval of the employer, a session or part of a session may be worked outside those hours without shift or weekend penalties applying. However, where a sessional employee agrees to the employer's request to work sessions outside of those specified in this sub clause, the shift or weekend penalties prescribed in Clause 29 shall apply.

3. Allocation of sessions shall be the responsibility of the employer after receiving appropriate clinical input.

4. Limit on Number of Sessions

a. An employee shall not be allocated more than 7 sessions per week. Provided that—

i. to meet short term exigencies within the hospital, the employer may approve additional sessions for an employee for a period not exceeding 3 months;

ii. an employee may be allocated extra sessions or extended sessions where operational efficiencies can be achieved and where the total number of sessions in any year does not exceed an average of 7 sessions per week.

b. Where the employee is employed at more than one hospital covered by this Agreement, the aggregate of the sessions allocated in all hospitals shall be limited by the provisions of this subclause.

5. Sessional Rate

A sessional employee (other than a Radiologist employed in a tertiary hospital) shall, subject to clause 29, be paid at the sessional rate prescribed in Schedule D.

6. Private Practice Loading

a. Where a sessional employee has demonstrated the incurrence of private practice costs outside the hospital, the employee shall be paid a 14% private practice loading (calculated on the sessional rate prescribed in Schedule D) on each session allocated up to and including 5 sessions. The employee must demonstrate the incurrence of private practice costs annually.

b. Where a sessional employee works more than 5 sessions in a week the private practice loading for the 6th session shall be 10%, and for the 7th session shall be 5%. No private practice loading is payable for sessions worked in excess of 7 per week.

c. No private practice loading is payable for sessions which attract any shift or weekend penalty payment specified in this Agreement.

7. On Call and Call Back

A sessional employee rostered on call for a specified period outside the employee's agreed hours, or called back to work to provide a service other than to a private patient, shall be paid in accordance with Clause 30 of this Agreement.

8. Leave Entitlements

a. A sessional employee shall be entitled to pro rata annual, sick and long service leave entitlements in the same ratio as the number of sessions allocated bears to 10. Where during any qualifying period the number of sessions allocated to a sessional employee varies, the number shall be averaged over the qualifying period.

b. A sessional employee shall be entitled to paid public holidays in accordance with Clause 32 of this Agreement provided the public holidays occur on a day on which a session is normally worked. Where a sessional employee is required to work on a public holiday the provisions of Clause 29(4) shall apply

c. Professional Development Leave

A sessional employee shall be entitled to a maximum of 2 weeks professional development leave per annum subject to the following conditions—

(i) The employee must submit a written application;

(ii) Approval of the application shall rest solely with the person specifically delegated the authority by the hospital or health service concerned;

(iii) Applications must provide a minimum of 6 weeks' notice. The notice period may be varied by agreement.

(iv) The proposed conference, training or course of study must be relevant to the employee's role or specialty and be of direct benefit to the hospital or health service concerned;

(v) The leave must be taken at a time convenient to the hospital or health service and the application must ensure that work (including on call cover) will be covered at no additional cost to the hospital or health service (including no additional clinical, nursing, clerical or support labour costs). Arrangements for cover are to be submitted with the application;

(vi) Cover must be from "in house" and no additional or replacement medical staff will be recruited;

(vii) Applications for professional development leave will not be granted where to do so would result in a reduction in activity;

(viii) Not more than 50% of the medical staff of any specialty or department are to be absent at one time (special arrangements may be agreed to for single service departments);

(ix) Employees taking professional development leave must prepare a written report for their peers and hospital or health service;

(x) Preference will be given to employees presenting a paper or poster;

(xi) Employees will only be paid while on professional development leave for allocated sessions missed as a result of taking the leave;

(xii) The maximum number of absences on professional development leave in any two year period shall be 4;

(xiii) Professional development leave will not be granted where the applicant has more than 8 weeks' accrued annual leave;

(xiv) Professional development leave shall not accumulate from year to year and may not be cashed out;

(xv) No travel, accommodation or registration costs will be met by the hospital or health service;

(xvi) The Association agrees not to claim for travel, accommodation or registration costs in the next round of enterprise/workplace bargaining;

(xvii) Sessional employees shall not otherwise be entitled to conference or overseas study leave;

(xviii) Sessional employees shall not be entitled to special leave for conferences or education or professional development purposes. This shall not preclude hospital initiated programs.

(xix) The continuation of professional development leave shall be subject to a satisfactory review by both parties at the expiry of this Agreement.

9. Sessional Radiologists

a. Radiologists appointed on a sessional basis by tertiary hospitals in accordance with the provisions of the Agreement will undertake all radiological services to patients referred to them in tertiary hospitals.

b. For the purpose of this subclause a radiological service is a radiological service as described in the Schedule to the *Health Insurance Act 1973* (Cwth).

c. The number of sessions for service radiology in each tertiary hospital shall be based on the number of radiological services performed in the previous year ending June 30 divided by one thousand.

d. Each radiologist shall be paid at the sessional rate prescribed in Schedule D for 50% of the number of

sessions for which the individual radiologist is appointed. The sessional payment shall be made in accordance with the provisions of this clause and shall be paid to each radiologist in post in each hospital by the employer.

e. The Head of the Department of Radiology will be paid a management fee equivalent to two additional sessions every week, and the Deputy Head of the Department, where appointed, will be paid a fee equivalent to one additional session every week provided that the total number of sessions for which payment is made shall not exceed ten sessions every week. This allowance may be reduced by agreement between the WA branch of the Australian Medical Association Inc and the employer.

f. To avoid doubt, the provisions of this clause, except subclause (5), shall apply to sessional radiologists.

g. Notwithstanding the provisions of this subclause, where the employer and Association agree in writing, other arrangements may be made for compensation for radiological services.

10. Superannuation

a. In the case of sessional employees employed prior to the date of this Agreement, the employer shall contribute, in respect of each session, the equivalent of 10% of the sessional rate prescribed in Schedule D into a fund nominated by the employee which complies with the *Superannuation Guarantee (Administration) Act* 1992 (Cth) as amended. Provided that the contribution shall not be payable where the employee is a contributing member to the State Government Superannuation Scheme.

b. Superannuation entitlements for sessional employees employed on or after the date of this Agreement shall be governed by the *Government Employees Superannuation Act* 1987 (WA).

23.—PART TIME EMPLOYEES

1. Part time employees may be engaged to work 30 hours per week.

2. A part time employee shall, unless otherwise indicated, receive on a pro rata basis equivalent pay and conditions to those of an equivalent full time employee.

24.—SALARIES

1. The salary range for a full time employee is prescribed in—

a. Schedule B if employed under Arrangement A;

b. Schedule C if employed under Arrangement B;

c. Schedule C if granted "alternative" rights of private practice (as defined) or no rights of private practice.

2. Sessional rates are prescribed in Schedule D.

3. Salary/payment levels apply as follows—

	Levels
a. Health Service Medical Practitioner	13-15 inclusive
b. Vocationally Registered General Practitioner	13-17 inclusive
c. Non Specialist Qualified Medical Administrator	13-17 inclusive
d. Senior Medical Practitioner	15-17 inclusive
e. Consultants	15-23 inclusive

4. a. A current employee on entering into this Agreement shall be placed at the point within the relevant salary range at which he or she was employed immediately prior to entering into this Agreement;

b. New employees shall be placed within the relevant salary range according to years of relevant experience;

c. Each employee shall then progress through the salary range by annual increments on their anniversary date subject to satisfactory performance.

5. a. A Consultant shall be appointed at a salary within the range of levels 15-23 inclusive on the basis of years of experience gained in a recognised specialist appointment in Western Australia or in a specialist appointment elsewhere which is recognised by the employer.

b. A Vocationally Registered General Practitioner who ceases to maintain Vocationally Registered Status under the *Health Insurance Act 1973* shall thereafter be classified as a Health Service Medical Practitioner or Senior Medical Practitioner as appropriate.

6. Level 23

a. A medical practitioner shall not be appointed at or proceed by incremental progression to salary level 23 unless the medical practitioner has at least 13 years of experience gained in a recognised specialist appointment in Western Australia or in a relevant specialist appointment elsewhere which is recognised by the employer.

b. Payment of salary level 23 is subject to annual review and shall be discontinued by the employer if professional standards are not maintained in accordance with medical college requirements or the performance of the medical practitioner is not maintained to the standard required at this level.

7. Head of Department Allowance

a. An employee, other than a sessional Radiologist paid in accordance with Clause 22(9), appointed as a Head of Department in a hospital, shall be paid the following allowance—

No. of FTEs Under Direct Supervision and control	fpp date of registration $ per annum	fpp 1 January 2000 $ per annum
0- 4	nil	nil
5- 9	3,105	3,214
10-20	6,210	6,427
Over 20	10,350	10,712

or an amount agreed in writing between the employer and employee. The allowance is to be paid for administrative work performed in addition to the employee's clinical caseload and teaching and/or research responsibilities.

b. For the purpose of this subclause, "staff under direct supervision and control" shall mean—

i. immediate secretary reporting directly to, and performance managed by, the Head of Department;

ii. medical staff reporting to, and performance managed by, the Head of Department;

iii. chief technical staff under the direct control and supervision of, and performance managed by, the Head of Department.

c. The Head of Department shall be required to manage his or her Department's leave entitlements as a condition of receiving the allowance.

8. Salaries shall be paid fortnightly.

25.—PRIVATE PRACTICE

1. "Private Practice" means those services provided in or using the hospital's facilities and for which fees are charged by or on behalf of the employee.

2. Subject to this clause, the employer may grant and/or continue to allow rights of private practice to—

a. Consultants;

b. Other employees granted rights of private practice prior to the date of this agreement for the duration of their current contract.

An appointment to the position of Consultant shall normally include the right of private practice.

3. In exceptional circumstances, the employer may grant rights of private practice to any employee not granted rights of private practice in accordance with subclause (2).

[*Full or part time employees granted rights of private practice under this subclause shall be regarded as having "alternative" rights of private practice. See paras. 25(7)(b) and 8(d)*].

4. The employer may at any time grant, refuse to grant or withdraw any right of private practice.

5. A disagreement relating to the employer's decision to refuse to grant or withdraw the right of private practice may be referred to a Board of Reference.

6. a The right of private practice shall be exercised to the fullest extent available.

b. Private practice within the hospital must not interfere with the employee's responsibility to carry out all the necessary duties of the employee's appointment, shall not give rise to a conflict of interest and shall be relevant to the employee's specialty.

7. Full & Part Time Employees

a. Full and part time employees, who are granted the right of private practice in accordance with subclause (2), may elect annually whether to be employed under Arrangement A or B, as set out in Clauses 26 and 27. An election, once made, shall remain in force for 12 months.

b. Full or part time employees who are granted "alternative" rights of private practice under subclause (3) or who are not granted any rights of private practice shall be paid under Schedule C but shall not receive any of the benefits prescribed in Clause 28. Nor shall Clause 27 apply to those employees.

8. Use of Hospital Facilities

a. The Minister for Health may from time to time determine the terms and conditions, including the payment of charges, on which hospital facilities may be made available. It is a condition of the right of private practice that employees comply with any such terms and conditions.

b. As at the date of this Agreement, the Minister has determined that employees granted rights of private practice, except employees under Arrangement A, shall be required to contribute a percentage of nett earnings from private practice within the hospital for the use of hospital facilities as follows:

Pathology	50%
Nuclear Medicine	50%
Ultrasound	50% except if done in a Radiology Department
Pulmonary Physiology	50%
EEG	50%
Audiology	50%
EMG	50%
ECG	50%

c. Payment of facility charges shall, at the direction of the hospital, be made either to the hospital or an approved trust fund.

d. Requirement to Provide Statement

Sessional employees granted rights of private practice and employees granted rights of private practice under subclause (3) shall provide to the hospital within three months after June 30 each year a statement prepared and certified by a certified practising accountant of all services in respect of which a payment for use of hospital facilities is due to the hospital in accordance with this subclause. The statement shall be in the following form and shall be accompanied by a cheque for the amount payable to the hospital—

(i) Total amount of all such accounts rendered during the year $___

(ii) Total amount of all such accounts collected $___

(iii) Total amount due to the hospital in accordance with subclause 25(8) $___

Provided that where the employer and employee agree, payment of facility charges may be made on a quarterly basis in which case uncertified statements in the above form shall be provided. Any end of year adjustment shall be made by payment accompanying the certified annual statement.

9. Fees shall only be raised for services rendered personally or personally supervised by the employee and for all laboratory services. Accounts will be submitted on account forms which show the name of the employee providing the service. Where a hospital acts as agent for an employee in laboratory service, the hospital shall ensure that no account may be rendered to a patient which could place the employee in breach of the undertaking they have given in terms of the *Health Insurance Act 1973* (Cwth).

The employee shall assess the fee to be charged. Where the fee will exceed the Commonwealth Medicare Benefits Schedule fee, the employee shall inform the patient of the fee and shall on request provide the hospital with a certificate indicating that the patient has been informed.

10. The hospital shall provide to the employee a copy of the Patient Election form for those private patients admitted under the care of the employee.

11. Notwithstanding the provisions of this Agreement, where the employer and Association agree in writing, other arrangements may be made governing the exercise of rights of private practice.

26.—ARRANGEMENT A (FULL OR PART TIME ONLY)

A full or part time employee, on electing Arrangement A, shall give the hospital written authority to render accounts in the employee's name on private patients seen in the course of duty. The employee shall assess the fee to be charged and must notify the hospital on each occasion that a private patient is seen so that the hospital can render an account.

27.—ARRANGEMENT B (FULL OR PART TIME ONLY)

1. A full or part time employee shall upon electing and commencing under Arrangement B render accounts directly to private patients within the hospital or to insurers if eligible under Workers Compensation or MVIT.

2. Definitions

a. "Salary" for the purpose of this clause means the employee's annual salary as prescribed in this Agreement including, where applicable, any prescribed Head of Department allowance.

b. "Nett earnings" for the purpose of this clause means the total amount received by the employee from private practice within the hospital after the employee deducts an allowance of 17½% of private practice receipts for administration costs and the employee's medical defence premium for the financial year in question. In the case of part time employees only 80% of the cost of medical defence insurance premiums is allowable.

3. Distribution of Nett Earnings after Deduction of Facility Charges

a. An employee under this arrangement may, after the deduction of facility charges, retain from nett earnings from private practice within the hospital up to an amount equal to 25% of the employee's salary.

b. In the case of employees, who are not Pathologists, or Nuclear Physicians, fees received from private practice within the hospital, in excess of the amount authorised under paragraph (a), shall be distributed as follows—

i. 50% to an approved Trust Fund for hospital/departmental purposes;

ii. the remainder to be retained by the employee.

c. In the case of Pathologists and Nuclear Physicians, fees received from private practice within the hospital, in excess of the amount authorised under paragraph (a), shall be distributed as follows—

i. 65% to approved Trust Fund for hospital/departmental purposes; and,

ii. the remainder equally among the Pathologists and Nuclear Physicians.

d. Notwithstanding paragraph (c) the employer may, by agreement with the Pathologists or Nuclear Physicians, make other arrangements for the distribution of funds received from private practice in excess of the amount authorised under paragraph (a).

4. Statement of Earnings to be Provided

a. The employee shall provide to the hospital within 3 months after June 30 each year a statement prepared and certified by a certified practising accountant in the following form together with cheques for the amounts to be paid to the hospital and into the Trust Fund respectively—

(i) Total amount of accounts rendered during the year $___

(ii) Total amount of accounts collected $___

(iii) Less— $___

(A) 17½% for administration and collection costs

(B) Medical defence premium for the year in question in accordance with subcl 27(2)(b).

(iv) NETT amount for distribution in the following order— $___

(A) To the hospital—payment for the use of hospital facilities in accordance with subcl. 25(8) $___
Balance

(B) To the employee being up to an amount equal to 25% of the employee's salary $___

(C) To approved Trust Fund for hospital/ departmental purposes in accordance with subcl 27(3)(b) or (c) $___
Balance

(D) To the employee in accordance with subcl 27(3)(b) or (c) $___
Balance

b. The employee shall include the following certification at the end of the statement—

"I certify that all monies due to the hospital have been accounted for."

..... Signature

..... Date

c. Provided that where the employer and employee agree, the amount payable to an approved Trust Fund for hospital/departmental and the Trust Fund purposes may be paid on a quarterly basis in which case uncertified quarterly statements in the above general form shall be provided. Any end-of-year adjustment shall be made by payment accompanying the certified annual statement.

d. An employee who does not comply with the provisions of this subclause may have the right to render accounts directly to private patients withdrawn and the employer may direct that the hospital shall act as the agent in the rendering of accounts (in which case the provisions of subclause (5) shall apply).

5. a. An employee may ask the hospital to act as agent in rendering accounts to private patients after the employee has assessed the fee for services.

In so doing, the hospital shall provide the employee within 3 months after June 30 each year a statement in the following form together with a cheque for the amount payable to the employee—

(i) Total amount of accounts rendered during the year $___

(ii) Total amount of accounts collected $___

(iii) Less 17½% for administration and collection costs $___

(iv) NETT amount for distribution in the following order— $___

(A) To the hospital—payment for the use of hospital facilities in accordance with subcl. 25(8) $___
Balance

(B) To the employee being up to an amount equal to 25% of the employee's salary $___

(C) To approved Trust Fund for hospital/ departmental purposes in accordance with subcl 27(3)(b) or (c) $___
Balance

(D) To the employee in accordance with subcl 27(3)(b) or (c) $___
Balance

6. a. Where individual or agreed group contributions are insufficient to permit drawings of 16% of the employee's salary, payment shall be made up to 16% of the salary from the monies which would otherwise have been appropriated as facility charges.

In such circumstances payment to the 16% of salary level shall be made once each year (for the financial year ended June 30) following receipt of a certified statement from the employee to the hospital in accordance with subclause (4).

b. Where individual or agreed group contributions are sufficient to permit drawings of 16% but less than 25% of the employee's salary, payment shall be made up to 25% of salary from the monies which would otherwise have been appropriated as facility charges.

In such circumstances payment to the 25% of salary level shall be made once each year for the year ended June 30 following receipt of a certified statement from the employee to the hospital in accordance with subclause (4).

c. Provided that in no case shall the employer be liable to pay, in respect of any hospital, more than the total amount which that hospital received in that financial year as facility charges.

7. Amounts paid to employees under this Arrangement shall not be regarded as salary for the purpose of calculating superannuation entitlement nor for the purpose of any other entitlement under this Agreement.

28.—CONFERENCE AND OVERSEAS STUDY LEAVE

1. This clause shall only apply to full or part time employees granted rights of private practice under subclause 25(2) of this Agreement. It shall not apply to sessional employees.

2. Conference Leave

a. A full time or part time employee shall be entitled to a maximum of two weeks' paid conference leave during each year of continuous service.

b. Leave shall not accumulate for more than two years. Where the whole or part of such leave is not taken the entitlement to untaken leave shall lapse.

c. (i) A full time employee employed under Arrangement A shall be paid a conference registration, travel and accommodation allowance of $3105 per annum (paid at the rate of $119 per fortnight) for conference leave and professional development purposes. The allowance shall increase to $3213.70 per annum (paid at the rate of $123.20 per fortnight) from the first pay period commencing on or after 1 January 2000.

(ii) A part time employee shall be paid an allowance of $2484 per annum (paid at the rate of $95.20 per fortnight). The allowance shall increase to $2570.90 per annum (paid at the rate of $98.60 per fortnight) from the first pay period commencing on or after 1 January 2000.

d. A full or part time employee employed under Arrangement B shall be paid, in respect of each period of conference leave, reasonable travel and accommodation expenses in accordance with paragraph 3(d) and subclause (4) of this clause.

3. Overseas Study Leave

a. A full or part time employee shall be entitled to five weeks paid leave after each five years' continuous service for the purpose of overseas training, education and study.

b. The taking of overseas study leave may be deferred by mutual agreement, provided that no employee shall be allowed to take accumulated leave in excess of 10 weeks in any one period.

c. Overseas study leave may be taken wholly or partly within Australia by agreement between the employer and employee.

d. An employee may apply to take overseas study leave in advance. If the services of an employee who has been granted such leave in advance are terminated before the end of the qualifying period the employee shall be liable to repay the funding source the whole amount received provided that the funding source retains the discretion to waive all or part of the amount repayable. The employer may deduct the amount determined by the funding source as repayable and repay the funding source from money due to the medical practitioner by reason of the other provisions of this Agreement at the time of termination.

e. A full time employee shall be paid in respect of each period of overseas study leave:

(i) the actual cost of air fares up to a maximum of Business Class rates; provided that a maximum of two air fares shall be paid in respect of each completed five years' continuous service where overseas study leave is taken in broken periods with hospital permission; and

(ii) a travelling allowance as follows—

- either $177 per day; or
- the actual cost of reasonable accommodation and expenses upon production of receipts; or
- an alternative system of payment agreed between the employer, employee and, where relevant, trustee.

A part time employee shall be paid the amount specified in paragraph (i) and 80% of the amount specified in paragraph (ii).

4. Fares and expenses associated with leave under this clause shall be paid by the employer in the case of employees under Arrangement A and the Trust Fund in the case of employees under Arrangement B. Payment in the case of employees under Arrangement B shall be made at the sole discretion of the trustees of the Trust Fund. The employer shall in no way be liable for payment of fares and expenses for employees under Arrangement B.

5. Employees must give a minimum of 4 weeks notice when applying for conference leave, and 3 months notice when applying for overseas study leave, under this clause. The period of notice may be shortened by agreement between the employer and employee. The leave is to be taken at a mutually convenient time provided that the employer shall not unreasonably refuse an application for leave that has been properly made.

6. The granting of conference and/or overseas study leave is conditional on the leave being used for professional development and the hospital being satisfied that the proposed conference or course of study is relevant to, and will benefit, the hospital. The hospital may stipulate certain reasonable outcomes such as reports, information sharing etc which may be required from the employee upon return from such leave.

7. Subject to this clause conference and overseas study leave benefits are not available as monetary payments in lieu.

PART 4—GENERAL PROVISIONS

29.—SHIFT, WEEKEND AND PUBLIC HOLIDAY PENALTIES

1. Where there is a demonstrated clinical need determined by the Medical Superintendent or appointed Senior Medical Practitioner in consultation with the Head of Department (or where there is no Head of Department, with the Chairman of the Medical Advisory Committee) the employer may require an employee to work shiftwork.

2. Time worked before 6.00am or after 6.00pm on any weekday shall be paid at the rate of 115%.

3. Time worked on a Saturday or Sunday shall be paid at the rate of 150%.

4. Work performed on a public holiday shall be paid at—

a. the rate of 250%;

b. if the employer and employee agree, the rate of 150% and in addition the employee shall be allowed to observe the holiday on a day acceptable to the employer and the employee, provided that no more than five days may be accumulated at any one time.

30.—ON CALL AND CALL BACK

1. **On Call**

a. For the purposes of this Agreement an employee is on call when the employee is directed by the employer to remain readily contactable and available to return to work outside of the employee's normal hours of duty.

b. Employees shall be rostered on call in accordance with clinical need by the Medical Superintendent or appointed Senior Medical Practitioner in consultation with the Head of the Department or where there is no Head of Department, the Chairman of the Medical Advisory Committee.

c. (i) A medical officer rostered on call shall be paid an hourly allowance of $4.15. This allowance shall be increased to $4.28 from the first pay period commencing on or after 1 January 2000.

(ii) A medical practitioner employed at or above level 13 (whether full time, part time or sessional) rostered on call shall be paid an hourly allowance of $8.08. This allowance shall be increased to $8.37 from the first pay period commencing on or after 1 January 2000.

(iii) Provided that payment in accordance with this paragraph shall not be made with respect to any period for which payment is otherwise made in accordance with the provisions of this clause when the employee is recalled to work.

d. Annualised payments.

(i) Where an agreement between the employer and all employees concerned in a Department is reached, the relevant on call payment may be annualised and paid fortnightly. There must be no additional cost to the employer as a result.

(ii) The employer (or Department) or employees may, by giving four weeks written notice, withdraw from such an annualised payment system.

2. **Call Back**

a. An employee recalled to work shall be paid a minimum of two hours for a call back as follows—

(i) for work on any day between 6.00am and midnight at the rate of 150%;

(ii) for work on any day between midnight and 6.00am at the rate of 200%.

b. The employee shall not be obliged to work for two hours if the work for which the employee was recalled is completed in less time, provided that if the employee is called out within two hours of starting work on a previous recall the employee shall not be entitled to any further payment for the time worked within that period of two hours.

c. If the call back period exceeds two hours, the employee shall be paid at the rate of 150% for the first additional hour and 200% thereafter. Provided that any time worked during the call back period between midnight and 6.00am on any day shall be paid at the rate of 200%.

d. Sessional Employees

Provided that payments to a sessional employee under this subclause shall be calculated on the salary

prescribed for an equivalent full or part time employee.

e. Where an employee is recalled to work, payment for the call back shall commence from—

(i) In the case of a employee who is on call, from the time the employee starts work;

(ii) In the case of an employee who is not on call, the time the employee embarks on the journey to attend the call. Provided that where a employee is recalled within two hours prior to commencing normal duty, any time spent in travelling to work shall not be included with actual duty performed for the purpose of determining payment under this paragraph.

Subject to the minimum two hour payment, payment for the call back shall cease when the work is completed or when the employee commences normal duty, whichever occurs first.

f. An employee who is required to use the employee's motor vehicle when recalled to work shall be reimbursed all expenses incurred in accordance with the provisions of Schedule E of this Agreement.

3. Notwithstanding the provisions of this clause, where an employer and the Association agree, other arrangements may be made for compensation of on call and call back.

31.—ANNUAL LEAVE

1. Except as provided in subclause (2), employees shall be entitled to four weeks' annual leave on full pay after 52 weeks' continuous service. The entitlement accrues pro rata on a weekly basis.

2. Employees who are rostered to work their ordinary hours on Sundays and/or public holidays during a qualifying period of employment for annual leave shall be entitled to receive additional annual leave as follows—

a. If 35 ordinary shifts on such days have been worked—one week

b. If less than 35 ordinary shifts on such days have been worked the employee shall be entitled to have one additional day's leave for each seven ordinary shifts so worked, provided that the maximum additional leave shall not exceed five working days.

3. An employee who during a qualifying period towards an entitlement of annual leave was employed on a part time or sessional basis may elect to take a lesser period of annual leave calculated by converting the part time or sessional service to equivalent full-time service.

4. The annual leave prescribed in this clause may be split into portions, and may be taken in periods of one day or less, by agreement between the employer and the employee.

5. Accrued annual leave may, by agreement between the employer and employee, be taken before the completion of 52 weeks' continuous service.

6. Annual leave may also, by agreement between the employer and employee, be taken in advance of it having accrued. Provided that in such a case the advance payment shall be offset against any future leave accrual or against monies otherwise payable to the employee on termination. No refund is required in the event of the death of the employee.

7. All annual leave taken shall be at the rate of salary applicable at the time of taking such leave.

8. When the convenience of the hospital is served the employer may approve the deferment of the commencing date for taking annual leave, but such approval shall only remain in force for one year. The employer may renew the approval for a further period of a year or further periods of a year. If, as a result, the employee accumulates more than three years entitlement, the employer may impose conditions on the taking of the leave.

9. Notwithstanding the provisions of this clause, the employer may direct an employee to take accrued annual leave and may determine the date on which such leave shall commence.

10. Employees upon request shall receive their ordinary pay and any allowances due to them for the period of their annual leave prior to going on such annual leave.

11. a. If an employee lawfully leaves his or her employment, or that employment is terminated by the employer through no fault of the employee, before the employee has taken annual leave to which he or she is entitled, the employee is to be paid for the untaken leave.

b. If any employee leaves his or her employment, or that employment is terminated by the employer, in circumstances other than those referred to in paragraph a, before the employee has taken annual leave to which he or she is entitled, the employee is only to be paid for any untaken leave that relates to a completed year of service.

c. Payment in lieu of any untaken annual leave shall be made on the death of an employee.

12. Annual leave loading has been annualised into the base salary.

13. In the case of any medical practitioner transferring from one employer to another employer covered by this Agreement the annual leave entitlement may be transferred.

14. An employee who has accrued more than four weeks annual leave may by written agreement with the employer cash out some or all of the excess.

32.—PUBLIC HOLIDAYS

1. The following days shall be regarded as public holidays for the purpose of this Agreement and shall be granted to full time employees—

New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Anzac Day, Foundation Day, Sovereign's Birthday, Christmas Day, Boxing Day.

2. When a public holiday falls on a Saturday or Sunday the holiday shall be observed on the next succeeding Monday, provided that when Boxing Day falls on a Saturday, Sunday or Monday the holiday shall be observed on the next succeeding Tuesday.

3. When one or more public holidays fall during a period of annual leave the holiday or holidays shall be observed on the next succeeding work day or days as the case may be after completion of that annual leave.

4. When a public holiday falls on a day when an employee is rostered off duty and the employee has not been required to work on that day the employee shall be paid as if the day was an ordinary working day or if the employer agrees be allowed to take a day's holiday in lieu of the holiday at a time mutually acceptable to the employer and the employee

5. An employee who is required to be on call in accordance with the provisions of Clause 30—On Call and Call Back of this Agreement on a day observed as a public holiday during what would normally have been the employee's ordinary hours shall be allowed to observe that holiday on a day mutually acceptable to the hospital and the employee.

6. One additional day of paid leave shall be granted in 1999. The additional day may be taken at a time agreed between the employer and employee provided that the day is taken in 1999 and does not accrue. The additional day may be cashed in by agreement between the employer and employee.

33.—SICK LEAVE

1. An employee who is incapacitated for duty in consequence of illness or injury shall be entitled to be paid sick leave in accordance with the provisions of this clause.

2. A full time employee shall accrue an entitlement of 10 days paid sick leave per annum. A part time employee shall accrue a pro rata entitlement.

3. An employee in his/her first 12 months of service may take up to 10 days paid sick leave in advance of the entitlement having accrued. Sick leave taken in advance may be offset against any future accrual or against monies otherwise payable to the employee at the end of his/her employment.

4. The entitlement, to the extent that it is unused, shall accumulate from year to year and may be taken in any subsequent year.

5. An employee who is incapacitated for duty in consequence of illness or injury shall, as soon as possible, notify the employer of the fact and also advise the likely date of resuming duty.

6. No sick leave with pay exceeding two consecutive working days shall be granted without an adequate medical certificate or other evidence satisfactory to the employer. Provided that the number of days sick leave which may be granted without the production of a medical certificate shall not exceed, in the aggregate, five working days in any one calendar year

7. An employee who is unable to resume duty on the expiration of the period shown in the first certificate, shall produce a further certificate and shall continue to do so upon the expiration of the period respectively covered by such certificates.

8. Where an employee is ill during a period of annual leave and produces at the time, or as soon as practicable thereafter, medical evidence to the satisfaction of the employer that the employee is or was as a result of the illness confined to the employee's place of residence or a hospital for a period of at least seven consecutive calendar days, the employer may grant the employee sick leave for the period during which the employee was so confined and reinstate the employee annual leave equivalent to the period of confinement.

9. Where an employee is ill during the period of long service leave and produces at the time or as soon as practicable thereafter, medical evidence to the satisfaction of the employer that the employee is or was confined to the employee's place of residence or a hospital for a period of at least fourteen consecutive calendar days, the employer may grant sick leave for the period during which the employee was so confined and reinstate the employee long service leave equivalent to the period of confinement.

10. No leave on account of illness or injury shall be granted with pay if the illness or injury has been caused by misconduct of the employee or in any case of absence from duty without sufficient cause.

11. Where an employee suffers a disability within the meaning of s. 5 of *the Workers' Compensation and Rehabilitation Act 1981*, which necessitates that employee being absent from duty, sick leave with pay shall be granted to the extent of sick leave credits. In accordance with s. 80(2) of the *Workers' Compensation and Rehabilitation Act 1981* where the claim for workers' compensation is decided in favour of the employee, sick leave credit is to be reinstated and the period of absence shall be granted as sick leave without pay.

12. a. Where an employee resigns or is terminated by the employer through no fault of the employee and is engaged by another respondent to this Agreement within seven days of the expiration of any period for which payment in lieu of annual leave or public holidays has been made, the period of sick leave that has accrued to the employee's credit shall remain to such employee's credit and subclauses (2) and (3) shall continue to apply to such employee.

b. Where an employee was, immediately prior to being employed by the employer, employed by any other WA government employer, or by the Commonwealth or any other State of Australia, and the period between the date when the employee ceased previous employment and the date of the employee commencing employment with the employer does not exceed one week, or such further period as the employer determines, the employer may credit that employee additional sick leave credits up to those held at the date the employee ceased the previous employment.

13. A pregnant employee shall not be refused sick leave by reason only that the "illness or injury" encountered by the employee is associated with the pregnancy.

34.—LONG SERVICE LEAVE

1. Each employee shall be entitled to thirteen weeks long service leave at their ordinary rate of pay on the completion of each ten years of continuous service.

2. Notwithstanding the provisions of subclause (1) an employee who, during a qualifying period towards an entitlement of long service leave was employed on either a part time or sessional basis may elect to take a lesser period of long service leave calculated by converting the part time or sessional service to equivalent full-time service.

3. An employee shall take the long service leave to which an entitlement has accrued at the convenience of the employer.

4. Subject to the approval of the employer an employee shall take long service leave within three years of the leave becoming due. Provided that the employer may approve the deferment of taking long service leave beyond three years in "exceptional circumstances". "Exceptional circumstances" shall include retirement within five years of the date of entitlement.

Approval to defer the taking of long service leave may be withdrawn or varied at any time by the employer giving the employee notice in writing of the withdrawal or variation.

Employees having more than one entitlement to long service leave at 1 November 1997 shall be required to clear one full entitlement of long service leave by 1 November 2000 and a further full entitlement within each 3 years thereafter until the employee's entitlement to long service leave has been cleared.

5. Upon the application of an employee, the employer may approve the taking by the employee—

a. of double the period of long service leave entitlement on half pay instead of the period of long service leave entitlement on full pay; or

b. of any portion of long service leave entitlement on full pay or double the portion on half pay, provided that the minimum portion of long service leave entitlement taken shall be one complete month's entitlement or a multiple thereof.

6. Continuous service shall not include—

a. any period during which an employee is absent on a long service leave entitlement or any portion thereof;

b. any period exceeding two weeks during which the employee is absent on leave without pay, unless the employer determines otherwise;

c. any service by an employee who resigns, is dismissed or whose services are otherwise terminated other than service prior to such resignation, dismissal or termination when that prior service had actually entitled the employee to long service leave.

7. A lump sum payment for long service leave accrued in accordance with this clause and for pro-rata long service leave shall be made in the following cases—

a. As a retiring allowance, to an employee who retires at or over the age of fifty five years or who is retired on the grounds of ill health, provided that no payment shall be made for pro-rata long service leave unless the employee has completed twelve months' continuous service.

b. To an employee who, not having resigned, is retired for any other cause; provided that no payment shall be made for pro-rata long service leave unless the employee has completed three years' continuous service before the date of retirement.

c. To the estate of an employee in the event of death, unless the employee is survived by a spouse legally dependent on him/her or some other person legally so dependent who is approved by the employer for the purpose. Provided that no payment shall be made for pro-rata long service leave unless the employee had completed twelve months' continuous service prior to the date of death.

8. a. An employee may, prior to commencing long service leave, apply to change the commencement date and the employer may approve the change.

b. Subject to the provisions of subclause (6) the service of an employee shall not be deemed to have been broken if the employee's employment is ended by the employer for any reason other than misconduct or unsatisfactory service but only if—

(i) the employee resumes employment under this Agreement not later than six months from the day on which the employment ended; and

(ii) payment pursuant to subclause (7) of this clause has not been made.

9. a. Where an employee, immediately prior to being employed by the employer was employed by any other WA government employer or by the Commonwealth or any other State of Australia, and the period

between the date when that employee ceased the previous employment and the date of commencing employment with the new employer does not exceed one week, or such further period as the employer determines, that employee shall be entitled to thirteen weeks of long service leave on full pay on the date determined by—

(i) calculating the pro rata portion of long service leave to which the employee would have been entitled up to the date of appointment by the employer in accordance with the provisions that applied to the previous employment referred to, but in calculating that period of pro rata long service leave, any long service leave taken or any benefit granted in lieu of any such long service leave during that employment shall be deducted from any long service leave to which the employee may become entitled under this clause; and

(ii) by calculating the balance of the long service leave entitlement of the employee upon appointment by the employer in accordance with the provisions of subclause(1) of this clause.

b. In addition to any entitlement arising from the application of paragraph (a) of this subclause, an employee previously employed by any other WA government employer may, on approval of the employer be credited with any period of long service leave to which the employee became entitled during the former employment but had not taken at the date of appointment with the employer provided the former employer had given approval for the employee to accumulate the entitlement.

c. An employee previously employed by the Commonwealth or by any other State of Australia shall not proceed on any period of long service leave without the express approval of the employer until the employee has served a period of not less than three years' continuous service under this Agreement and becomes entitled to long service leave on full pay.

d. Nothing in this Agreement confers on any employee previously employed by the Commonwealth or by any other State of Australia any entitlement to a complete period of long service leave that accrued in the employee's favour prior to the date on which the employee commenced employment under this Agreement.

10. An employee who has elected to retire at or over the age of 55 years and who will complete not less than twelve months' continuous service before the date of retirement may apply to take pro rata long service leave before the date of retirement, based on continuous service of a lesser period than that prescribed by subclause (1) for a long service leave entitlement.

11. An employee may by written agreement with the employer cash out some or all of his/her long service leave entitlement.

35.—FAMILY LEAVE

1. An employee is entitled to paid family leave of up to two days in a calendar year to care for an ill family member provided the days used are sick leave entitlements accrued from the previous years of service and are not the employee's entitlements for the current year.

2. In this clause, "family member" means—

a. A spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee; or

b. A child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee; or

c. Any other person who lives with the employee as a member of the employee's family.

3. Family leave is not cumulative from year to year.

4. An absence on family leave must, if required by the employer, be supported by a certificate, dated at the time of the absence, from a registered medical practitioner, stating that the family member was ill.

36.—BEREAVEMENT LEAVE

1. An employee is entitled to paid bereavement leave for up to two days on the death of a family member (as defined in clause 35, subclause 2).

2. If required by the employer, bereavement leave must be supported by evidence that would satisfy a reasonable person as to—

a. the death that is the subject of the leave sought; and

b. the relationship of the employee to the deceased person.

37.—PARENTAL LEAVE

An employee shall be entitled to Parental Leave in accordance with Division 6—Parental Leave of the *Minimum Conditions of Employment Act 1993*.

38.—LEAVE FOR COLLEGE OFFICE BEARERS

National Office Bearers of Medical Colleges shall be allowed up to 5 days of paid leave each year to attend to functions required of their office. Provided that this shall, unless otherwise agreed between the employers and the Association, only apply to the offices of President, Vice President, Treasurer, Secretary for Colleges and Faculties which are formally recognised by the National Specialist Qualifications Advisory Committee of Australia.

39.—SPECIAL LEAVE

Special leave with or without pay for conferences and other purposes including study leave may be granted at the discretion of the employer.

Special leave shall not be available to sessional employees for conferences or education or professional development purposes. This shall not preclude employer initiated programs.

40.—HIGHER DUTIES

An employee who is directed by the employer to act in a position which carries a higher rate of pay than that which he or she usually performs, and who performs the full duties and accepts the full responsibility of the higher position for more than ten consecutive working days, shall be paid the higher rate whilst so engaged.

41.—TRAVEL ALLOWANCE

1. Reasonable costs of travel will be provided for calls to the hospital out of normal working hours.

2. An employee required by the employer to visit another centre in the course of official duties shall have reasonable costs of travel provided. This subclause shall not apply to travel between the employee's home and daily place of work.

42.—CALCULATION OF PENALTIES

Where an employee works hours which would entitle that employee to payment of more than one of the monetary penalties payable in accordance with the relevant overtime, public holidays, on call and call back or shift and weekend work provisions of this Agreement, only the highest of any such penalty shall be payable.

43.—MEAL ALLOWANCES

1. The employer shall supply a meal to any employee—

a. Whose rostered period of duty necessitates the employee taking a second or subsequent meal; or

b. Who is required to work overtime which necessitates the taking of a meal away from the employees usual place of residence.

2. Where the employer cannot supply a meal the employee shall be reimbursed for each meal purchased at the following rates—

Breakfast: $6.25 Lunch: $7.70 Evening: $9.25

Provided that these rates will be automatically adjusted in accordance with adjustments to the rates prescribed in Schedule H—Overtime of the Public Service Award 1992 as amended or its successor.

44.—CLAIMS FOR PAYMENT OF ENTITLEMENTS

Employees shall submit claims for payment of overtime, call backs or other entitlements for which they have not been formally rostered in the pay period within which the entitlement arose or in the following period.

45.—RECOVERY OF OVERPAYMENTS

1. Where an employee is paid for work not subsequently performed or is otherwise overpaid, the employer will, after consultation with the employee, make adjustments to the employee's subsequent fortnightly salary payments.

2. A one-off overpayment will be recovered in the pay period immediately following the pay period in which it was made, or in the period immediately following the pay period in which it was discovered that overpayment had occurred.

3. Cumulative overpayments will be recovered at a rate agreed between the employer and the employee, provided that the rate is not less than the rate at which it was overpaid or $50.00 per week, whichever is the lesser amount per pay period.

46.—CONFIDENTIALITY

A medical practitioner shall not be bound, without the patient's consent, to divulge any information which the medical practitioner has acquired in attending the patient to any person other than the Medical Superintendent, Deputy Medical Superintendent or senior medical staff of the hospital, the Health Department of Western Australia or the Commissioner of Health or Commissioner's delegate when the medical practitioner is seconded to a hospital for which the Commissioner or the Commissioner's delegate acts as Medical Superintendent.

47.—INTRODUCTION OF CHANGE

1. a. Where an employer has made a definite decision to introduce major changes in production, programme, organisation, structure or technology that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and the Association.

   b. "Significant effects" include termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of medical practitioners to other work or locations and restructuring of jobs.

   Provided that where the Agreement provides for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

2. a. The employer shall discuss with the employee affected and the Association, inter alia, the introduction of the changes referred to in subclause (1) hereof, the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effects of such changes on employees and shall give prompt consideration to matters raised by the employees and/or the Association in relation to the changes.

   b. The discussion shall commence as early as practicable after a firm decision has been made by the employer to make the changes referred to in subclause (1) hereof.

   c. For the purposes of such discussion, the employer shall provide to the employees concerned and the Association, all relevant information about the changes including the nature of the changes proposed; the expected effects of the changes on medical practitioners and any other matters likely to affect employees provided that the employer shall not be required to disclose confidential information the disclosure of which would be inimical to his/her interests.

48.—DISPUTE SETTLING PROCEDURES

1. Subject to Clause 3 No Further Claims, to the provisions of the *Industrial Relations Act, 1979* and Clause 47—Introduction of Change any questions, disputes or difficulties raised by a party to this Agreement, shall be settled in accordance with the following procedures.

2. Where the matter is raised by a employee, or a group of employees, the following steps shall be observed—

   a. The employee(s) concerned shall discuss the matter with the Head of Department. If the matter cannot be resolved at this level the Head of Department shall, within three working days, refer the matter to the Medical Superintendent and the employee(s) shall be advised accordingly.

   b. The Medical Superintendent shall, if so able, answer the matter raised within one week of it being referred and, if the Medical Superintendent is not able, refer the matter to the Hospital Executive for its attention, and the employee(s) shall be advised accordingly.

   c. If the matter has been referred in accordance with paragraph (b) above the employee(s) or the appropriate AMA hospital medical practitioner representative shall notify the Association, to enable the opportunity of discussing the matter with the employer.

   d. The employer shall, as soon as practicable after considering the matter before it, advise the employee(s) or, where necessary, the Association of its decision. Provided that such advice shall be given within one month of the matter being referred to the employer.

   e. Where the parties agree that a matter is non-industrial it may by agreement be referred to other appropriate bodies (eg relevant Royal Colleges) for advice and/or assistance.

   f. Nothing in this procedure shall prevent the parties agreeing to shorten or extend the periods prescribed.

3. Subject to Clause 3—No Further Claims, should a question, dispute or difficulty remain in dispute after the above processes have been exhausted the matter may—

   a. be referred by either party to the Western Australian Industrial Relations Commission (provided that persons involved in the question, dispute or difficulty must confer among themselves and make reasonable attempts to resolve questions, disputes or difficulties before taking these matters to the Commission); or

   b. where the parties agree, be referred to another independent arbitrator chosen by the parties or as a last resort nominated by the Public Sector Commission. In such a case—

      (i) either party may be represented in the arbitration by an agent or legal practitioner and shall bear the costs of that representation;

      (ii) the employer will meet the costs of the arbitration. Provided that where the arbitrator determines that a claim is frivolous or vexatious, the arbitrator may assign the costs of the arbitration (but not the costs of representation) against the claimant or apportion them in any manner between the parties. The parties undertake to accept the arbitrated decision as final and binding.

4. Industry wide issues will be dealt with by discussions between the appropriate Association official(s) and employer representative(s). Should a matter remain in dispute after discussions have been exhausted it may be dealt with in accordance with subclause 48(3).

5. While the above procedures are being followed no party shall take action, of any kind, which may frustrate a settlement in accordance with the above procedures. The status quo (ie the condition applying prior to the issue arising) will remain until the issue is resolved in accordance with the above procedures.

6. Where the employer seeks to discipline or terminate an employee the following steps shall be observed—

   a. Where an employee commits a misdemeanour, the employee's immediate supervisor or any authorised medical practitioner may reprimand the employee so that the employee understands the nature and implications of his/her conduct. The employee has a right to be represented when being reprimanded.

b. The first two reprimands shall take the form of warnings and, if given verbally, shall be confirmed in writing as soon as practicable after the giving of the reprimand.

c. Should it be necessary, for any reason, to reprimand an employee three times, the contract of service shall, upon the giving of that third reprimand, be terminable in accordance with the provisions of this Agreement.

d. This procedure shall not, limit the right of the employer to summarily dismiss a medical practitioner for misconduct. Nor shall it limit the right of an employee to refer a claim for alleged wrongful or unlawful termination to a Board of Reference.

PART 5—SCHEDULES

SCHEDULE A—MEDICAL OFFICERS FULL TIME SALARIES (BASED ON 40 HOUR WEEK)

Classification	Level	Base Annual Salary at FPP 1 January 1999	Base Annual Salary at FPP 1 January 2000
INTERN	1	43673	44983
RMO (YR 1)	2	46778	48181
RMO (YR 2)	3	49950	51449
RMO (YR 3)	4	51877	53433
REGISTRAR (YR 1) SUPERVISED MEDICAL OFFICER (YR 1)[1]	5	53884	55500
REGISTRAR (YR 2) SUPERVISED MEDICAL OFFICER (YR 2) TRAINEE MEDICAL ADMIN REGISTRAR (YR 1) TRAINEE PUBLIC HEALTH PHYSICIAN (YR 1)	6	57994	59734
REGISTRAR (YR 3) SUPERVISED MEDICAL OFFICER (YR 3) TRAINEE MEDICAL ADMIN REGISTRAR (YR 2) TRAINEE PUBLIC HEALTH PHYSICIAN (YR 2) TRAINEE PSYCHIATRIST (YR 1)	7	61458	63301
REGISTRAR (YR 4) SUPERVISED MEDICAL OFFICER (YR 4) TRAINEE MEDICAL ADMIN REGISTRAR (YR 3) TRAINEE PUBLIC HEALTH PHYSICIAN (YR 3) TRAINEE PSYCHIATRIST (YR 2)	8	65079	67030
SENIOR REGISTRAR (YR 1) SUPERVISED MEDICAL OFFICER (YR 5) TRAINEE MEDICAL ADMIN REGISTRAR (YR 4) TRAINEE PUBLIC HEALTH PHYSICIAN (YR 4) TRAINEE PSYCHIATRIST (YR 3)	9	67631	69660
SENIOR REGISTRAR (YR 2) SUPERVISED MEDICAL OFFICER (YR 6) TRAINEE PSYCHIATRIST (YR 4)	10	71502	73647
SENIOR REGISTRAR (YR 3) SUPERVISED MEDICAL OFFICER (YR 7) TRAINEE PSYCHIATRIST (YR 5)	11	78436	80789
SENIOR REGISTRAR(YR 4) SUPERVISED MEDICAL OFFICER (YR 8) TRAINEE PSYCHIATRIST (YR 6)—ELECTIVE YEAR ONLY	12	85622	88191

[1] The salary of a Supervised Medical Officer, who commenced employment prior to 22 April 1998, shall be within the range of levels 7 to 12 inclusive, based on years of relevant experience in that capacity.

SCHEDULE B—ARRANGEMENT A—FULL TIME SALARIES

Classification	Level	Base Annual Salary at FPP 22 February 1999	Base Annual Salary at FPP 1 January 2000
HEALTH SERVICE MEDICAL PRACTITIONER (YR 1) NON SPECIALIST QUAL MED ADMINISTRATOR (YR 1) VRGP (YR 1)	13	101678	105237
HEALTH SERVICE MEDICAL PRACTITIONER (YR 2) NON SPECIALIST QUAL MED ADMINISTRATOR (YR 2) VRGP (YR 2)	14	106289	110009
HEALTH SERVICE MEDICAL PRACTITIONER (YR 3) NON SPECIALIST QUAL MED ADMINISTRATOR (YR 3) VRGP (YR 3) SNR MED PRACTITIONER (YR 1) CONSULTANT (YR 1)	15	110872	114753
NON SPECIALIST QUAL MED ADMINISTRATOR (YR 4) VRGP (YR 4) SNR MED PRACTITIONER (YR 2) CONSULTANT (YR 2)	16	115479	119521
NON SPECIALIST QUAL MED ADMINISTRATOR (YR 5) VRGP (YR 5) SNR MED PRACTITIONER (YR 3) CONSULTANT (YR 3)	17	121307	125553
CONSULTANT (YR 4)	18	124451	128807
CONSULTANT (YR 5)	19	125739	130140
CONSULTANT (YR 6)	20	127613	132079
CONSULTANT (YR 7)	21	131803	136416
CONSULTANT (YR 8)	22	134424	139129
CONSULTANT	23	140085	144988
LEVEL 23 ONLY AVAILABLE AFTER 13TH YR OF EXPERIENCE—SEE CLAUSE 24(6)			

SCHEDULE C—ARRANGEMENT B—FULL TIME SALARIES

Classification	Level	Base Annual Salary at FPP 22 February 1999	Base Annual Salary at FPP 1 January 2000
HEALTH SERVICE MEDICAL PRACTITIONER (YR 1) NON SPECIALIST QUAL MED ADMINISTRATOR (YR 1) VRGP (YR 1)	13	87653	90721
HEALTH SERVICE MEDICAL PRACTITIONER (YR 2) NON SPECIALIST QUAL MED ADMINISTRATOR (YR 2) VRGP (YR 2)	14	91629	94836
HEALTH SERVICE MEDICAL PRACTITIONER (YR 3) NON SPECIALIST QUAL MED ADMINISTRATOR (YR 3) VRGP (YR 3) SNR MED PRACTITIONER (YR 1) CONSULTANT (YR 1)	15	95580	98925
NON SPECIALIST QUAL MED ADMINISTRATOR (YR 4) VRGP (YR 4) SNR MED PRACTITIONER (YR 2) CONSULTANT (YR 2)	16	99550	103034
NON SPECIALIST QUAL MED ADMINISTRATOR (YR 5) VRGP (YR 5) SNR MED PRACTITIONER (YR 3) CONSULTANT (YR 3)	17	104575	108235
CONSULTANT (YR 4)	18	107286	111041
CONSULTANT (YR 5)	19	108396	112190
CONSULTANT (YR 6)	20	110012	113862
CONSULTANT (YR 7)	21	113623	117600
CONSULTANT (YR 8)	22	115883	119939
CONSULTANT	23	120763	124990
LEVEL 23 ONLY AVAILABLE AFTER 13TH YR OF EXPERIENCE—SEE CLAUSE 24(6)			

SCHEDULE D—SESSIONAL BASE RATES

Classification	Level	Base Session at FPP 22 February 1999	Base Session at FPP 1 January 2000
HEALTH SERVICE MEDICAL PRACTITIONER (YR 1) NON SPECIALIST QUAL MED ADMINISTRATOR (YR 1) VRGP (YR 1)	13	194.91	201.73
HEALTH SERVICE MEDICAL PRACTITIONER (YR 2) NON SPECIALIST QUAL MED ADMINISTRATOR (YR 2) VRGP (YR 2)	14	203.75	210.88
HEALTH SERVICE MEDICAL PRACTITIONER (YR 3) NON SPECIALIST QUAL MED ADMINISTRATOR (YR 3) VRGP (YR 3) SNR MED PRACTITIONER (YR 1) CONSULTANT (YR 1)	15	212.54	219.98
NON SPECIALIST QUAL MED ADMINISTRATOR (YR 4) VRGP (YR 4) SNR MED PRACTITIONER (YR 2) CONSULTANT (YR 2)	16	221.36	229.11
NON SPECIALIST QUAL MED ADMINISTRATOR (YR 5) VRGP (YR 5) SNR MED PRACTITIONER (YR 3) CONSULTANT (YR 3)	17	232.53	240.67
CONSULTANT (YR 4)	18	238.57	246.92
CONSULTANT (YR 5)	19	241.04	249.48
CONSULTANT (YR 6)	20	244.63	253.19
CONSULTANT (YR 7)	21	252.66	261.50
CONSULTANT (YR 8)	22	257.68	266.70
CONSULTANT	23	268.54	277.94
LEVEL 23 ONLY AVAILABLE AFTER 13TH YR OF EXPERIENCE—SEE CLAUSE 24(6)			

SCHEDULE E—MOTOR VEHICLE ALLOWANCES

AREA AND DETAILS	ENGINE DISPLACEMENT (IN CUBIC CENTIMETRES)		
RATE PER KILOMETRE	OVER 2600CC	OVER 1600CC & UNDER 2600CC	UNDER 1600CC
Metropolitan Area	63.3	54.9	48.7
South West Land Division	65.1	56.5	50.2
North of 23.5° South Latitude	71.4	62.3	55.5
Rest of the State	67.3	58.4	51.8

PART 6—SIGNING OF AGREEMENT, COMMON SEAL

The Common Seal of the Metropolitan Area Health Service Board is duly affixed hereto pursuant to a resolution of the Board—

(Signed IWP McCall)
Signature of Board member
Ian William Payne McCall
Printed Name of Signatory
(Signed AC Weeks)
Signature of Board member
Andrew Charles Weeks
Printed Name of Signatory
DATE 1 / 6 / 1999

Common Seal

The Common Seal of the Western Australian Branch of the Australian Medical Association was duly affixed in the presence of—

(Signed RC Host)
Signature
Rosanna Capolinalia-Host
Printed Name of Signatory
(Signed V Caruso)
Signature
Vincent Caruso
Printed Name of Signatory
DATE 02 / 06 / 99

Common Seal

MIRAGE INDUSTRIES INDUSTRIAL AGREEMENT.
No. AG 102 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Mirage Industries Pty Ltd.

No. AG 102 of 1999.

Mirage Industries Industrial Agreement.

COMMISSIONER S J KENNER.

2 August 1999.

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 Mirage Industries Industrial Agreement as filed in the Commission on 4 June 1999 in the terms of the following schedule be and is hereby registered as an industrial agreement.

(Sgd.) S. J. KENNER,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Mirage Industries Industrial Agreement.

2.—ARRANGEMENT

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 Mirage Industries 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") and will apply to work on sites where the unions have a registered agreement with the Principal Contractor, or has an agreement in writing with the Principal Contractor. There are approximately five (5) 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 Clause 46 – Settlement of Disputes and Appendix – Resolution of Disputes Requirements of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act 1979, as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Unions and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate and allowances resulting in the wage rates in 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**

(i) The Company will immediately increase its level of payment to $60 per week per employee or 7% Ordinary Time Earnings, whichever is the greater.

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 shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by the employee.

(ii) "Ordinary Time Earnings" (which for the purposes of the Superannuation Guarantee (Administration) Act 1992 will operate to provide a notional earnings base) shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including tool allowance, industry allowance, trade allowances, shift loading, special rates, qualification allowances (eg. first aid, laser safety officer), multi-storey allowance, site allowance, asbestos eradication allowance, leading hand allowances, in charge of plant allowance and supervisory allowances where applicable. The term includes any regular over-award pay as well as casual rates received and any additional rates and allowances paid for work undertaken during ordinary hours of work, including fares and travel.

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 employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an inability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than—

course fees

course books and materials

payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

3. The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (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.—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.—UNION MEMBERSHIP

The employer will encourage, as far as possible, all employees covered by the agreement, to be financial members of the BLPPU and the CMETU.

22.—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

(Sgd.).....

Date: / /

(Sgd.).....

WITNESS

CMETU

(Sgd.).....

Date: / /

(Sgd.).....

WITNESS

The Company:

(Sgd.).....

SIGNATURE

Date: / /

Company

Seal

ALAN CUNNIFFE

PRINT NAME

L. T. GRIFFITHS

WITNESS

APPENDIX A—WAGE RATES

	Date of Signing Hourly Rate $	1 August 1999 Hourly Rate $
Labourer Group 1	16.92	17.15
Labourer Group 2	16.34	16.56
Labourer Group 3	15.90	16.12
Plaster, Fixer	17.58	17.82
Painter, Glazier	17.19	17.42
Signwriter	17.56	17.80
Carpenter	17.70	17.93

APPENDIX A—WAGE RATES—*continued*

	Date of Signing Hourly Rate $	1 August 1999 Hourly Rate $
Bricklayer	17.52	17.75
Refractory Bricklayer	20.12	20.38
Stonemason	17.70	17.93
Rooftiler	17.38	17.62
Marker/Setter Out	18.21	18.46
Special Class T	18.45	18.69

APPRENTICE RATES

	Date of Signing Hourly Rate $	1 August 1999 Hourly Rate $
Plasterer, Fixer		
Year l	7.38	7.48
Year 2 (1/3)	9.68	9.81
Year 3 (2/3)	13.19	13.37
Year 4 (3/3)	15.48	15.69
Painter. Glazier		
Year l (.5/3/5)	7.22	7.32
Year 2 (1/3), (1.5/3.5)	9.45	9.58
Year 3 (2/3), (2.5/3.5)	12.89	13.06
Year 4 (3/3), (3.5/3.5)	15.13	15.33
Signwriter		
Year l (.5/3/5)	7.38	7.48
Year 2 (1/3), (1.5/3.5)	9.65	9.78
Year 3 (2/3), (2.5/3.5)	13.17	13.35
Year 4 (3/3), (3.5/3.5)	15.46	15.66
Carpenter		
Year l	7.44	7.54
Year 2 (1/3)	9.73	9.86
Year 3 (2/3)	13.27	13.45
Year 4 (3/3)	15.57	15.78
Bricklayer		
Year l	7.36	7.46
Year 2 (1/3)	9.63	9.76
Year 3 (2/3)	13.14	13.31
Year 4 (3/3)	15.41	15.62
Stonemason		
Year l	7.44	7.54
Year 2 (1/3)	9.73	9.86
Year 3 (2/3)	13.27	13.45
Year 4 (3/3)	15.57	15.78
Rooftiler		
6 months	9.91	10.04
2nd 6 months	10.90	11.04
Year 2	12.73	12.90
Year 3	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 person's ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/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	$520,000	NIL
Above	$520,000 to $2.17m	$1.90
Above	$2.17m to $4.55m	$2.25
Over	$4.55m	$2.85

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17m	$1.70
Above	$2.17m to $4.55m	$1.90
Over	$4.55m	$2.45

4.2 Projects Located Within West Perth (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17m	$1.70
Above	$2.17m to $4.55m	$1.90
Over	$4.55m	$2.45

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17m	$1.60
Above	$2.17m to $4.55m	$1.80
Over	$4.55m	$2.05

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 $2.17m	$1.30
Above	$2.17m to 6m	$1.60
Above	$6m to $11.98m	$1.85
Above	$11.98m to $24.43m	$2.05
Above	$24.43m to $60.5m	$2.35
Over	$60.5m	$2.55

"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 eastem 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 Procedure
- 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. Productivity Allowance

In return to increase productivity and/or timely completion of projects it is agreed that a productivity allowance of $1.00 per hour worked shall be paid to employees engaged upon projects (new construction only) which exceed two stories in height or building where the structure exceeds 10 metres in height (excluding spires, flagpoles and the like).

14. Structural Frame Allowance

It is agreed that a structural frame allowance of $1.00 per hour all purpose shall be paid to all employees engaged upon projects (new construction only) which exceed two stories in height or building where the structure exceeds 10 metres in height (excluding spires, flagpoles and the like).

15. Provision of Canteen

It is agreed that a canteen accommodation shall be provided where a project exceeds $35 million in value and where the operation of the canteen is financially self supporting in respect of consumables. Canteen to come into operation when on site manning levels exceed 50 and to cease when manning levels reduce to below 50.

16. Provision of Nurse

It is agreed that a qualified nurse shall be engaged where the forecast long term staffing levels for a project exceed 100 (one hundred) or when actual numbers exceed 100 not withstanding that forecasts may have been below that level. The nurse shall commence duties when staffing levels reach (fifty) and shall terminate when levels reduce to 50 (fifty). The requirement for a provision of a nurse shall be waived if the project is adjacent to a hospital with a public emergency department.

17. This agreement shall only apply to building contracts entered into on or tendered for on or after 1 January 1999.

18. Application to Apprentices

The rates prescribed in this agreement shall apply to all apprentices commencing employment after 31 December 1997 in the same proportion as the percentage of a tradesperson's wage rate as prescribed by the appropriate award or Enterprise Bargaining Agreement, being

1st year	42%
2nd year	55%
3rd year	75%
4th year	88%

PARENT CONTROLLED CHRISTIAN EDUCATION ASSOCIATION NORTHERN SUBURBS INC. (ENTERPRISE BARGAINING) AGREEMENT 1999. No. AG 99 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Parent Controlled Christian Education Association Northern Suburbs Inc

No. AG 99 of 1999.

Parent Controlled Christian Education Association Northern Suburbs Inc. (Enterprise Bargaining) Agreement 1999.

CHIEF COMMISSIONER W S COLEMAN.

21 July 1999.

Order.

HAVING heard on behalf Ms T Howe on behalf of the Applicant, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Parent Controlled Christian Education Association Northern Suburbs Inc. (Enterprise Bargaining) Agreement 1999 be registered in accordance with the following Schedule and shall replace the Parent Controlled Christian Education Association Northern Suburbs Inc. (Enterprise Bargaining) Agreement 1997. And such variation shall have effect from the beginning of the first pay period commencing on or after the 16th day of June 1999.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the Parent Controlled Christian Education Association Northern Suburbs Inc. (Enterprise Bargaining) Agreement 1999 and shall replace the Parent Controlled Christian Education Association Northern Suburbs Inc. (Enterprise Bargaining) Agreement 1997.

2.—ARRANGEMENT

17. No Precedent
18. Signatories

3.—PARTIES TO THE AGREEMENT

This agreement is made between Parent Controlled Christian Education Association Northern Suburbs Inc. ("the Board") and the Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (the ISSOA), a registered organisation of employees.

4.—SCOPE OF AGREEMENT

(1) This agreement shall apply to all teachers employed by the Parent Controlled Christian Education Association Northern Suburbs Inc. who are covered by the provisions of the scope of the Independent Schools' Teachers' Award 1976 ("the award").

(2) The number of teachers covered by this agreement is 60.

(3) The Parent Controlled Christian Education Association Northern Suburbs Inc. administers Kingsway Christian College Landsdale and Merriwa campuses (the College).

5.—DATE AND DURATION OF AGREEMENT

(1) This agreement shall come into effect on and from the 1st day January 1999 and shall expire on 31st December 1999.

(2) 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 PARENT AWARD

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

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

7.—SINGLE BARGAINING UNIT

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

The single bargaining unit has conducted negotiations with employer and teacher representatives and has reached full 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 Board 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 Board and the teaching staff acknowledge that this upgrading of skills and experience can best occur when both the Board and teachers share responsibility for professional development by undertaking both in-service and external courses and training partly during school time and partly during the teachers' time.

(4) To enhance the education process by continually providing a Christ-centred foundation and perspective within the structure of the curriculum in harmony with the ethos of the College defined within the Mission Statement as adopted by the Board.

9.—SALARY RATES

(1) Effective the 1st day of January 1999, the minimum annual rate of salary payable to teachers engaged in the classifications described in Clause 11.—Salaries of the award are set out in the table below—

Step	From 1 Jan 99 Per annum $	From 1 Apr 99 2% Per Annum $	From 1 Aug 99 2% Per Annum $	From 31 Dec 99 2% Per Annum $
1	25,091	25,593	26,105	26,627
2	27,030	27,571	28,122	28,684
3	29,732	30,327	30,933	31,552
4	31,412	32,040	32,681	33,335
5	32,655	33,308	33,974	34,654
6	34,614	35,306	36,012	36,733
7	35,954	36,673	37,407	38,155
8	37,575	38,327	39,093	39,875
9	40,215	41,019	41,840	42,676
10	41,451	42,280	43,126	43,988
11	43,166	44,029	44,910	45,808
12	44,638	45,531	46,441	47,370
13	46,402	47,330	48,277	49,242

(2) In the event of any safety net adjustment being applied to the award such adjustment shall be absorbed into the increase.

10.—SALARY PACKAGING

(1) For the purposes of this clause—

(a) "Benefits" means the benefits nominated by the teacher from the benefits provided by the Board and listed in paragraph (d) of subclause (3) of this clause.

(b) "Benefit Value" means the amount specified by the Board as the cost to the College of the benefit provided including Fringe Benefit Tax, if any.

(c) "Fringe Benefit Tax" means tax imposed by the Fringe Benefits Tax Act 1986.

(2) Conditions of Employment—

(a) Except as provided by this clause, teachers must be employed at a salary based on a rate of pay, and on terms and conditions, not less than those prescribed by the agreement.

(b) For all purposes of the agreement, salary shall be deemed to include the value of any benefits provided under this clause.

(3) Salary Packaging

The Board may offer to provide and the teacher may agree in writing to accept—

(a) Salary packaging of up to 40% of gross salary in the form of expense benefit payments;

(b) The Benefits nominated by the teacher and approved by the employer;

(c) A salary equal to the difference between the Benefit Value and the salary which would have applied to the teacher or under subclause (2) of this clause, in the absence of an agreement under this subclause;

(d) The available Benefits are those made available by the Board from the following list—

(i) Superannuation;

(ii) Motor Vehicle; and

(iii) other benefits as agreed between the teacher and the School;

(e) The College must advise the teacher in writing of the Benefit Value before the agreement is entered into.

(4) During the currency of an agreement under subclause (3) of this clause—

(a) Any teacher who takes paid leave on full pay shall receive the Benefits and salary referred to in paragraphs (b) and (c) of subclause (3) of this clause.

(b) If a teacher takes leave without pay the teacher will not be entitled to any Benefits during the period of leave.

(c) If a teacher takes leave on less than full pay he or she shall receive—

(i) the Benefits; and

(ii) the amount of salary calculated as agreed between the Board and the teacher.

(5) (a) The salary package is to operate from 16 June 1999—

(b) Renewal of the salary package will be on an annual basis by agreement between the parties.

11.—AGREED EFFICIENCY IMPROVEMENTS

(1) (a) Professional Development

Professional development activities shall be undertaken partly in school time and partly in the teachers' own time; where feasible in equal proportions.

(b) Professional development will be encouraged and supported in the following areas—

(i) Where it bears a strong relationship to overall College development as articulated in the operational and strategic plans which are currently being developed in consultation with teachers and the Board.

(ii) Where it is documented in the form of an "action plan" under the College's performance management system.

(iii) Where it can be shown that it will enhance a teacher's performance and/or provides other benefits to the College.

(2) Performance Management

(a) The College and teachers will establish in 1999 a performance management system which is agreeable to both the College and teachers. The system will—

(i) be based on improving the performance of teachers;

(ii) involve all teachers;

(iii) confirm expectations between teachers and their supervisors about professional responsibilities and the role they play in the College.

(b) Ensure that the individual concerned is able to request—

(i) the any advice or direction be in writing;

(ii) that a colleague acceptable to both parties to be present during discussion or interviews; and

(iii) that there is access to a grievance process.

(c) Ensure that teachers and administrators are treated as professionals and that the performance management system will—

(i) be directly linked to the College operational plan which is currently being developed in consultation with teachers and the Board;

(ii) promote the growth and development of teachers.

(d) Operate through supervisory line relationships which will include self evaluation and peer evaluation techniques maintaining that;

(i) the authority to act in an area of responsibility lies with the person who is expected to carry it out;

(ii) the decision about how and what is to be done in order to carry out an area of responsibility lies with the person carrying it out; and

(iii) the process must be supported by appropriate training and resourcing.

(2) Teaching Appointment

(a) The Board will provide a statement of requirements, including methods of appraisal, for newly appointed teachers.

(b) Teachers must agree to participate in the College's induction program during the first term of their employment, and acknowledge that they are familiar with, and will comply with the College's policies and procedures.

(c) Teachers are required to participate in the development of the College's pastoral care programme.

(b) A teacher who, at the end of a probationary period of up to two years is deemed by the Board not to have developed adequate teaching skills, may be appointed as a temporary teacher, subject to Appendix 1 (Teacher Appraisal) of the award.

(i) The normal length of probation for a teacher in his/her first teaching appointment will be two years.

(ii) The normal length of probation for an experienced teacher will be one year. An experienced teacher is any teacher who has two or more years of full time teaching experience.

(3) Payment of Relief Teachers

Notwithstanding the provisions of subclause (5) of Clause 11.—Salaries of the award, relief teachers employed for five days or less may be engaged by the day and paid a daily rate or part thereof and paid on a pro-rata rate on the basis of the periods worked in relation to the number of periods in the particular school day.

12.—LONG SERVICE LEAVE

(1) Notwithstanding the provisions of subclause (1) of Clause 10.—Long Service Leave of the award, a teacher who has completed eight years' continuous service with the Board shall be entitled to take 10 weeks' long service leave on full pay, corresponding with a school term.

(2) Where the continuous service of a teacher during the period of accrual contains any period which is less than full time then that teacher's entitlement to payment for long service leave shall be subject to a calculation which averages the full time equivalence of the teacher's service over the accrual period.

13.—DISPUTE RESOLUTION PROCEDURES

(1) The Board seeks to apply a biblical foundation in its approach to dispute resolution. The principles outlined in Matthew 18:15—16 are relevant to this clause. A dispute is defined as any question, dispute or difficulty arising out of this agreement. The following procedures shall apply to the resolution of such a dispute.

(a) The persons directly involved shall make reasonable attempts to resolve the question, dispute or difficulty as soon as is practicable.

(b) If the initial discussions do not result in a settlement, the matter, at the request of either party, shall be referred to a meeting between the parties, together with any additional representatives requested by either party.

(c) (i) If these discussions do not result in a settlement, the question, dispute or difficulty shall be referred to the Executive Director for further discussion.

(iii) Discussions at this level will take place as soon as practicable provided that, unless it is agreed otherwise, it shall be no later than 72 hours from the conclusion of the discussion held in accordance with paragraph (b) of this subclause.

(d) Where the question, dispute or difficulty is unable to be resolved under paragraph (c) of this subclause the matter will be referred to the Board for resolution.

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

(3) Any question, dispute or difficulty not settled may be referred to the Western Australian Industrial Relations Commission.

14.—OTHER MATTERS

(1) 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 Board or the teachers.

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 REDUCTION

Nothing contained herein shall entitle the Board to reduce the salary or conditions of an employee which prevailed prior to entering into this agreement, except where provided by this agreement.

17.—NO PRECEDENT

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

18.—SIGNATORIES

……
(Signature)
(Hedley S Bond) (Con Savas)
……
(Name of signatory in block letters)
Parent Controlled Christian Education Association Northern Suburbs Inc

……
(Signature)
(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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PCH ACCESS PTY LTD INDUSTRIAL AGREEMENT. No. AG 95 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

PCH Access Pty Ltd.

AG 95 of 1999.

PCH Access Pty Ltd Industrial Agreement.

COMMISSIONER S J KENNER.

2 August 1999.

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 PCH Access Pty Ltd Industrial Agreement as filed in the Commission on 31 May 1999 in the terms of the following schedule be and is hereby registered as an industrial agreement.

(Sgd.) S.J. KENNER,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the PCH Access Pty Ltd Industrial Agreement.

2.—ARRANGEMENT

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 PCH Access 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") limited to yard employees engaged in servicing works in the CBD and large commercial and Civil Construction. There are approximately six (6) 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 Clause 46 Settlement of Disputes and Appendix – Resolution of Disputes Requirements of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act 1979, as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Unions and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate and allowances resulting in the wage rates in Appendix A—Wage Rates.

11.—ALLOWANCE

a) Leading Hand Allowance

This Agreement provides for a leading hand allowance of $0.64 per hour worked. Further percentage increases are linked to the Appendix—Wage Rates.

b) Yard Allowance

This Agreement also provides for a yard allowance of $0.25 per hour. This is paid on a per hour worked basis.

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

(i) The Company will immediately increase its level of payment to $60 per week per employee or 7% Ordinary Time Earnings, whichever is the greater.

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 shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by the employee.

(ii) "Ordinary Time Earnings" (which for the purposes of the Superannuation Guarantee (Administration) Act 1992 will operate to provide a notional earnings base) shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including tool allowance, industry allowance, trade allowances, shift loading, special rates, qualification allowances (eg. first aid, laser safety officer), multistorey allowance, site allowance, asbestos eradication allowance, leading hand allowances, in charge of plant allowance and supervisory allowances where applicable. The term includes any regular over-award pay as well as casual rates received and any additional rates and allowances paid for work undertaken during ordinary hours of work, excluding fares and travel and other reimbursement allowances.

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 employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an inability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than—

course fees
course books and materials
payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

3. The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (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.—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.

Signed for and on behalf of—

The Unions:	BLPPU	(Sgd.) Date: 24/5/99
		(Sgd.) WITNESS
	CMETU	(Sgd.) Date: 24/5/99
		(Sgd.) WITNESS
The Company:		(Sgd.)
	Company Seal	SIGNATURE Date: 19/5/99
		(Sgd.) PRINT NAME
		(Sgd.) WITNESS

APPENDIX A—WAGE RATES

	Date of Signing Hourly Rate $	1 August 1999 Hourly Rate $
Labourer Group 1	16.92	17.15
Labourer Group 2	16.34	16.56
Labourer Group 3	15.90	16.12
Plaster, Fixer	17.58	17.82
Painter, Glazier	17.19	17.42
Signwriter	17.56	17.80
Carpenter	17.70	17.93
Bricklayer	17.52	17.75
Refractory Bricklayer	20.12	20.38
Stonemason	17.70	17.93
Rooftiler	17.38	17.62
Marker/Setter Out	18.21	18.46
Special Class T	18.45	18.69

TECH FAB INDUSTRIAL AGREEMENT.
No. AG 89 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Linkman Holdings Pty Ltd t/a Tech Fab.

AG 89 of 1999.

Tech Fab Industrial Agreement.

COMMISSIONER S J KENNER.

22 July 1999.

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 Tech Fab Industrial Agreement as filed in the Commission on 26 May 1999 in the terms of the following schedule be and is hereby registered as an industrial agreement.

(Sgd.) S.J. KENNER,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Tech Fab Industrial Agreement.

2.—ARRANGEMENT

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 Linkman Holdings Pty Ltd trading as Tech Fab (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") but shall not apply to projects on which less than 5 dwelling units are being constructed, nor on projects which have a contracted value of not more than $284,000. 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 Clause 46 Settlement of Disputes and Appendix – Resolution of Disputes Requirements of the Award.

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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").

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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.

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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.

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This Agreement provides for increases in the hourly rate and allowances resulting in the wage rates in Appendix A—Wage Rates.

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

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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

(i) The Company will immediately increase its level of payment to $60 per week per employee or 7% Ordinary Time Earnings, whichever is the greater.

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 shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by the employee.

(ii) "Ordinary Time Earnings" (which for the purposes of the Superannuation Guarantee (Administration) Act 1992 will operate to provide a notional earnings base) shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including tool allowance, industry allowance, trade allowances, shift loading, special rates, qualification allowances (eg. first aid, laser safety officer), multistorey allowance, site allowance, asbestos eradication allowance, leading hand allowances, in charge of plant allowance and supervisory allowances where applicable. The term includes any regular over-award pay as well as casual rates received and any additional rates and allowances paid for work undertaken during ordinary hours of work, including fares and travel.

3. Apprentice Rates

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

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1. The following items will be supplied to each employee by the Company, upon the completion of five working days.

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(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.

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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 employer's approval shall not be unreasonably withheld.

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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.

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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.

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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.

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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.

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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.—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.—UNION MEMBERSHIP

The employer will encourage, as far as possible, all employees covered by the agreement, to be financial members of the BLPPU and the CMETU.

22.—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	(Sgd.)
		Date: 19/5/99
		(Sgd.)
		WITNESS
	CMETU	(Sgd.)
		Date: 19/5/99
		(Sgd.)
		WITNESS
The Company:		(Sgd.)
	Company	SIGNATURE
	Seal	Date: 7/5/99
		(Sgd.)
		PRINT NAME
		(Sgd.)
		WITNESS

APPENDIX A—WAGE RATES

	Date of Signing Hourly Rate $	1 August 1999 Hourly Rate $
Labourer Group 1	16.92	17.15
Labourer Group 2	16.34	16.56
Labourer Group 3	15.90	16.12
Plaster, Fixer	17.58	17.82
Painter, Glazier	17.19	17.42
Signwriter	17.56	17.80
Carpenter	17.70	17.93
Bricklayer	17.52	17.75
Refractory Bricklayer	20.12	20.38
Stonemason	17.70	17.93
Rooftiler	17.38	17.62
Marker/Setter Out	18.21	18.46
Special Class T	18.45	18.69

APPRENTICE RATES

	Date of Signing Hourly Rate $	1 August 1999 Hourly Rate $
Plasterer, Fixer		
Year l	7.38	7.48
Year 2 (1/3)	9.68	9.81
Year 3 (2/3)	13.19	13.37
Year 4 (3/3)	15.48	15.69
Painter. Glazier		
Year l (.5/3/5)	7.22	7.32
Year 2 (1/3), (1.5/3.5)	9.45	9.58
Year 3 (2/3), (2.5/3.5)	12.89	13.06
Year 4 (3/3), (3.5/3.5)	15.13	15.33
Signwriter		
Year l (.5/3/5)	7.38	7.48
Year 2 (1/3), (1.5/3.5)	9.65	9.78
Year 3 (2/3), (2.5/3.5)	13.17	13.35
Year 4 (3/3), (3.5/3.5)	15.46	15.66
Carpenter		
Year l	7.44	7.54
Year 2 (1/3)	9.73	9.86
Year 3 (2/3)	13.27	13.45
Year 4 (3/3)	15.57	15.78
Bricklayer		
Year l	7.36	7.46
Year 2 (1/3)	9.63	9.76
Year 3 (2/3)	13.14	13.31
Year 4 (3/3)	15.41	15.62
Stonemason		
Year l	7.44	7.54
Year 2 (1/3)	9.73	9.86
Year 3 (2/3)	13.27	13.45
Year 4 (3/3)	15.57	15.78
Rooftiler		
6 months	9.91	10.04
2nd 6 months	10.90	11.04
Year 2	12.73	12.90
Year 3	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 person's ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/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	$520,000	NIL
Above	$520,000 to $2.17m	$1.90
Above	$2.17m to $4.55m	$2.25
Over	$4.55m	$2.85

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17m	$1.70
Above	$2.17m to $4.55m	$1.90
Over	$4.55m	$2.45

4.2 Projects Located Within West Perth (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17m	$1.70
Above	$2.17m to $4.55m	$1.90
Over	$4.55m	$2.45

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17m	$1.60
Above	$2.17m to $4.55m	$1.80
Over	$4.55m	$2.05

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 $2.17m	$1.30
Above $2.17m to 6m	$1.60
Above $6m to $11.98m	$1.85
Above $11.98m to $24.43m	$2.05
Above $24.43m to $60.5m	$2.35
Over $60.5m	$2.55

"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 eastem 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 Procedure
- 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. Productivity Allowance

In return to increase productivity and/or timely completion of projects it is agreed that a productivity allowance of $1.00 per hour worked shall be paid toemployees engaged upon projects (new construction only) which exceed two stories in height or building where the structure exceeds 10 metres in height (excluding spires, flagpoles and the like).

14. Structural Frame Allowance

It is agreed that a structural frame allowance of $1.00 per hour all purpose shall be paid to all employees engaged upon projects (new construction only) which exceed two stories in height or building where the structure exceeds 10 metres in height (excluding spires, flagpoles and the like).

15. Provision of Canteen

It is agreed that a canteen accommodation shall be provided where a project exceeds $35 million in value and where the operation of the canteen is financially self supporting in respect of consumables. Canteen to come into operation when on site manning levels exceed 50 and to cease when manning levels reduce to below 50.

16. Provision of Nurse

It is agreed that a qualified nurse shall be engaged where the forecast long term staffing levels for a project exceed 100 (one hundred) or when actual numbers exceed 100 not withstanding that forecasts may have been below that level. The nurse shall commence duties when staffing levels reach (fifty) and shall terminate when levels reduce to 50 (fifty). The requirement for a provision of a nurse shall be waived if the project is adjacent to a hospital with a public emergency department.

17. This agreement shall only apply to building contracts entered into on or tendered for on or after 1 January 1999.

18. Application to Apprentices

The rates prescribed in this agreement shall apply to all apprentices commencing employment after 31 December 1997 in the same proportion as the percentage of a tradesperson's wage rate as prescribed by the appropriate award or Enterprise Bargaining Agreement, being

1st year	42%
2nd year	55%
3rd year	75%
4th year	88%

VOGUE INTERIORS (WA) INDUSTRIAL AGREEMENT.
No. AG 91 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Vogue Interiors (WA) Pty Ltd.

AG 91 of 1999.

Vogue Interiors (WA) Industrial Agreement.

COMMISSIONER S J KENNER.

22 July 1999.

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 Vogue Interiors (WA) Industrial Agreement as filed in the Commission on 26 May 1999 in the terms of the following schedule be and is hereby registered as an industrial agreement.

(Sgd.) S.J. KENNER,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Vogue Interiors (WA) Industrial Agreement.

2.—ARRANGEMENT

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 Vogue Interiors (WA) Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the 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 five (5) 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 Clause 46 Settlement of Disputes and Appendix – Resolution of Disputes Requirements of the Award.

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(ii) "Ordinary Time Earnings" (which for the purposes of the Superannuation Guarantee (Administration) Act 1992 will operate to provide a notional earnings base) shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including tool allowance, industry allowance, trade allowances, shift loading, special rates, qualification allowances (eg. first aid, laser safety officer), multistorey allowance, site allowance, asbestos eradication allowance, leading hand allowances, in charge of plant allowance and supervisory allowances where applicable. The term includes any regular over-award pay as well as casual rates received and any additional rates and allowances paid for work undertaken during ordinary hours of work, excluding fares and travel and other reimbursement allowances.

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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.

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(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.

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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.

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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.—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	(Sgd.) Date: 19/5/99 (Sgd.) WITNESS
	CMETU	(Sgd.) Date: 19/5/99 (Sgd.) WITNESS
The Company:	*Company Seal*	(Sgd.) SIGNATURE Date: 29/04/99 (Sgd.) PRINT NAME (Sgd.) WITNESS

APPENDIX A—WAGE RATES

	Date of Signing Hourly Rate $	1 August 1999 Hourly Rate $
Labourer Group 1	16.92	17.15
Labourer Group 2	16.34	16.56
Labourer Group 3	15.90	16.12
Plaster, Fixer	17.58	17.82
Painter, Glazier	17.19	17.42
Signwriter	17.56	17.80
Carpenter	17.70	17.93

APPENDIX A—WAGE RATES—*continued*

	Date of Signing Hourly Rate $	1 August 1999 Hourly Rate $
Bricklayer	17.52	17.75
Refractory Bricklayer	20.12	20.38
Stonemason	17.70	17.93
Rooftiler	17.38	17.62
Marker/Setter Out	18.21	18.46
Special Class T	18.45	18.69

APPRENTICE RATES

	Date of Signing Hourly Rate $	1 August 1999 Hourly Rate $
Plasterer, Fixer		
Year l	7.38	7.48
Year 2 (1/3)	9.68	9.81
Year 3 (2/3)	13.19	13.37
Year 4 (3/3)	15.48	15.69
Painter. Glazier		
Year l (.5/3/5)	7.22	7.32
Year 2 (1/3), (1.5/3.5)	9.45	9.58
Year 3 (2/3), (2.5/3.5)	12.89	13.06
Year 4 (3/3), (3.5/3.5)	15.13	15.33
Signwriter		
Year l (.5/3/5)	7.38	7.48
Year 2 (1/3), (1.5/3.5)	9.65	9.78
Year 3 (2/3), (2.5/3.5)	13.17	13.35
Year 4 (3/3), (3.5/3.5)	15.46	15.66
Carpenter		
Year l	7.44	7.54
Year 2 (1/3)	9.73	9.86
Year 3 (2/3)	13.27	13.45
Year 4 (3/3)	15.57	15.78
Bricklayer		
Year l	7.36	7.46
Year 2 (1/3)	9.63	9.76
Year 3 (2/3)	13.14	13.31
Year 4 (3/3)	15.41	15.62
Stonemason		
Year l	7.44	7.54
Year 2 (1/3)	9.73	9.86
Year 3 (2/3)	13.27	13.45
Year 4 (3/3)	15.57	15.78
Rooftiler		
6 months	9.91	10.04
2nd 6 months	10.90	11.04
Year 2	12.73	12.90
Year 3	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 person's ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/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	$520,000	NIL
Above	$520,000 to $2.17m	$1.90
Above	$2.17m to $4.55m	$2.25
Over	$4.55m	$2.85

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17m	$1.70
Above	$2.17m to $4.55m	$1.90
Over	$4.55m	$2.45

4.2 Projects Located Within West Perth (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17m	$1.70
Above	$2.17m to $4.55m	$1.90
Over	$4.55m	$2.45

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17m	$1.60
Above	$2.17m to $4.55m	$1.80
Over	$4.55m	$2.05

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 $2.17m	$1.30
Above $2.17m to 6m	$1.60
Above $6m to $11.98m	$1.85
Above $11.98m to $24.43m	$2.05
Above $24.43m to $60.5m	$2.35
Over $60.5m	$2.55

"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 eastem 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 Procedure
- 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. Productivity Allowance

In return to increase productivity and/or timely completion of projects it is agreed that a productivity allowance of $1.00 per hour worked shall be paid toemployees engaged upon projects (new construction only) which exceed two stories in height or building where the structure exceeds 10 metres in height (excluding spires, flagpoles and the like).

14. Structural Frame Allowance

It is agreed that a structural frame allowance of $1.00 per hour all purpose shall be paid to all employees engaged upon projects (new construction only) which exceed two stories in height or building where the structure exceeds 10 metres in height (excluding spires, flagpoles and the like).

15. Provision of Canteen

It is agreed that a canteen accommodation shall be provided where a project exceeds $35 million in value and where the operation of the canteen is financially self supporting in respect of consumables. Canteen to come into operation when on site manning levels exceed 50 and to cease when manning levels reduce to below 50.

16. Provision of Nurse

It is agreed that a qualified nurse shall be engaged where the forecast long term staffing levels for a project exceed 100 (one hundred) or when actual numbers exceed 100 not withstanding that forecasts may have been below that level. The nurse shall commence duties when staffing levels reach (fifty) and shall terminate when levels reduce to 50 (fifty). The requirement for a provision of a nurse shall be waived if the project is adjacent to a hospital with a public emergency department.

17. This agreement shall only apply to building contracts entered into on or tendered for on or after 1 January 1999.

18. Application to Apprentices

The rates prescribed in this agreement shall apply to all apprentices commencing employment after 31 December 1997 in the same proportion as the percentage of a tradesperson's wage rate as prescribed by the appropriate award or Enterprise Bargaining Agreement, being

1st year	42%
2nd year	55%
3rd year	75%
4th year	88%

WEST AUSTRALIAN NEWSPAPERS SECURITY OFFICERS (ENTERPRISE BARGAINING) (INTERIM) AGREEMENT 1999.
No. AG 120 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

West Australian Newspapers Limited

and

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

No. AG 120 of 1999.

West Australian Newspapers Security Officers (Enterprise Bargaining) (Interim) Agreement 1999.

22 July 1999.

Order.

WHEREAS having heard Mr R Joyce and with him Ms S Dodson on behalf of West Australian Newspapers Limited and Ms D MacTiernan on behalf of The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch; and

WHEREAS this is an application to register an agreement between these parties for terms and conditions to apply to security officers employed by West Australian Newspapers Limited; and

WHEREAS currently their conditions of employment are bound by the Security Officers and Cleaners (West Australian Newspapers) Award, 1992 and the West Australian Newspapers Security Officers and Cleaners (Enterprise Bargaining) Agreement 1997 and this application would see registration of an agreement to be known as the "West Australian Newspapers Security Officers (Enterprise Bargaining) (Interim) Agreement 1999", to have force in conjunction with these; and

WHEREAS the Commission was told that the agreement came about following initiatives of the employees to be affected who, concerned at the prospect of insecure employment, sought to have this agreement registered with a result that a pay increase due under their existing conditions would not occur; and

WHEREAS the union was informed this situation, had discussions with the members affected and agrees to this course; and

WHEREAS 10 employees are said to be affected, each is identified within the terms of the agreed document as endorsing it; and

WHEREAS the parties have agreed to have discussions prior to the expiry of this agreement in 2000; and

WHEREAS, having regard for the obligations imposed on the Commission by the Industrial Relations Act, 1979 with respect to the registration of industrial agreements;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order—

THAT the terms of the schedule which follows, to be known as the "West Australian Newspapers Security Officers (Enterprise Bargaining) (Interim) Agreement 1999" shall be and is registered.

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

Schedule.

1.—TITLE

This Agreement shall be referred to as the "West Australian Newspapers Security Officers (Enterprise Bargaining) (Interim) Agreement 1999".

2.—ARRANGEMENT

3.—APPLICATION

The West Australian Newspapers Security Officers (Enterprise Bargaining) (Interim) Agreement 1999 ("the 1999 Agreement") shall apply to West Australian Newspapers Limited ("the Company") in respect of all employees whose employment as security officers is bound by the Security Officers and Cleaners (West Australian Newspapers) Award, 1992.

4.—PARTIES BOUND

(1) West Australian Newspapers Limited ("the Company"), 50 Hasler Road

OSBORNE PARK WA 6017; and

(2) The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch ("the Union"),
61 Thomas Street
SUBIACO WA 6008.

5.—DATE AND OPERATION

(1) The 1999 Agreement shall operate from the beginning of the first pay period commencing on or after 30 May 1999 and shall remain in force until 30 June 2000. Discussions between the company and the employees will commence not later than one (1) month before the expiry date of the 1999 Agreement.

(2) The 1999 Agreement shall not be cancelled or varied unless agreed to by the parties.

6.—NUMBER OF EMPLOYEES BOUND

As at registration the 1999 Agreement covered 10 employees.

7.—SINGLE BARGAINING UNIT

A single bargaining unit has been created in accordance with the State Wage Case Principles. This unit, on behalf of their members, negotiated the 1999 Agreement with the company.

8.—RELATIONSHIP TO PARENT AWARD AND PREVIOUS ENTERPRISE BARGAINING AGREEMENTS

(1) The 1999 Agreement is to be read and interpreted wholly in conjunction with the Security Officers and Cleaners (West Australian Newspapers) Award, 1992 ("the Award"), and the West Australian Newspapers Security Officers and Cleaners (Enterprise Bargaining) Agreement 1997 – AG 199 of 1997 ("the 1997 Agreement").

(2) Where there is any inconsistency between the 1999 Agreement, the Award, and the 1997 Agreement, this Agreement shall prevail to the extent of any inconsistency.

9.—AVOIDANCE OF INDUSTRIAL DISPUTES

The parties to the 1999 Agreement are committed to observing the Award's dispute settlement procedures in respect to any questions, difficulties or disputes arising under it.

10.—AIM OF THIS AGREEMENT

(1) The Company must achieve commercial competitiveness in order to successfully compete in an increasingly difficult environment. Commercial competitiveness requires that each department and business unit must become competitive to remain relevant and viable.

(2) The parties acknowledge that the Company's goal is to achieve competitive and effective security. The Company will review the operation of the Security Department ("the Department") before 30 June 2000.

(3) The amendments to the 1997 Agreement, combined with these new provisions will assist the Department to become more competitive during this interim period. The Company will not engage contractors to replace the Department before 30 June 2000.

11.—STEPS TO BE TAKEN TO MAKE THE DEPARTMENT MORE COMPETITIVE

The parties agree that the Department can become more competitive by implementing the following—

(1) Amend The 1997 Agreement

The 1999 Agreement amends the following provisions of the 1997 Agreement—

Schedule "B"—Wages and Allowances

2. Security Officers

Delete column headed "1 July 1999 —4%".

3. Shift Allowance

Delete column headed "1 July 1999 —4%".

The confirmation of the employees' consent to this deletion is attached – Schedule A—Employee Signatures.

(2) INTRODUCING NEW PROVISIONS

The 1999 Agreement includes the following new provisions—

(a) Wage Rates and Shift Allowance

(i)	Security Officers	Operative Date: 30 May 1999
	Wage Rates	$
	Grade 5	463.50
	Grade 4	521.60
	Grade 3	579.40
	Grade 2	608.30
	Grade 1	649.20
(ii)	Shift Allowance	Operative Date: 30 May 1999
		$
		102.50

(b) Hours of Work

(i) The ordinary hours of work will be 38.5 per week averaged over a 12 week cycle.

(ii) The Department will trial 12 hour shifts. During this trial period all shifts will be continuous except for two half hour unpaid meal breaks. All meal breaks are to be staggered, and taken at times that will not hinder the performance of security duties.

(iii) An indicative roster is attached—Schedule B—Roster.

(c) Self Managed Team

(i) The employees will become a self managed team. This means that the employees will now be responsible to initiate, coordinate and complete all of their current duties in a timely and professional manner without day to day supervision and direction.

(ii) An indicative list of their current duties is attached—Schedule C—Indicative list of Current Duties.

(d) Sick Leave

(i) The Department will trial 12 hour shifts. During this trial period the quantum for the existing full time employees will remain unchanged—

(aa) full pay for the first 152 hours;

(bb) half pay for the next 76 hours; and

(cc) quarter pay for the next 38 hours.

(ii) In the event that the Department amend these working arrangements, then it may be necessary to introduce an appropriate accrual rate.

(e) Overtime Arrangement

In the first instance all overtime is to be worked by the casual relief.

SCHEDULE A—EMPLOYEE SIGNATURES

The employees, after consultation with their Union, offered to make these amendments to the 1997 Agreement. The Company agreed to this offer as it will assist the Department to become more competitive. The employees and their Union

understand, accept and agree that by deleting these columns the employees will not be eligible for the 1 July 1999 increase that had been provided for under the 1997 Agreement.

Sgd. BRIAN BUNNELL	17/6/99
Sgd. GERALD DOBBIE	20/6/99
Sgd. GORDON EVANS	18/6/99
Sgd. HOWARD HAYWARD	16/6/99
Sgd. DESMOND HEATLEY	5/7/99
Sgd. TERRY KINNANE	20/6/99
Sgd. RAYMOND LAWLESS	17/6/99
Sgd. PETER PUGH	20/6/99
Sgd. JOE SPAETH	20/6/99
Sgd. ALAN THOMAS	18/6/99

SCHEDULE B - INDICATIVE ROSTER

	SHIFT	DAY ON WEEK 1	DAY ON WEEK 2	DAY ON WEEK 3	DAY ON WEEK 4	DAY ON WEEK 5	DAY ON WEEK 6	DAY ON WEEK 7	DAY ON WEEK 8	DAY ON WEEK 9	DAY ON WEEK 10	DAY ON WEEK 11	DAY ON WEEK 12	DAY ON WEEK 13
MONDAY	06:00-18:00	A	B	A	D	C	D	B	A	B	C	D	C	A
	18:00-06:00	B	A	B	C	D	C	A	B	A	D	C	D	B
TUESDAY	06:00-18:00	A	B	C	D	C	A	B	A	D	C	D	B	A
	18:00-06:00	B	A	D	C	D	B	A	B	C	D	C	A	B
WEDNESDAY	06:00-18:00	A	D	C	D	B	A	B	C	D	C	A	B	A
	18:00-06:00	B	C	D	C	A	B	A	D	C	D	B	A	B
THURSDAY	06:00-18:00	C	D	C	A	B	A	D	C	D	B	A	B	C
	18:00-06:00	D	C	D	B	A	B	C	D	C	A	B	A	D
FRIDAY	06:00-18:00	C	C	B	A	B	C	D	C	A	B	A	D	C
	18:00-06:00	D	D	A	B	A	D	C	D	B	A	B	C	D
SATURDAY	06:00-18:00	C	A	B	A	D	C	D	B	A	B	C	D	C
	18:00-06:00	D	B	A	B	C	D	C	A	B	A	D	C	D
SUNDAY	06:00-18:00	B	A	B	C	D	C	A	B	A	D	C	D	B
	18:00-06:00	A	B	A	D	C	D	B	A	B	C	D	C	A

	HOURS WEEK 1	HOURS WEEK 2	HOURS WEEK 3	HOURS WEEK 4	HOURS WEEK 5	HOURS WEEK 6	HOURS WEEK 7	HOURS WEEK 8	HOURS WEEK 9	HOURS WEEK 10	HOURS WEEK 11	HOURS WEEK 12	AV HRS
SHIFT A	44	44	44	33	33	33	44	44	44	33	33	33	38.5
SHIFT B	44	44	44	33	33	33	44	44	44	33	33	33	38.5
SHIFT C	33	33	33	44	44	44	33	33	33	44	44	44	38.5
SHIFT D	33	33	33	44	44	44	33	33	33	44	44	44	38.5
TOTAL HOURS	154	154	154	154	154	154	154	154	154	154	154	154	154

SCHEDULE C—INDICATIVE LIST OF CURRENT DUTIES

DUTIES

- Front Gatehouse Security Service.
- Control exit/entry gates.
- Issue visitors' passes.
- Reception duties.
- Respond to duress calls from Newspaper House.
- Monitor contractors' and couriers' access.
- Directing traffic to Newspaper House, visitors to the car parks and couriers and contractors to the areas they require.
- Escorting visitors to the appropriate areas.
- Co-ordinating NIE tours.
- Take phone calls and act as main WAN switchboard after hours.
- Take sick calls after hours and report accordingly.
- Provide security instruction to new employees.
- Monitor building access controls.
- Monitor CCTV and alarm controls.
- Vehicle fleet co-ordination after hours and weekends.
- ID maintenance.
- Petty cash custodian.
- Security patrols (internal and external).
- Alarm response.
- Compile Security Incident Reports as required.
- Review VCR surveillance tapes when required.
- Be aware of HAZMAN and material handling procedures.
- Provide First Aid.
- Provide Oxy-Viva resuscitation.
- Ensure the daily operational condition of the Oxy-Viva and that bottles are full.
- Compile Illness/Accident Reports and register.
- Daily check and resupply of first aid cabinets through complex, including Gatehouse.
- Co-ordinate/control of emergency evacuation procedures including bi-annual evacuation drills and report to Management after these drills.
- To carry out all Chief fire Warden's duties and to keep up to date with and publish any amendments to fire/evacuation procedures.
- Contact/supervise any repairs/maintenance of all fire equipment (detectors and control board) with Manhire; this occurs almost daily; and to check the control board to ensure that zones are not mistakenly left isolated.
- Issuing keys.
- To arrange the cutting of, and to pick up, all security type keys and locks (which requires security clearance) and the issue of and upkeep of register of theses keys and locks.
- Control blue "pay phones" operation including deposit of money to Cashier.
- To receive from afternoon and night shift any breakages/maintenance repairs and pass onto the department responsible.

- Security Person to attend Wednesday weekly meetings.
- Site security reports.
- Other duties as directed.

AWARDS/AGREEMENTS—Variation of—

CHILDREN'S SERVICES CONSENT AWARD 1984.
No. A1 of 1985.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Winterfold Child Care Centre Incorporated and Others.

No. 1091A of 1998.

Children's Services Consent Award 1984.

16 July 1999.

Order.

HAVING heard Ms S. Ellery on behalf of the applicant and there being no appearance on behalf of the respondents, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT the Children's Services Consent Award 1984 be varied in accordance with the following schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 16th day of July 1999.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

Schedule.

1. Clause 6.—Definitions: Delete the words "The Federated Miscellaneous Workers' Union of Australia, Hospital, Service and Miscellaneous, W.A. Branch" and insert in lieu thereof the following—

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

2. Clause 25.—Fares and Travelling Allowances: Delete paragraph (c) of subclause (2) of this clause and in lieu thereof the following—

(2) (c) A year for the purpose of this clause shall commence on the 1st day of July and end on the 30th day of June next following.

Rates of hire for use of employees' own vehicle on employer's business.

Schedule 1—Motor Car Allowances

Area and Details	Engine Displacement (in Cubic Centimetres) Over 2600cc	Over 1600cc - 2600cc	1600cc & under
Rate per kilometre			
Metropolitan Area	63.3	54.9	48.7
South West Land Division	65.1	56.5	50.2
North of 23.5° South Latitude	71.4	62.3	55.5
Rest of the State	67.3	58.4	51.8

Schedule 2—Motor Cycle Allowances

Distance travelled during a year on Official Business	Rate Cents per Kilometre
Rate per kilometre	21.9

Motor vehicles with rotary engines are to be included in the 1600-2600cc category.

3. Schedule A—Parties to the Award: Delete the words "The Federated Miscellaneous Workers' Union of Australia, W.A. Branch" and insert in lieu thereof the following—

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

DAMPIER SALT AWARD 1990.
No. A23 of 1990.

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

Dampier Salt Limited and Others.

No. 937 of 1999.

Dampier Salt Award 1990.

CHIEF COMMISSIONER W S COLEMAN.

30th July 1999.

Order.

HAVING heard Mr G Sturman on behalf of the Applicant also the Australian Workers Industrial Union of Workers (West Australian Branch) and Communication Electrical Electronic Energy Information Postal Plumbing and Allied Services Union, Engineering and Electrical Plumbing Division of WA and Mr A Cameron on behalf of Dampier Salt Limited and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Dampier Salt 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 30th day of July 1999.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

1. Clause 34.—Wages

A. Delete sub clause (1)(a) of this clause and insert in lieu thereof the following—

34.—WAGES

(1) (a) Base Wage Rates

Salt Worker Level	Eng'g Classification	Production Classification	Base Trade	Minimum Weekly Wage $	Safety net Adjustment $	Gross Weekly Wage $
SW1	T4		115	557.60	46.00	603.60
SW2	T3		110	533.30	46.00	579.30
SW3	T2	P6	105	509.10	48.00	557.10
SW4	T1	P5	100	484.80	48.00	532.80
SW5		P4	96	465.40	48.00	513.40
SW6		P3	92	446.00	48.00	494.00
SW7		P2	88	426.60	48.00	474.60
SW8		P1	82	397.60	48.00	445.60

The rates of pay in this award include the three arbitrated safety net adjustments totalling $24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Case Decision, the December 1994 State Wage Decision and the March 1996 State Wage Case Decision. The first, second and third $8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increases payable since

1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety adjustments.

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.

B. Delete subclause (4) of this clause and insert in lieu thereof the following—

(4) Shift Allowance

A shift employee shall be paid $18.50 (flat) per shift of eight ordinary hours worked on afternoon or night shift.

2. Clause 35.—Standard Group of Allowances: Delete paragraphs (1)(a-d) and insert in lieu thereof the following

(1) (a) The Standard Allowance of $141.20 per week is payable to all adult employees except adult apprentices. This allowance is paid in respect of all factors of service and work conditions.

(b) The Trades Allowance of $11.55 per week is payable to a tradesperson for the provision of a suitable kit of tools.

(c) (i) The Electrical Allowance of $22.55 per week is payable to a tradesperson, holder of an "A" grade electrical license, or a "B" grade electrical license endorsed as both a fitter and a mechanic.

(ii) Where the "B" grade license is endorsed as either a fitter or a mechanic, in lieu of the above a figure of $14.50 shall be used as the basis of the electrical allowance then calculated and paid as per the standard group of allowances.

(d) The Carnarvon Accommodation allowance of $47.40 per week is payable to employees at Lake MacLeod excepting—

(i) Junior employees.

(ii) Apprentices: unless an apprentice is over 18 years of age, married and is directly responsible for the cost of housing purchase payments or rental.

3. Clause 36.—Charge Hand Allowance: Delete subclause (1) and insert in lieu thereof the following—

(1) An employee appointed as a Charge Hand shall be paid $0.63 per hour (flat) in addition to the Leading Hand allowance for actual hours worked in the period so appointed.

4. Clause 37.—Dampier Accommodation: Delete subclauses (1) and (2) and insert in lieu thereof the following—

(1) Employer Supplied Accommodation

(a) Accommodation charges for the rental periods beginning 1 July 1991 to 1 January 2000 will be adjusted in accordance with the agreed schedule.

(b) The initial value of the Accommodation charges shall be as follows—

	Per Week $
Houses	28.90
Twin Units	23.10
Single Units	17.90

(c) Subsequent review will be based on progressive normalisation of accommodation charges.

(2) Dampier Housing Subsidy

(a) Subject to the exclusions below employees at Dampier not in accommodation provided by the employer shall be paid a subsidy for accommodation purposes, which shall be calculated on the agreed basis.

(b) The initial value of the subsidy will either be $89.60 per week or $151.80 per week depending on the type of accommodation.

(c) The subsidy will be adjusted upwards or downwards to offset the difference between the employer's accommodation charges and area rental benchmarks.

(d) Exclusions—this subsidy is not applicable to—

(i) employees in subsidised accommodation,

(ii) more than one employee in a household,

(iii) junior employees,

(iv) apprentices: unless an apprentice is over 18 years of age, married and directly responsible for the cost of house purchase payments or rentals,

(v) part-time employees,

(vi) vacation students.

5. Clause 38.—Lake Macleod Remote Lease Allowance: Delete subclause (1) and insert in lieu thereof the following—

(1) An allowance of $18.70 flat per full day worked will be paid to Lake MacLeod employees in recognition of all factors associated with travelling to and from and working at the Lake MacLeod lease.

6. Clause 39.—Cape Cuvier Mooring Allowance: Delete this clause and insert in lieu thereof the following—

In recognition of the environmental factors associated with berthing and unberthing of ships at Cape Cuvier, an allowance of $26.40 per shift or part thereof shall be made to any employee engaged as a member of the mooring gang.

ETHNIC CHILDREN'S SERVICES INDUSTRIAL AWARD, 1993.
No. A 10 of 1989.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Ethnic Child Care Resource Unit Incorporated.

No. 1067A of 1998.

Ethnic Children's Services Industrial Award, 1993.
Award No. A 10 of 1998.

16 July 1999.

Order.

HAVING heard Ms S. Ellery on behalf of the applicant and Mr P. Swingler on behalf of the Ethnic Child Care Resource

Unit Incorporated, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT the Ethnic Children's Services Industrial Award, 1993 No. A 10 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 16th day of July 1999.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

Schedule.

1. Clause 6.—Definitions: In subclause (6) of this clause delete the words "The Federated Miscellaneous Workers' Union of Australia, W.A. Branch" and insert in lieu thereof the following—

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

2. Clause 20.—Fares and Travelling Allowance: Delete paragraph (c) of subclause (2) of this clause and insert in lieu thereof the following—

(c) A year for the purpose of this clause shall commence on the first day of July and end on the thirtieth day of June next following.

Rates of hire for use of employee's own vehicle on employer's business.

Schedule 1—Motor Vehicle Allowance

Area and Details	Engine Displacement (in cubic centimetres)		
Rate per Kilometre	Over 2600cc ¢/km	1600 - 2600cc ¢/km	1600cc & Under ¢/km
Metropolitan Area	63.3	54.9	48.7
South West Land Division	65.1	56.5	50.2
North of 23.5° South Latitude	71.4	62.3	55.5
Rest of the State	67.3	58.4	51.8

Schedule 2—Motor Cycles

Distanced Travelled During a Year on Official Business	Rate ¢/km
All Areas of State:	21.9

Motor vehicles with rotary engines are to be included in the 1600-2600cc category.

3. Schedule A—Parties to the Award: Delete the words "The Federated Miscellaneous Workers' Union of Australia, W.A. Branch" and insert in lieu thereof the following—

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

FAMILY DAY CARE CO-ORDINATORS' AND ASSISTANTS' AWARD, 1985.
No. A16 of 1985.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Communicare and Others.

No. 1068A of 1998.

Family Day Care Co-Ordinators' and Assistants' Award, 1985.

16 July 1999.

Order.

HAVING heard Ms S. Ellery on behalf of the applicant and Mr P. Swingler on behalf of the Salvation Army—Balga, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT the Family Day Care Co-Ordinators' and Assistants' Award, 1985 be varied in accordance with the following schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 16th day of July 1999.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

Schedule.

1. Clause 21.—Fares and Travelling Allowance: Delete paragraph (c) of subclause (2) and insert in lieu thereof the following—

(2) (c) A year for the purpose of this clause shall commence on the 1st day of July and end on the 30th day of June next following.

Rates of hire for use of employee's own vehicle on employer's business.

Schedule 1—Motor Car Allowance

Area and Details	Engine Displacement (in cubic centimetres)		
Rate per kilometre	Over 2600cc	Over 1600cc -2600cc	l600 cc & Under
Metropolitan Area	63.3	54.9	48.7
South West Land Division	65.1	56.5	50.2
North of 23.5° South Latitude	71.4	62.3	55.5
Rest of the State	67.3	58.4	51.8

Schedule 2—Motor Cycle Allowance

Distance Travelled During a Year on Official Business	Rate ¢/km
Rate per kilometre	21.9

Motor vehicles with rotary engines are to be included in the 1600-2600cc category.

2. Schedule A—Parties to the Award: Delete the words "The Federated Miscellaneous Workers' Union of Australia, W.A. Branch" and insert in lieu thereof the following—

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

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PERFORMERS LIVE AWARD (WA) 1993.
No. A 18 of 1989.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Media, Entertainment and Arts Alliance of Western Australia (Union of Employees)

and

The Gilbert and Sullivan Society of Western Australia and Others.

No. 557 of 1999.

Performers Live Award (WA) 1993.

19 July 1999.

Reasons for Decision.

COMMISSIONER S A CAWLEY: This application seeks to vary the Performers Live Award (WA) 1993. The variations sought are unexceptional. They would insert safety net adjustments allowed for in State Wage Case decisions, and vary allowances accordingly, provide for the expression of the superannuation provision obligations for employers as a result of federal legislation, insert the minimum award rate, and amend, by consent, the name of one respondent to the award.

No answers in objection were filed and no respondent sought to be heard in objection to the claim when the matter went to hearing. There was by leave an appearance by Mr A Needham

on behalf of the Gilbert and Sullivan Society seeking time to consider the application further on the basis that it had only very recently come to that organisation's notice. The union was amenable to 21 days from the date of hearing being allowed for any objection to be put in writing to the Commission. That time has elapsed without any objection being raised.

Having regard for all this and the Wage Fixing Principles the variations sought by the union will be ratified with an operative date of 19 July 1999.

Appearances: Ms R McGinty appeared, by leave, on behalf of the applicant.

Mr C Fayle appeared on his own behalf as a respondent to the award.

Mr A Needham appeared, by leave, on behalf of The Gilbert and Sullivan Society of Western Australia.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Media, Entertainment and Arts Alliance of Western Australia (Union of Employees)

and

The Gilbert and Sullivan Society of Western Australia and Others.

No. 557 of 1999.

Performers Live Award (WA) 1993.

23 July 1999.

Order.

HAVING heard Ms R McGinty, by leave, on behalf of The Media, Entertainment and Arts Alliance of Western Australia (Union of Employees), Mr C Fayle on his own behalf as a respondent to the award and Mr A Needham, by leave, on behalf of The Gilbert and Sullivan Society of Western Australia, and there being no appearance by or on behalf of any other respondent, now therefore the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order —

THAT the Performers Live Award (WA) 1993 as amended 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 the 19th day of July 1999.

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

Schedule.

1. Clause 1B.—Minimum Adult Award Wage: Delete this clause and insert the following in lieu thereof—

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 14th November 1997.

(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 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: Immediately following "34. Superannuation" in this clause, insert the following—

35. Award Modernisation and Enterprise Agreements

3. Clause 34.—Superannuation: Immediately following Clause 34.—Superannuation, insert a new clause as per the following—

35.—AWARD MODERNISATION AND ENTERPRISE AGREEMENTS

(1) The parties are committed to modernising the terms of the Award so that it provides for more flexible working arrangements, improves the quality of working life, enhances skills and job satisfaction and assists positively in the restructuring process.

(2) The Union will negotiate all matters raised by employers for increased flexibility. Those negotiations with the Union will be on the premise that—

(a) The majority of employees covered by this award at each enterprise must genuinely agree to the change.

(b) No employee will lose income as a result of the change.

(c) The Union must be party to the agreement, and in particular, where enterprise level discussions are considering matters requiring any award variation, the Union must be invited to participate.

(d) Where the agreement represents the consent of the employer and the majority of the employees concerned, the union will not unreasonably oppose any agreement"

(e) Any agreement shall be subject, where appropriate, to approval by the Western Australian Industrial Relations Commission and, if approved, shall operate as a Schedule to this award and take precedence over any inconsistency.

(f) The disputes procedure will apply if agreement cannot be reached on negotiating a change or on implementing the agreed change.

(3) When an agreement is reached pursuant to subclause (2) at a particular enterprise and that agreement requires award variation the parties will not oppose that award variation for trial particular provision in its application to the particular enterprise.

(4) The parties agree any award matter may be raised for negotiation under this Clause**.**

(5) The parties agree that working parties will meet and continue to meet with the aim of modernising the award.

4. Clause 7.—Rates of Pay—

A. Delete the preamble to subclause (1) of this clause and insert the following in lieu thereof—

(1A) (a) 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.

(b) 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.

(c) 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.

The minimum rates of pay to be paid by an employer to an employee for work, inclusive of work in or incidental to either performance or rehearsals or both, shall be as set out hereunder—

B. Delete paragraphs (a) to (e) inclusive, of subclause (1) of this clause and insert the following in lieu thereof—

(1) Engaged by the Week (age sixteen and over)

		PER WEEK $	ASNA $	TOTAL $
(a) (i)	Speciality Artiste:			
	Solo	498.60	48.00	546.60
	Duo (each)	468.50	48.00	516.50
	Trio (each	453.10	48.00	501.10
	Quartet or an act of more than four artists (each)	437.00	48.00	485.00
(ii)	Variety Artist	468.50	48.00	516.50
(iii)	Vocalist	453.10	48.00	501.10
(iv)	Actor or Actress	416.80	48.00	464.80
(v)	Ballet or Chorus	398.80	48.00	446.80
(vi)	Model	398.80	48.00	446.80
(b)	Skaters:			
(i)	Solo, Duo or Speciality Artist	416.80	48.00	464.80
(ii)	Employee engaged only in a skating ensemble	398.80	48.00	446.80
(c)	Aquatic Artists:			
(i)	Other than member of an aquatic ensemble	416.80	48.00	464.80
(ii)	Aquatic ensemble—employee engaged therein only	398.80	48.00	398.80
(d) (i)	Supernumeraries engaged by the week shall be paid $14.86 per hour with a minimum payment for a week of	209.60	48.00	257.60

(ii) Supernumeraries on tour shall be paid the ballet of chorus rate of pay together with the touring allowance as hereinafter specified.

(e) A walking understudy and/or supernumerary understudying one of the other roles in a theatrical production and any other employees speaking not more than 80 words in the production shall be paid as follows:

16 years of age and over	$	$	$
- not on tour—at the rate per week of	398.80	48.00	446.80
- on tour, plus the touring allowance as hereinafter specified	416.80	48.00	464.80

C. Delete paragraphs (i) and (j) of subclause (1) of this clause and insert the following in lieu thereof—

(i) If an employee is required by the employer to act as understudy the employee shall be paid an additional amount per week for each part understudied as follows:

	$
(i) Star Role	37.55
(ii) Leading Role	25.05
(iii) Actor/Actress	12.52
(iv) Supporting Role	9.37

(j) If an employee is required to perform in a role which the employee is acting as understudy the employee shall be paid an additional amount per performance as follows:

	$
(i) Star Role	62.58
(ii) Leading Role	43.80
(iii) Actor/Actress	31.28
(iv) Supporting Role	18.78

Provided that: aggregate of payments to swing performers may not exceed contracted salaries paid to the employees whose part is understudied either on

a pro-rata or weekly basis. The additional payments prescribed in this paragraph and in the preceding paragraph shall not apply in the case of ensemble companies.

D. Delete paragraphs (b) and (c) of subclause (3) of this clause and insert the following in lieu thereof—

(b) Rehearsals

(i) An employee aged sixteen years or over who is required to rehearse by the employer shall be paid the rate of $19.71 for one hour (minimum) and over one hour at the rate of $9.86 per half hour or part thereof, provided however that if the employee desires to leave the rehearsal before the completion of one hour's rehearsal payment shall be at the rate of $9.86 per half hour or part thereof for the time actually worked.

(ii) Any rehearsals required of employees aged fourteen years and under or those aged fifteen years shall be paid for at 45 and 55 percent respectively of the above rates.

(c) Casual supernumeraries shall be paid at $14.41 per hour with a minimum call for performances of three hours and for rehearsals of two hours.

5. Clause 16.—Travelling—

A. Delete subclause (7) of this clause and insert the following in lieu—

(7) An employee required to travel to or from an airport shall have such travel provided by the employer, or shall be reimbursed for the cost of such transport to a maximum of $22.34 for any single trip.

B. Delete subparagraph (i) of paragraph (b) of subclause (8) of this clause and insert the following in lieu—

(i) Where the period of travel is one week or less the employer shall provide suitable accommodation or if the employer and employee agree an allowance of $83.60 per night shall be payable in lieu of the provision of accommodation.

C. Delete placita (bb) of subparagraph (ii) of paragraph (b) of subclause (8) of this clause and insert the following in lieu—

(bb) The reimbursement limits referred to above are—

	$
Sydney and Melbourne	614.60
Canberra	558.70
Adelaide, Perth, Hobart Brisbane	502.83
Other places	446.96

D. Delete subparagraph (iii) of paragraph (b) of subclause (8) of this clause and insert the following in lieu—

(iii) In lieu of the provisions of subparagraph (ii) of this subclause an employee may elect to take a cash allowance of $307.28 per week or $61.46 per night up to a maximum of the weekly cash allowance.

E. Delete subclauses (9) and (10) of this clause and insert the following in lieu—

(9) Meals

An employee required to travel shall be provided by the employer with all meals of a satisfactory nature or paid an allowance in lieu of $30.17 per day to a maximum of $150.63 per week except for localities north of 26 degrees south latitude in Western Australia where the rate shall be prescribed by Schedule J—Travelling, Transfer and Relieving Allowance of the Government Officers Salaries, Allowances and Conditions Award 1989 for the locality allowance concerned.

(10) Incidentals

An employee required to travel shall be paid an allowance for incidentals of $9.60 per day to a maximum of $47.82 per week except for localities north of 26 degrees south latitude in Western Australia where the rate shall be prescribed by Schedule J—Travelling, Transfer and Relieving Allowance of the Government Officers Salaries, Allowances and Conditions Award 1989 for the locality allowance concerned.

F. Delete paragraph (b) of subclause (15)of this clause and insert the following in lieu—

(b) Where an employee agrees at the request of the employer to use his/her own motor vehicle or motor cycle for purposes other than travelling between cities and towns, the employee shall be paid an allowance of 58 cents per kilometre or the official rate set by the Royal Automobile Club of WA, whichever is the greater.

6. Clause 34.—Superannuation: Delete the words "equivalent to three percent of the performer's salary" which appear in subclause (1) of this clause, and insert the following in lieu—

prescribed in the Federal Government Superannuation Legislation

7. Schedule C—Parties to the Award: Delete this schedule and insert the following in lieu—

SCHEDULE C—PARTIES TO THE AWARD

OPERA, MUSIC THEATRE

The Gilbert and Sullivan Society of Western Australia (Inc.)
82 Cambridge Street
LEEDERVILLE WA 6007

The Music Theatre Company of W.A. (Inc,)
Administrator
32 Richardson Street
WEST PERTH WA 6004

DANCE

2 Dance Plus Ltd
Mosman Park Memorial Hall
12 Lochee Road
MOSMAN PARK WA 6012

lntertainment
80 Casserly Drive
LEEMING WA 6149

Danza Viva Spanish Dance Company Inc.
Shop 13, Piccadilly Square
PERTH WA 6000

Jacoba Productions
30 Tyrell Street
NEDLANDS WA 6009

THEATRE

Curtin University of Technology
Kent Street
BENTLEY WA 6102

Playback Theatre of Western Australia (Inc.)
23 Angwin Street
EAST FREMANTLE WA 6158

Patch Incorporated
443 Albany Hwy
VICTORIA PARK WA 6100

Queens Park Theatre
Cathedral Avenue
GERALDTON WA 6530

Albany Town Hall Theatre
221 York Street
ALBANY WA 6330

Firelake Production Services
345 Guildford Road
BAYSWATER WA 6053

Townring Pty Ltd
15 Rivett Way
BRENTWOOD WA 6153

Theatre Zart Ltd
223 Eighth Avenue
INGLEWOOD WA 6052

Eliza Productions Pty Ltd
11 Hawkins Avenue
SORRENTO WA 6020

The Effie Crump Theatre Incorporated
81 Brisbane Street
NORTHBRIDGE WA 6003

PUPPETRY

Spare Parts Theatre (Inc.)
1 Short Street
FREMANTLE WA 6160

The Black String Puppet Theatre
29 Innamincka Road
GREENMOUNT WA 6065

CIRCUS, CLOWNS, MAGIC

Suitcase Circus
Walcott Street
MOUNT LAWLEY WA 6050

RESTAURANTS

Blarney Castle
Newcastle Street (Cnr Stirling Street)
PERTH WA 6000

Churchills Restaurant Perth
Rear 5 St George's Terrace
PERTH WA 6000

Mulberry Farm
34 Hamersley Road
CAVERSHAM WA 6055

TAVERNS

Seaview Tavern
282 South Terrace
SOUTH FREMANTLE WA 6162

THEME PARKS

Pioneer World
Albany Hwy (Cnr Southwest Highway)
ARMADALE WA 6112

Adventureworld
179 Forrest Road
BIBRA LAKE WA 6163

FESTIVALS

Artrage
Arts House
Perth Cultural Centre
PERTH WA 6000

NIGHTCLUBS, REVUES, AND CABARETS

Limbo Dance Club
232 William Street
PERTH WA 6000

Fly By Night Club
24 Holdsworth Street
FREMANTLE WA 6160

NIGHTCLUBS, REVUES, AND CABARETS—*continued*

Sylvesters Night Club—Cabaret
52 Hannon Street
KALGOORLIE WA 6430

Theatre Night Clubs
120 York Street
ALBANY WA 6330

Raunchy Promotions (Australia) Pty Ltd
148 Scarborough Beach Road
MOUNT HAWTHORN WA 6016

Pelsaert's
60 Fitzgerald Street
GERALDTON WA 6530

Metropolis Concert Night Club
58 South Terrace
FREMANTLE WA 6160

RETAIL STORES, SHOPPING CENTRES, MARKETS

Karrinyup Shopping Centre
Karrinyup Road
KARRINYUP WA 6018

Carousel Shopping Centre
1382 Albany Highway
CANNINGTON WA 6107

St Martins Properties (Australia) Pty Ltd
25th Floor,
St Martins Tower
44 St George's Terrace
PERTH WA 6000

City Centre Markets
726 Hay Street
PERTH WA 6000

Subiaco Pavilion
2 Rokeby Road
SUBIACO WA 6008

Myer WA Stores Pty Ltd
200 Murray Street
PERTH WA 6000

Myer Stores Ltd
295 Lonsdale Street
MELBOURNE VIC 3000

PUBLIC RELATIONS AND PROMOTIONS

Ward Holt Pty Ltd
1131 Hay Street
WEST PERTH WA 6005

CLUBS

East Perth Football Club Incorporated
Perth Oval
PERTH WA 6000

Royal Perth Yacht Club of WA (Inc.),
Australia II Drive
CRAWLEY WA 6009

Perth Wildcats Pty Ltd
588 Hay Street
SUBIACO WA 6008

Melville Glades Golf Club
Beasley Road
LEEMING WA 6149

Mosman Park Bowling Club
Bay View Terrace
MOSMAN PARK WA 6012

Olympic Kingsway Sports Club
Lot 7993 Kingsway Road
WANNEROO WA 6065

The Irish Club of WA Incorporated
61 Townshend Road
SUBIACO WA 6008

Fremantle Workers Social & Leisure Club
5 Henry Street
FREMANTLE WA 6160

Italian Club (WA)
219 Fitzgerald Street
PERTH WA 6000

Alcoa Club Kwinana (Inc.)
19 Hope Valley Road
KWINANA WA 6167

FUNCTIONS, WEDDINGS, DANCES, SOCIALS

Carlisle Function Centre
174 Rutland Avenue
CARLISLE WA 6101

SHIPS AND FERRIES

Captain Cook Cruises
No. 3 Jetty,
Barrack Street
PERTH WA 6000

Boat Torque Cruises Pty Ltd
Pier 4
Barrack Street Jetty
PERTH WA 6000

ENTERTAINMENT PROMOTERS, ENTREPRENEURS, AGENTS, BANDLEADERS, ENTERTAINMENT CONTRACTORS/DIRECTORS

Claire Condry Publicity & Promotions
2 Seaview Terrace
COTTESLOE WA 6011

Joyce Spiers Modelling & Casting Agency
858 Hay Street
PERTH WA 6000

Paul Gadenne Enterprises Pty Ltd
5 Tyne Crescent
WANNEROO WA 6065

Fremantle Arts Foundation Limited
8 Phillimore Street
FREMANTLE WA 6160

Band Booking Centre
53 Rathay Street
VICTORIA PARK WA 6100

Leslie Hinton
Entertainment Agency
Suite 7 / 108 Rokeby Road
SUBIACO WA 6008

SCHOOLS, UNIVERSITIES, COLLEGES

Wrightson Dance Studios
41 Great Eastern Hwy
RIVERVALE WA 6103

The Johnny Young Talent School of WA
175 Hay Street
EAST PERTH WA 6004

Penrhos College
6 Morrison Street
COMO WA 6152

Curtin University of Technology
Kent Street
BENTLEY WA 6102

Christ Church Grammar School
Queenslea Drive
CLAREMONT WA 6010

ARENAS, RECREATION CENTRES, AND OPEN-AIR VENUES

The Royal Agricultural Society of W.A. (Inc.)
Claremont Showgrounds
CLAREMONT WA 6010

DISC JOCKEYS

Christopher Stanley Fayle
28 Priestley Street
EMBLETON WA 6062

CORPORATE TRAINING AND PSYCHOLOGY COUNSELLING

Aragon and Associates
297 Hay Street
EAST PERTH WA 6004

UNION PARTY TO THE AWARD

The Media, Entertainment and Arts Alliance of Western Australia (Union of Employees)
224 Stirling Street
PERTH WA 6000

TRAINING ASSISTANTS' AND COMMUNITY SUPPORT STAFF (SPASTIC WELFARE) AWARD 1987. No. A16 of 1986.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Cerebral Palsy Association of WA Incorporated.

No. 1046A of 1998.

Training Assistants' and Community Support Staff (Spastic Welfare) Award 1987.

16 July 1999.

Order.

HAVING heard Ms S. Ellery on behalf of the applicant and Mr P. Swingler on behalf of the Cerebral Palsy Association of WA Incorporated, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT the Training Assistants' and Community Support Staff (Spastic Welfare) Award 1987 be varied in accordance with the following schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 16th day of July 1999.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

Schedule.

1. Clause 8.—Fares and Travelling Time: Delete subclause (2) of this clause and insert in lieu thereof the following—

(2) Where an employee is required and authorised to use his/her own motor vehicle in the course of his/her duties he/she shall be paid an allowance not less than that provided for in the schedules set out hereunder. Notwithstanding anything contained in this subclause the employer and the employee may make any other arrangement as to car allowance not less favourable to the employee.

Schedule 1—Motor Car Allowance

Area and Details	Engine Displacement (in cubic centimetres)		
Rate per kilometre	Over 2600cc	Over 1600cc -2600cc -2600cc	l600 cc & Under
Metropolitan Area	63.3	54.9	48.7
South West Land Division	65.1	56.5	50.2
North of 23.5° South Latitude	71.4	62.3	55.5
Rest of the State	67.3	58.4	51.8

Schedule 2—Motor Cycle Allowance

Distance Travelled During a Year on Official Business	Rate ¢/km
Rate per kilometre	21.9

Motor vehicles with rotary engines are to be included in the 1600-2600cc category.

2. Schedule A—Parties to the Award: Delete the words "The Federated Miscellaneous Workers' Union of Australia, W.A. Branch" and insert in lieu thereof the following—

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

AWARDS/AGREEMENTS—Application for variation of—No variation resulting—

TEACHERS (PUBLIC SECTOR PRIMARY AND SECONDARY EDUCATION) AWARD 1993. No. TA 1 OF 1992.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Minister for Education

and

State School Teachers' Union of WA.

No. 1203 of 1998.

COMMISSIONER P E SCOTT.

20 July 1999.

Order.

WHEREAS this is an application pursuant to the Industrial Relations Act 1979 for a variation to an award; and

WHEREAS on the 16th day of July 1999 the Applicant filed a Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT this application be, and is hereby withdrawn by leave.

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

PUBLIC SERVICE ARBITRATOR—Matters Dealt With—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Incorporated

and

Ministry of Justice.

No. P(2)37 of 1997.

COMMISSIONER J F GREGOR.

29 July 1999.

Order.

WHEREAS on 24 July 1997 the Civil Service Association of Western Australia Incorporated applied to the Commission for an order pursuant to Section 80E of the Industrial Relations Act 1979; and

WHEREAS that application was No. P 37 of 1997; and

WHEREAS by an order dated 6 October 1998 the Commission ordered that application No. P 37 of 1997 be divided so that application No. P (1) 37 of 1997 dealt with the claim concerning reimbursement of vehicle costs and application No. P (2) 37 of 1997 dealt with the balance of matters in the original notice of application, specifically the suspension of an employee; and

WHEREAS on 10 November 1998, the Commission conducted a conference at which time the matter was not settled; and

WHEREAS the applicant advised the Commission, by a letter dated 14 July 1999 that it wished to withdraw the matter; and

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Incorporated

and

Chief Executive Officer
Ministry of Justice.

No. P 47 of 1998.

PUBLIC SERVICE ARBITRATOR
COMMISSIONER J F GREGOR.

19 July 1999.

Reasons for Decision.

THE COMMISSIONER: On 25 November 1998, the Civil Service Association of Western Australia Incorporated (CSA) applied to the Public Service Arbitrator for a declaration and orders pursuant to s.46 of the Industrial Relations Act, 1979 (the Act). The declaration sought concerns the true interpretation of clause 18(5)(a) of the Public Service Award 1992 (PSA A 4 of 1989) (the Award). By s.46 of the Act the Commission is empowered, at any time while an Award is in force, on an application of any employer, organisation or association bound by the Award to declare the true interpretation of the particular Award. Similarly, where a declaration so requires the Commission may by order, vary any provision of the Award. Award provisions will be varied to remedy any defect contained therein or to give fuller effect to Award provisions.

The Award has its genesis in an agreement made on 18 May 1990. The agreement was made by consent between the CSA and the Public Service Arbitrator. The applicant seeks this interpretation.

The agreement was secured by the exchange of letters and is in the following terms.

"**ON CALL ALLOWANCE—SUPERINTENDENTS, DEPARTMENT OF CORRECTIVE SERVICES**

Reference is made to discussions held between your Mr K Dodd, the Department of Corrective Services, the Public Service Commission, and the Department of Productivity and Labour Relations concerning the above matter.

As a result of these negotiations, the following points have been agreed between your Association and this Commission.

(a) There will be two levels of contactability and response time.

(i) The first level of contactability and response will be paid at the rate of $75.00 per week.

(ii) The second level of contactability and response will be paid at the rate of $37.50 per week.

(b) Those allowance rates are to be indexed to the National CPI rate and backdated to October 1, 1989.

(c) The Executive Director, Department of Corrective Services is to define appropriate contact and response time for each relevant position and prison.

This agreement is considered an exception and should not be used as a precedent.

Your formal acceptance of the On Call Allowance provisions for specified officers within the Department of Corrective Services, by way of an exchange of letters, would be appreciated.

Upon receipt of your acceptance arrangements will be made with the Department of Productivity and Labour Relations to cancel the Commuted Overtime and Availability Allowances Agreement (1981)."

(Appendix C to the Application)

It is a contention of the Ministry of Justice (MOJ) that the agreement which has existed for 9 years, has been applied. It is extant and is applicable under the terms of clause 18(5)(a) of the Award. The CSA contend that the agreement, made between the Public Service Commissioner and the CSA, has never been the subject of an order, Award or agreement of the Industrial Relations Commission and is void. The CSA's counsel, Mr Long, refers to this agreement as an "arrangement". The CSA seeks the following declaration and orders—

"1. A declaration that the Arrangement entered into between the Commissioner and the Association on or about the 1st June 1990 is void and of no effect.

2. An order that, on a proper interpretation of clause 18(5)(a) of the Award, the validity of any agreement entered into between the parties depends on an agreement being registered as an Order, Agreement or Award of the Western Australian Industrial Relations Commission.

3. An order that, on the proper interpretation of the Award, the occupants of the Positions referred to in Annexure "D" herein are, and have been, entitled to be paid the on call allowance calculated in accordance with Schedule H (Part 1- out of hours contact) of the Award since the 1st June 1990."

The CSA chose to discontinue its application for an order that, on the proper interpretation of the Award, the occupants of the positions referred to in Annexure "D" should have been and are entitled to be paid an on call allowance in accordance with the Award. In the balance of these Reasons only the first two matters for determination are addressed.

To address the matters before the Commission three questions need to be answered. They are—

- What is the true interpretation of clause 18(5)(a) of the Award.
- If that interpretation authorises agreements which result in different payments than those produced by the Award being made to persons subject to the Award, whether such agreements are valid.
- If an agreement can be made is the agreement, cited previously, a valid agreement.

I deal with the first question, that is, whether clause 18(5)(a) of the Award authorises the making of agreements. The principles to be applied in interpreting Awards are well known. The principles are the same as those applied to the construction of deeds, instruments and statutes [*Norwest Beef Industries Limited v. West Australian Branch, Australian Meat Industry Employees Union, Industrial Union of Workers, Perth 1994 (64 WAIG 2124)]*. The first task in interpretation is to determine, taking into account the terms of the Award as a whole, whether the words under consideration are capable in their ordinary meaning of being unambiguous. Adherence to the strict technical meaning of words is to be avoided. The matter is to be viewed broadly after giving consideration, and weight, to the Award in general. It is important to bear in mind, that after giving words their ordinary natural meaning, it is not permissible to resort to extrinsic aides. It is not permissible to look to the expressed or supposed intention of the Award making tribunal.

The Award is typical of public service employment. It has 59 detailed clauses and is accompanied by 13 schedules which deal with specific matters such as Motor Vehicle Allowance; Motor Cycle Allowance; Travelling, Transfer and Relieving Allowance; Diving, Flying and Seagoing Allowance and the like. The document contains detailed provisions which appear to provide regulation on all possible aspects of the employment relationship. The document is highly prescriptive. It contains a code which leaves few areas of the employment relationship untouched. Clauses in the Award which give relief from this intense prescription stand out. An example is clause 9(3) which provides for hours of duty to be between 7.00am and 6.00pm except as agreed between the employer and union. This clause provides that variations to the hours of part time employment can be agreed in writing between the employer and the part time officer involved. Significantly, it is the employer and the union that are able to make agreements relating to working hours for part time employees.

There is provision in subclause 9 that the number, or proportion, of part time officers employed in departments not exceed a number, or proportion, which the CSA and employer agree to in writing. Another example is contained in clause 17(3) – Hours of Duty and Rosters. This clause enables the number of shifts, worked per fortnight, to be altered by agreement between the CSA and the Chief Executive Officer of the Department. Subclause (f) provides that the CSA and the Public Service Commissioner can make arrangements concerning the necessity to provide a 10 hour break between the time a shift ends and another begins. Clause 17(3)(c) provides that officers may be rostered to work on any 7 days of the week provided that no officer be rostered for more than six consecutive days. This provision can be varied by agreement by a Chief Executive Officer and the CSA by exemption.

Clause 18(1)(j) provides for agreements to be made concerning the calculation of agreed overtime allowance. Commuted overtime allowance is described in the clause as an agreed allowance negotiated between the Association and the Chief Executive Officer. It is paid, in lieu of actual overtime worked, to officers occupying positions which require work to be performed consistently and regularly outside and in excess of the prescribed hours of duty. The provision enables an agreement to be made similar to that provided in the clause under review. Commuted overtime allowances can be negotiated between the association and the Chief Executive Officer by clause 18(2)(c). The clause is not prescriptive about what can be negotiated. However, it is clear that an arrangement can be made for payment other than a payment prescribed in clause 18(2)(d). Another example is the Trade Union Training Leave which is contained in Clause 28(1). This provides that paid leave of absence may be granted by the Chief Executive Officer for officers to attend short courses or seminars which are agreed not only between the Chief Executive Officer and the CSA but between the Department of Productivity and Labour Relations as well.

The Award is for the most part intensely prescriptive. However, there are flexible provisions that allow the parties to make arrangements that suit particular work groups in particular circumstances. Whether the provisions come from amendments to the Award, as a result of the Structural Efficiency Principles of the State Wage Principles, is not significant. The task of the Commission is to interpret the words in the document as they appear regardless of the origin.

The words contained in clause 18(5)(a) Overtime Allowance Out of Hours Contact, fall for interpretation. The Award provision in full is as follows. I have added emphasis to the part of the extract that is subject to interpretation—

"(5) Out of Hours Contact

(a) Except as otherwise agreed between the Commissioner and the Association, an officer who is required by the Chief Executive Officer or a duly authorised officer to be on "out of hours contact" during periods off duty shall be paid an allowance in accordance with the following formulae for each hour or part thereof the officer is on "out of hours contact".

Standby

Level 2 (minimum) weekly rate x $\frac{1}{37.5}$ x $\frac{37.5}{100}$

On Call

Level 2 (minimum) weekly rate x $\frac{1}{37.5}$ x $\frac{18.75}{100}$

Availability

Level 2 (minimum) weekly rate x $\frac{1}{37.5}$ x $\frac{18.75}{100}$ x $\frac{50}{100}$

> Such allowances are contained in Part 1 of Schedule H.—Overtime of this Award.
>
> Provided that payment in accordance with this paragraph shall not be made with respect to any period for which payment is made in accordance with the provisions of subclause (2) of this clause when the officer is recalled to work."
>
> (Emphasis added)

The words to be interpreted are clear and unambiguous. They are very similar to words used in the clauses 9(3) 17(3), 18(1) previously cited. Clause 18(5) enables an agreement to be made, contrary to the requirement of the respondent to pay officers, in accordance with a formula, for each hour or part thereof that an officer is on out-of-hours contract. When an officer is on out-of-hours contact the formula prescribed in Part 1 of Schedule 1 applies. The balance of the clause deals with administrative arrangements for the supply of telephones and reimbursement of telephone costs when an officer is on out-of-hours contact. The plain meaning of the words 'except as otherwise agreed between the Commissioner and the Association' enables the parties to the Award to make an agreement concerning out-of-hours contact in any form, when the arrangements provided are inappropriate. Therefore, the parties named the Commissioner and the Association, which in this case is the respondent and the CSA, are able to make an agreement concerning out-of-hours contact.

I address the second question. In my respectful view, a lot of the argument between the parties was irrelevant. The argument regarding correct payments, the effect of Award changes and what entitlements should or should not be paid are not relevant in this interpretation. I am obliged to consider the normal natural meaning of the words contained in the Award and provide an interpretation of those. If there have been debates concerning the efficacy of previous agreements it is not a matter for me, nor is it for me to determine what should have been paid under those agreements. However, those matters may be within the exclusive jurisdiction of the Industrial Magistrate as prescribed in s.83 of the Act. Therefore, I need not concern myself with the conflict between two industrial instruments as suggested in the arguments addressed by Cawley C in the *Hungry Jacks Pty Ltd and Others v. Jeffrey Wilkins and Others 1991 (71 WAIG 1751 @ 1755) (Hungry Jacks case)*. In any event I suggest that the Hungry Jacks case is distinguishable.

Comfort is sought by the CSA from the decision of the Full Bench in *The Confederation of Western Australian Industry v. the Western Australian Timber Industry Union of Workers 1991 (71 WAIG 15) (Timber Workers case)*. Importantly, the *Timber Workers Case* concerned a refusal by the Commission to make amendments to an Award because it would or may have been contrary to s.114 of the Act. The Full Bench found that the Commission was unable to surrender its Award making power in such a way. Accordingly, it found that the proposed changes to clause 46 of the Timber Workers Award may have lead to agreements which arguably would be void ab initio. The Commissions decision to vest power to make agreements contrary to the Act, would be in breach of s.26 as it would be contrary to equity, conscious and substantial merits of the case. The Award dealt with making agreements between employees and employers, not making agreements between an association of employers and an association of employees. The only agreements which may be reached are those registered by the Commission in accordance with s.41 of the Act, and made between an association of employees and employers. Importantly, there was the potential that the powers vested may lead to variation of the area and scope of the Award without compliance with the appropriate sections of the Act.

That is not the situation here. The words as I have interpreted them, give the parties to the Award the ability to make an agreement which tailor the Award to the circumstances of a unique workplace. In this case, Superintendents and Assistant Superintendents in some 16 institutions around the State operate over hours in different ways to most institutions of Government which are covered by the Public Sector Award. None of the Award clauses, that provide for making arrangements which are different to those provided in the Award, contemplate making an industrial agreement capable of being registered under s.41 of the Act. I accept the suggestion that they are mere agreements. The agreements have no standing as an industrial agreement, which if approved by the Commission could alter provisions of an Award, because they have not been subject to the test in s.41(2). These are simply arrangements which parties may enter into to give better effect to the Award. They provide for flexibility where it is insufficient within the wording of the Award to cover an unusual work situation. Prison institutions are an example with their 24 hour day operation keeping persons imprisoned and restraining their involvement with the community. Prison superintendents, who carry statutory authority, require discipline, command and control. Their work regime differs from the main stream public service officer who works nine to five.

Importantly, this matter has not arisen because the Commission made an amendment to the Award as was the case with the *Timber Workers case (ibid)*. This is a case where the provision, which gives authority to make agreements, is of long standing. The efficacy of an agreement made under that clause has been called into question, possibly because the applicant no longer sees the provisions as appropriate. If that is the case, an interpretation is not the method by which that problem is resolved. Resolution lies in making some other arrangement, be that an arrangement under the clause or an arrangement that becomes subject to another legal instrument.

I move now to the third question, which is whether the agreement in force and is it invalid. Clearly, an agreement was made in 1990. The circumstances in which it was made are only of academic interest. The documents which constitute *Annexure C* provide an offer and suitably couched acceptance. Prima facie the document is not in conflict with the Award. It seems the applicant argues that, occasionally, the agreement provides less return, to the officers, than the Award if it had been applied in those particular circumstances. Therefore, the agreement is contrary to s.114 of the Act and is null and void. That argument neglects those occasions where the agreement may provide payments in excess of those provided by the Award. In that case s.114, does not make such an agreement null and void because it does not purport to void or vary the Award.

It is common for employees to be paid in excess of Awards. Except in some rare circumstances those agreements are not voided by s.114. If there are situations where the agreement produced less than the Award, s.114 may act to void the arrangement in that particular circumstance. However, that is not a matter for interpretation. That is a matter for enforcement. If it needs to be tested it can be by virtue of s.83 of the Act. For reasons I have mentioned the arrangement, entered into between the parties, cannot be bad because it is not an Award, order or agreement processed by the Commission. The agreement is evidenced in *Annexure C* of the application. The agreement is given its life by virtue of clause 18(5)(a). This provision gives the parties flexibility to arrange the Award's provisions to suit unique working circumstances. It is valid within that context and invalid in the circumstances described above.

I conclude that the parties were authorised to make an agreement on the plain interpretation of clause 18(5)(a). Whether that agreement creates a breach of the Award in whole or in part, is not a matter for the Commission to deal with on interpretation. The Agreement between the parties is valid to the extent I have described. The question posed in the application seeking a declaration that the Arrangement entered into between the Commission and the CSA or about 1 June 1990, is void and has no effect cannot be answered. No such declaration can be made because the agreement is valid within the terms described in these Reasons for Decision.

On a proper interpretation of clause 18(5)(a) of the Award, the answer to the second question concerning the validity of

an agreement entered into between the parties depends on an agreement being registered as an Order, Agreement or Award of the Western Australian Industrial Relations Commission, is in the negative.

The Act in s.46(2) requires that a declaration made under that section be made in the Commission's Reasons for Decision. A declaration shall be made in the form of an order, within seven days of handing down the Reasons for Decision, if any organisation, association or employer bound by the Award so requests.

These Reasons for Decision now issue.

APPEARANCES: Mr J A Long, of Counsel, appeared on behalf of the applicant

Ms J Smith, of Counsel, appeared on behalf of the respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Incorporated

and

Chief Executive Officer
Ministry of Justice.

No. P 47 of 1998.

COMMISSIONER J F GREGOR.

29 July 1999.

Order.

WHEREAS on 19 July 1999, after hearing Mr J A Long, of Counsel, on behalf of the Civil Service Association of Western Australia Incorporated and Ms J Smith, of Counsel, on behalf of the Chief Executive Officer of the Ministry of Justice, the Commission issued Reasons for Decision relating to the true interpretation of clause 18(5)(a) of the Public Service Award 1992; and

WHEREAS s.46(2) of the Industrial Relations Act, 1979 requires that if any organisation or employer bound by the Award so requests, within 7 days of the handing down of Reasons for Decision, that a Declaration in a form of an Order be issued, then the Commission shall issue such an Order ; and

WHEREAS such a request was made on the 21 July, 1999 by J A Long & Co on behalf of the applicant in this matter;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Commission hereby declares—

1. THAT in respect in of question 1 posed by the Civil Service Association of Western Australia Incorporated, no Declaration can be made because the agreement is valid within the terms prescribed in the Reasons for Decision issued on 19 July 1999.
2. THAT in answer to question 2 posed by the applicant is in the negative.

(Sgd.) J.F. GREGOR,
[L.S.] Public Service Arbitrator.

UNFAIR DISMISSAL/ CONTRACTUAL ENTITLEMENTS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Valerie Heather Atherton

and

Cardlink Pty Ltd (ACN 084566316).

No. 257 of 1999.

6 August 1999.

Reasons for Decision.

COMMISSIONER S A CAWLEY: This application is brought pursuant to section 29(1)(b)(i) of the Industrial Relations Act, 1979. By it Valerie Heather Atherton ("the applicant") claims she was unfairly dismissed by Cardlink Pty Ltd (ACN 084 566 316) ("the respondent"). In the application as filed the applicant sought an order that the respondent pay a sum equivalent to six months wages to her in compensation. At the hearing this was amended to $8,759.00. The applicant says this sum is arrived at by reference to what she would have earned in the six months from the time of the alleged dismissal less earnings and estimated earnings in that time plus an amount equivalent to four weeks pay in compensation for stress the applicant says was caused by the dismissal. Though it was not couched this way, in her submissions on this point the applicant effectively alleged that she had been denied contractual benefits due her under the contract. That is, a claim pursuant to section 29(1)(b)(ii) was raised. The entitlements claimed were one days pay for the date of the alleged dismissal and a weeks pay in lieu of notice; both of which are contingent on the applicant being dismissed as alleged. The respondent denies that the applicant was dismissed at all and objects to the issue of the order sought in the application and, by inference, objects to the amended claim for compensation and denies any contractual benefits are due the applicant.

The respondent, which trades under the name Business Express Club, operates a business which involves obtaining discounts from nominated restaurants, accommodation providers, entertainment venues, specified services and retail outlets for access by persons who pay a fee (called a membership) to the respondent. In return the respondent provides information on the discounts available and a card to be used to access these. Usually membership is for a 12 month period but this may vary. A significant part of the respondent's operations involves marketing: to get participating businesses for discount arrangements; to persuade existing clients to renew memberships; and, to obtain new clients for memberships. As well as "on the road" marketing the respondent uses telemarketing techniques.

The principal of the respondent business is Ms Lynda Griffiths who is also the executive managing director. Griffiths bought the business from the previous owner in October 1998. At the time the business was sold it was operating from premises in suburban Victoria Park. The respondent continued to operate the business from those premises for a short while after taking over before moving to premises in suburban Peppermint Grove.

The applicant says in her claim as filed that she commenced employment with the respondent in 1992 but it is clear from the evidence that there was no employment relationship between these parties before 15 October 1998 when, on behalf of the respondent, Griffiths offered the applicant a position on the same conditions she currently had and the applicant accepted this offer. This meant the applicant, who had worked for the previous owner of the business since 1992 continued on with the same work on the same conditions and in the same premises without a break. But there was no transmission for the purposes of any accrued benefits the applicant may have had. The respondent had no responsibility for any contractual benefit which may have arisen in relation to service by the applicant for the previous owner of the business or obligation for any recognition of that service.

The applicant described her occupation as telephone sales/consultant with her main duties being to initiate new business, provide a service to members and achieve renewals. According to the applicant's claim her hours of work were 9.00am – 5.00pm Mondays through Thursday and 9.00am – 4.30pm on Fridays for a weekly wage of $606.00 gross. The respondent does not agree that these were the hours or wage. It says the applicant's weekly wage was $614.00 gross for a 37 ½ hour week working 9.30am – 5.00pm Mondays through Fridays with 40 minutes paid lunch break and two 10 minute paid breaks each day.

There is evidence on the issue of hours. In the course of the hearing the applicant acknowledged that when the business was moved from Victoria Park to Peppermint Grove the respondent varied the commencement time for the applicant from 9.00am to 9.30am and continued to pay the weekly wage that had applied before. For this reason I accept the respondent's position as to weekly hours and, so far as the wage rate is concerned, I think it more likely than not that it was $614.00 gross per week.

Two other employees of the former owner of the business as well as the applicant were employed by the respondent when it took over. They were the receptionist and another sales representative. The latter was employed on a casual basis and that arrangement ceased when the business moved from Victoria Park. Another person identified by the respondent as being engaged to administer the business was involved for a short time in or about the time the business changed hands but this arrangement was not maintained and Griffiths was clearly in charge of the day to day operations by mid October 1998 at least.

It appears that the previous owner customarily closed the business for a period over Christmas/New Year and employees took paid annual leave then. At some time after taking over the respondent agreed that this arrangement would apply in 1998-1999. Thus, notwithstanding that neither of the two employees at the time, the receptionist and the applicant, had sufficient service with the respondent to give rise to such an entitlement by then proceeded on paid leave from 23 December 1998 to 11 January 1999. Shortly after the return to work the receptionist ceased being employed by the respondent and another person came in to do that work. And a Mr David James was employed by the respondent. His position at the relevant time was that of sales manager.

The respondent's premises in Peppermint Grove are made up of a reception and services area which leads through to an open planned area in which James and the applicant had desks. Griffiths has an office off this area. James' work involved him being 'on the road' an estimated 70% of the time so the applicant often worked on her own in this area for most of the time.

It is agreed that the employment relationship between the parties ended on 28 January 1999 though, as noted, there is a disagreement as to how it ended. The applicant says it ended with her being dismissed. The respondent says that there was no dismissal and, effectively, the applicant abandoned the employment. This dispute raises the question of jurisdiction.

In making the claim as filed the applicant relies upon the right conferred by section 29(1)(b)(i) of the statute for an employee alleging unfair dismissal to have access to this Commission to have that claim tested. It follows that there must have been a dismissal for the right of access to arise. That is a question of fact. Either there was a dismissal or there was not. There can be no consideration of the allegation of unfairness in the absence of a finding that, in fact, the applicant was dismissed. If it is concluded that there was no dismissal there is no jurisdiction for the Commission to deal with the claim further.

The question of fact as to whether there was a dismissal of the applicant by the respondent on 28 January 1999 turns on the evidence of the events that day. The applicant, Griffiths and the respondent's sales manager, Mr David Paul James each gave evidence of what happened. James had been employed by the respondent for only a short while by then and it appears had a cordial work relationship with the applicant. Having regard for this, the clear dispassionate way in which he gave evidence and the fact that he was a bystander throughout the exchanges between Griffiths and the applicant in the environs of the telemarketing office he shared with the applicant, I accept the evidence as unrehearsed and credible.

That evidence can be summarised as follows. James says that when he attended for work at 9.00am on 28 January Griffiths called him into her office, showed him a document in which she had set down criticisms of the applicant's attitude and told him she intended to produce the document to the applicant that day for the purposes of discussing her concerns with her and warning her that improvement was required. James then returned to his desk in the open office area. When the applicant arrived for work, Griffiths called her into her office and the door was closed. Voices were raised but he did not hear what was actually said. James says the applicant came out after a few minutes. He says the applicant appeared upset and aggressive and said words to the effect that she wanted to read the letter produced to her by Griffiths on her own. A loud exchange of words took place between the applicant and Griffiths who had followed the applicant out into the open office area. James was on the telephone at the time and, while he did not necessarily see all movements of the applicant and Griffiths, he could hear them. He ended the call because of the volume of the argument going on. James says Griffiths asked the applicant to come back into her office but the applicant refused. She then started to leave saying words to the effect that the document she had been presented with was all a pack of lies. Griffiths told her that if she walked out of the premises she was not to come back. The applicant continued on her way out. The applicant returned to the work area minutes later in quite an agitated state. James and Griffiths were still there. James says Griffiths asked the applicant to go into her office so they could discuss things. He says the applicant stated she would not sign the document which Griffiths had produced to her and asked Griffiths if she was being sacked. There was no response. He did not hear Griffiths tell the applicant to pack her things but thinks the receptionist was called into the room. The applicant then started clearing her desk and asked Griffiths for money due to her. After a further short exchange the applicant left.

While there was more detail in the evidence of the applicant and Griffiths on the events, some of it contradictory, in most substantive respects it did not differ from that of James.

Having regard for all this I am not satisfied that there was in fact a dismissal. It seems to me that by her actions the applicant ignored directions by the employer, including one after she returned to the premises to come into Griffiths' office for a discussion, and then walked out. There was no dismissal effected by the respondent.

While it was not raised by the applicant I have considered whether or not a constructive dismissal occurred. The fundamental test for such a conclusion is whether the employee had no real alternative but to terminate the employment, whether by resignation or abandonment, due to the conduct of the employer. As Rowland J, with whom Anderson J agreed, in the case of The Attorney General v Western Australian Prison Officers' Union of Workers (1995) 75 WAIG 3166 at 3169 said, a dismissal by the employer may result where "an employer has followed a course of conduct with the deliberate and dominant purpose of coercing a worker to resign". That case involved a situation where the employee had actually resigned but it seems to me that the statement would still apply if the purpose of the employer was to have the employee abandon his or her contract. The important element is that there must have been only that course open to the employee as a result of the employer's conduct.

But the evidence in this case falls well short of such an outcome. While it is very clear that the applicant was upset and offended by Griffiths and critical of her from early on, that does not take the matter further. In this case it is possible that the demotion presumed by the applicant in favour of James was not fact and in any event it can not be said on the evidence of the last day of employment that the purpose of the respondent was to end the contract by a constructive dismissal. In my view, a claim that there was a constructive dismissal could not be made out on the evidence in this case.

The finding that there was no dismissal means the question of jurisdiction must be answered in the negative. As a result the matter of unfairness cannot be considered.

Finally, and as a consequence of the conclusion that there was no dismissal, the claim for contractual benefits must fail.

An order reflecting these conclusions now issues.

Appearances: The applicant appeared on her own behalf.
Ms L Griffiths appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Valerie Heather Atherton

and

Cardlink Pty Ltd (ACN 084566316).

No. 257 of 1999.

6 August 1999.

Order.

HAVING heard the applicant on her own behalf and Ms L Griffiths on behalf of the respondent now therefore, I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order —

THAT this application shall be and is hereby dismissed.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Peter Adrian Bonney

and

Wongatha Wonganarra Aboriginal Corporation.

No. 225 of 1999.

COMMISSIONER S J KENNER.

4 June 1999.

Reasons for Decision.

THE COMMISSIONER: This is an application by Peter Adrian Bonney ("the applicant") made pursuant to s 29(1)(b)(i) and (ii) of the Industrial Relations Act 1979 ("the Act") for orders pursuant to s 23A of the Act, arising out of his summary dismissal by the Wongatha Wonganarra Aboriginal Corporation ("the respondent") on 29 January 1999. The applicant claims that his dismissal was harsh, oppressive and unfair and seeks reinstatement.

The applicant was employed by the respondent on or about 26 October 1998, pursuant to the terms of the Aboriginal Communities and Organisations (Western Australia) Award 1996 ("the Award"), an award of the Australian Industrial Relations Commission ("AIRC"), made under the then Conciliation and Arbitration Act 1904 (Cth). It is common ground that the respondent is a named party to the Award.

The respondent wholly contests the applicant's claim and says it did not dismiss the applicant harshly, oppressively or unfairly and denies that the applicant is entitled to the relief claimed or any relief at all. The respondent has challenged the Commission's jurisdiction to deal with this matter, referring to the decision of the Commission as presently constituted in *Hull v City of Mandurah* (1998) 78 WAIG 4912.

Furthermore, the applicant has concurrent proceedings in the AIRC against the respondent for unfair dismissal arising out of the same facts as in this application before this Commission. As a consequence of these matters, the Commission listed the application for show cause as to why the application should not be dismissed. The matter was heard on 28 May 1999.

Mr Gill of counsel appeared on behalf of the applicant and Mr Lenhoff of counsel appeared on behalf of the respondent.

At the conclusion of the proceedings, I announced my decision that the application should be dismissed, with reasons for decision to be published in due course. My decision on an application by the respondent for costs was reserved. My reasons now follow.

It was submitted on behalf of the applicant that because of the existence of concurrent proceedings relating to the applicant's dismissal in the AIRC, the Commission should adjourn and not dismiss the present application. It was submitted by counsel that the respondent in the proceedings in the AIRC, had challenged the AIRC's jurisdiction to deal with that claim. Furthermore, counsel submitted that in terms of the decision of the Commission in *Hull* (supra), raised by the respondent, that the terms of s 29 of the Act do cover employees bound by federal awards and this was no barrier to jurisdiction in the present application. In response to issues raised by the Commission in the proceedings, it was the applicant's submission that the terms of the Award, which applied to the applicant's employment, did not give rise to any inconsistency with the terms of the Act, for the purposes of s 109 of the Cth Constitution.

For the respondent, counsel submitted that the application should be dismissed. It was submitted that it was entirely inappropriate for the applicant to have the same claim in two different jurisdictions. Counsel submitted that the effect of this was to put the respondent to the time and expense of having to defend both actions in different forums. In relation to the submission by the applicant that the AIRC's jurisdiction was being challenged in those proceedings, counsel for the respondent denied that this was the case, however advised the Commission that the respondent had reserved its position in that regard.

Furthermore, counsel for the respondent submitted that based upon the principles discussed by the Commission in *Hull* (supra) in relation to inconsistency between State and federal law, the terms of the Award in relation to termination of employment were clearly inconsistent with the terms of the Act.

Conclusions

In my opinion, the Commission should not countenance the maintenance of concurrent proceedings in different jurisdictions for the same relief, involving the same parties and arising out of the same circumstances. As a general principle, courts and tribunals have resisted this course of conduct, as a form of "forum shopping". Having elected to commence a claim in one jurisdiction, the other party to such claim should not have to meet, in essence, the same claim for the same relief in another jurisdiction. A similar view has been expressed by Fielding SC in *Fitzpatrick v Balderstone Clough Joint Venture* (1999) 79 WAIG 862.

In the circumstances of this case however, I note that the respondent has reserved its rights in relation to jurisdiction in the AIRC proceedings. To that extent at least, a challenge to jurisdiction has not been ruled out, which is a point of distinction between this case and the circumstances arising in *Fitzpatrick* (supra). I would not therefore, be inclined to dismiss the application on the basis of the AIRC proceedings alone, in the present circumstances.

However, and notwithstanding the existence of the proceedings in the AIRC, there are in my opinion, fundamental difficulties with the present application. These difficulties would remain irrespective of the outcome of the proceedings presently before the AIRC. These difficulties relate to the terms of the Award, which govern the relationship between the applicant and the respondent.

Clause 12—Procedures For The Avoidance Of Industrial Disputes of the Award relatively provides as follows—

"12. Procedures For The Avoidance Of Industrial Disputes

12. 1 Disputes and grievance procedures (other than employees work performance)

Subject to the Industrial Relations Act 1988, as amended, any dispute or grievance arising out of the operation of this award, other than a dispute or grievance arising directly from an employer's concern about an employees work performance or conduct (see 12.2 below), shall be dealt with in the following manner—

12.1.1 In the first instance the employee shall attempt to resolve the dispute or grievance with their immediate supervisor, or employer and shall be entitled to

have a union representative present if the employee so desires.

12.1.1 (a) An Aboriginal (Indigenous) employee shall be entitled to be represented in the various steps of the above procedure by another person of his or her choosing.

Pt 3—Procedures for the avoidance of industrial disputes – contd

12.1.1 (b) Where the person chosen by the Aboriginal (Indigenous) employee to act as the representative is employed by the particular employer the employee selected shall suffer no loss of wages or other benefit arising from his or her presence and/or representation made at any stage of the dispute settlement procedure.

12.1.1 (c) The foregoing does not limit the right of an Aboriginal (Indigenous) employee to be represented by any other person, including an official of the ASU, who is not an employee of the employer but the employer shall not be liable to pay wages to such other person for time spent representing the relevant employee.

12.1.2 Where any such attempt at settlement has failed, or where the dispute or claim is of such a nature that a direct discussion between the employee and his/her immediate supervisor or employer would be inappropriate, the employee may notify a duly authorised State representative of the Australian Services Union, who, if she/he considers that there is some substance in the dispute or claim, may forthwith take the matter up with the employer, and a meeting shall be arranged.

12.1.3 The arrangement of a meeting under (b) shall take place within seven working days of notification to the employer of a dispute or grievance.

12.1.4 In the event of negotiations between the management and the union not resolving the matter in dispute either party shall be at liberty to refer the matter to a Board of Reference provided that an indigenous employee may prefer to request the matter is dealt with in accordance with local Aboriginal custom and decision making processes.

12.1.5 It is agreed that work shall continue during the period of negotiation, discussion and consultation except in the case of work which is considered to be unsafe. In any case where work is considered to be unsafe, the management shall be immediately consulted to determine whether safety regulations are being observed.

12.1.6 Notwithstanding the above, it is open to any party to have the matter referred to the Australian Industrial Relations Commission for resolution."

Furthermore, the termination clause on the Award is relevant and clause 16—TERMINATION OF EMPLOYMENT provides as follows—

"16.1 Notice of termination by the employer

Subject to clause 12.2 of this award, in order to terminate the employment of an employee the employer shall give to the employee the following written notice of dismissal—

Period of continuous service	Period of notice
Less than 1 year	1 week
1 year and up to the completion of 3 years	2 weeks
3 years and up to the completion of 5 years	3 weeks
5 years and over	4 weeks

In addition to the notice prescribed above, employees over 45 years of age at the time of the giving of the notice, with not less than two years continuous service, shall be entitled to an additional week's notice.

Full payment in lieu of notice of dismissal as prescribed above shall be made if the appropriate period of notice is not given. Employment may be terminated by part payment of the period of notice of dismissal, and part payment in lieu of notice.

For the purposes of calculating payment in lieu of notice of dismissal, ordinary time earnings (including relevant allowances) shall be used.

The period of notice of dismissal in this clause shall not apply in the situation where dismissal is for conduct which justifies summary dismissal, casual employment, or for employees engaged for a fixed term.

16.2 Notice of termination by the employee

The notice of termination required to be given by an employee shall be the same as that required of an employer, except that there shall be no additional notice based on the age of the employee concerned.

If an employee fails to give the required notice of termination, the employer shall have the option and right to withhold moneys due to the employee, but only for the amount of the ordinary time earnings (including allowances), for the period of notice.

16.3 Time off during notice period

Where an employer has given notice of termination to an employee, an employee shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off shall be taken at a time mutually convenient to the employee and the employer.

Pt 4—Termination of employment – contd

16.4 Statement of employment

The employer shall, if requested by an employee who has been terminated, provide to the employee a written statement specifying the period of their employment and the classification and type of work performed by the employee.

16.5 Summary dismissal

The employer shall have the right to dismiss any employee without notice for any serious and wilful misconduct which justifies summary dismissal.

Such conduct shall include, a breach of any prohibition on the use of alcohol, or the cancellation of an entry permit onto the community lands arising from a serious and wilful breach of the conditions of that permit.

16.6 Unfair dismissal

Termination of employment by an employer shall not be harsh, unjust or unreasonable.

For the purposes of this clause, termination of employment shall include terminations with or without notice.

Without limiting the above, except where a distinction, exclusion or preference is based on the inherent requirements of a particular position, termination on the grounds of race, colour, sex, family responsibility, sexual preference, marital status, pregnancy, religion, union membership or activity, political opinion, national extraction and social origin or customs

of traditional Aboriginal/Indigenous people shall constitute a harsh, unjust or unreasonable termination of employment.

In my opinion, having regard to the relevant principles regarding inconsistency, which I referred to in my decision in *Hull* (supra), the conclusion is inescapable that the terms of the Act in relation to unfair dismissal, are directly inconsistent with the terms of the Award, in relation to termination of employment. Furthermore, the terms of clause 12 of the Award make it clear, that where a dispute of any nature cannot be resolved in accordance with the procedure outlined in that clause, then the matter needs to be referred to the AIRC for resolution.

I pause to observe, that there was no submission before the Commission that the relevant terms of the Award that are set out above, relating to direct inconsistency, have ceased to have effect by reason of s 89A of the Workplace Relations Act 1996 (Cth) ("WRA"). I should also add that the terms of s 152(1A) of the WRA do not affect my conclusion as to inconsistency, as there can be no concurrent operation of State and federal law that directly conflicts. In *Burnham v Western Puntukurnuparna Aboriginal Corporation* (1998) 78 WAIG 4899 Fielding SC reached the same conclusion in relation to inconsistency, when considering the terms of the Award, which were in issue in that matter also.

For those reasons in my view, an inconsistency arises between the terms of the Act and the terms of the Award under which the applicant was employed, for the purposes of s 109 of the Cth Constitution. This leads to the conclusion that this application must be dismissed. As I have noted above, this conclusion is quite independent of any consideration of the separate proceedings before the AIRC.

Finally, I deal with the application by counsel for the respondent for costs against the applicant, arising from conciliation proceedings listed before the Commission in Kalgoorlie on 19 May 1999, in relation to which the applicant failed to appear. Counsel for the applicant submitted that the applicant's failure to appear at the conference by teleconference, was due to a genuine misunderstanding by the applicant's counsel and was not due to any deliberate act or omission. In all the circumstances, I am not persuaded on this occasion that such an order would be appropriate. In any event, it appeared that counsel for the respondent had instructions to claim only costs for the services of a legal practitioner, which course is precluded by s 27(1)(c) of the Act. The application for costs is therefore refused.

The application is dismissed.

APPEARANCES: Mr A Gill of counsel appeared on behalf of the applicant.

Mr D Lenhoff of counsel appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Peter Adrian Bonney

and

Wongatha Wonganarra Aboriginal Corporation.

No. 225 of 1999.

COMMISSIONER S J KENNER.

4 June 1999.

Order.

HAVING heard Mr A Gill of counsel on behalf of the applicant and Mr D 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 the application be and is hereby dismissed.

(Sgd.) S.J. KENNER,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Fay Ann Brenton

and

P.D.R. Enterprises Pty Ltd T/A Jolly Frog Cafe Restaurant.

No. 434 of 1997.

28 July 1999.

Reasons for Decision.

COMMISSIONER C.B. PARKS: It is the claim of the applicant that she was unfairly dismissed from the position of full time cook and supervisor at a kiosk operated by the respondent and relief in the form of "four months" compensation is claimed.

The respondent conducts a business which includes, among other things, a restaurant and associated kitchen, and a separate kiosk where meals of a different type are also prepared and sold. At the time the respondent acquired the business the applicant was employed as a kitchen hand working in the restaurant kitchen and was engaged by the respondent to continue in that employment. Six months later, at or about 3 January 1997, the parties entered into an arrangement that the applicant leave the kitchen and undertake the role of cook and supervisor for the kiosk, subject to the condition that she try the new role and either she or the respondent could decide that she return to the kitchen hand position. The work week of the applicant was Wednesday to Sunday and from that I conclude she commenced in the kiosk on 8 January 1997. No length of time for the trial was set.

The respondent terminated the applicant from her full time position in the kiosk and returned her to the kitchen to again work as a kitchen hand. According to a letter from the respondent (exhibit 1), dated 10 February 1997, it provided confirmation that the termination was to operate on that date. The Notice of Application asserts that the change in employment constituted the dismissal and indicates that such occurred on the date stated in the letter. However, during proceedings the applicant told the Commission that such occurred about 17 February, the reason being the contents of the letter caused her stress and to be absent from work, then upon her return she continued in the kiosk for about three days.

Return to the kitchen meant there would be a substantial reduction in the hours of work provided to the applicant. According to the applicant the reduced hours averaged 14 to 16 hours per week. Removal from the kiosk by the respondent and the failure to provide her with adequate hours of work as a kitchen hand, and inferentially the resultant reduced earnings, the applicant says caused her stress and resulted in her terminating that employment on 8 March 1997.

During the period that the applicant worked in the kiosk the respondent engaged an employee to trial as a replacement for the applicant in the kiosk. The trial of this new employee prompted a discussion between the applicant and the respondent which led to the arrangement that the applicant would continue in her kiosk role. There no longer being a need for a replacement cook and supervisor resulted in the new employee not being further employed. Another new employee, one suited to the role of kitchen hand, was then engaged by the respondent to work in the kitchen. According to the respondent this sequence of events occurred because, after the first day of work in the kiosk, the applicant had indicated she did not wish to continue in the role, however there was agreement she would continue until a replacement was arranged. Within a week the replacement had been engaged on trial and with the intention that the applicant be allowed to return to her previous role in the kitchen. That was followed by an overture from the applicant to the effect that, although she had concerns regarding her new role of cook and supervisor, she wished to persevere with it. This, the respondent says was acceptable, but the kitchen hand position could no longer be reserved for her possible return and she was advised of that. Shortly after that the new kitchen hand was engaged. Ms Brenton says she was informed by other employees that a newly arrived employee was to replace her in the kiosk. She therefore raised that matter with the respondent and was informed that was the intention because she had indicated dissatisfaction with her new role.

The respondent is said to have been informed by the applicant that she had not expressed dissatisfaction with the role but had earlier said she was "not happy" regarding weekend work, after which she stated her wish to continue in the role and it was agreed that she do so.

The respondent reached the conclusion that the applicant had not attained a satisfactory level of performance in the kiosk, notwithstanding her failings are said to have been identified and she had had the opportunity to address them, and therefore her employment in that role was terminated. Ms Brenton was offered, and accepted, the limited work said to be available in the kitchen, as a kitchen hand, until full time work became available in that position. Jean-Daniel Ichallalene, the principal for the respondent, and the person with whom the applicant had dealt with throughout, attended the kiosk on occasions each day and when he thought it was necessary he assisted with the work. Mr Ichallalene says, he received complaints from some kiosk customers, impliedly for which he held the applicant to be responsible, the applicant's standard of hygiene required improvement as did her preparation and presentation of food, she was responsible for a high wastage of food, and she failed to order necessary kiosk supplies. Ms Brenton denies the allegations made regarding her performance. She says that there were occasions when Mr Ichallalene had shown dissatisfaction with some work practices in the kiosk and each was dealt with when it arose, however difficulties continued to arise on weekends because of inadequate preparatory work and he refused to allow additional time to perform that work. In the opinion of the applicant, Mr Ichallalene expected meals of a type and volume to be prepared that were beyond that with which the staff and kiosk facilities could cope, he interfered unnecessarily, and he pressured the staff to deal with customers more quickly. The approach and conduct of Mr Ichallalene, the applicant says, caused her to become "stressed out".

There was evidence from Rosalind Lynette Armstrong, a former employee of the respondent, that she had worked in the kiosk of the respondent at the time the applicant had been a kitchen hand. Her evidence did not deal with the period that the applicant worked in the kiosk and therefore I do not find it material to the determination of this matter. The Commission also received evidence from Catherine Anne Spanbrook, a former employee of the respondent, who had worked with the applicant in the kiosk and who expressed the opinion that customers had been satisfied with the "presentation and efforts" of the applicant, and that she, Ms Spanbrook, had found the work situation to be stressful at times.

Mr Ichallalene told the Commission that it was after the first day the applicant indicated she did not wish to continue in the kiosk, his letter (exhibit 1) says that occurred after three days, and Ms Brenton said that after three days she spoke with him regarding her concerns. I therefore believe that the conversation which caused Mr Ichallalene to conclude that which he did, occurred after three days. The third and fourth days were Friday and Saturday, 10 and 11 January. The replacement employee was on trial during the days Ms Brenton did not usually work ie a Monday and/or Tuesday. Given that the intended replacement was thereafter arranged through the CES, it is most probable that the trial did not occur in the period 13 to 14 January, but on the following Monday and/or Tuesday, 20 and/or 21 January. Ms Brenton said it was while she was observing her days off duty, about three weeks after she accepted the kiosk job ie 3 January, that another employee told her she was about to be replaced in the kiosk and she then raised the matter with Mr Ichallalene on her return to work. The applicant commenced a new week of work on 22 January. This evidence serves to support the conclusion that the trial occurred on the lastmentioned Monday and/or Tuesday, and from that it follows that the continuation of Ms Brenton in the kiosk was agreed on or after 22 January. That therefore is what I find occurred.

At the time it was agreed Ms Brenton would continue in the kiosk she had worked two weeks in the role of cook and supervisor. There is no evidence that Mr Ichallalene gave the applicant any indication of how he viewed her performance to that time. After a further two weeks she was told she was to cease in the kiosk.

A number of principles are well enshrined in employment related law. Firstly, an employer has the right to terminate the services of an employee and the Commission is not to interfere with that right unless it has been exercised unfairly by the employer. Secondly, a termination of employment for the reason of unsatisfactory performance, as is alleged in the present case, will be fair if the employee has been counselled in relation thereto, that is, the employee has been made aware of the deficiency in performance, and has been provided with an opportunity to remedy the performance, and further, the employee has also been made aware that a failure to remedy the performance may result in termination of the employment.

It is plain from the evidence that Mr Ichallalene had criticised the performance of Ms Brenton from time to time during her time in the kiosk. There is nothing in her evidence that hints she was counselled in any way, nor is there anything in the evidence of Mr Ichallalene which positively identifies that any true counselling had been conducted and what was addressed. Ms Brenton worked as the cook and supervisor in the kiosk for four weeks prior to being given notice that that employment was to end and there is no evidence that she had any earlier warning that the continuation of her employment in the role was in serious doubt. It is therefore the opinion of the Commission that the applicant was unfairly dismissed from the position of cook and supervisor.

There was no address to the Commission on the matter of reinstatement however the Commission is satisfied on the evidence that it would be impracticable to reinstate the applicant to the position from which she was dismissed. It is the claim of the applicant that she be paid an undisclosed sum in compensation, in regard to which, it is in evidence (exhibit 3) that the applicant earned $462.61 for part of the final period of employment as a casual kitchen hand ie from 24 February to 9 March, and the applicant estimates she has earned "about $780.00" in other employment up to the date of the hearing. There is no evidence of what the applicant was paid from the date of her dismissal to 23 February. The Notice of application asserts that the applicant had been paid "approximately $900.60" each fortnight when the cook and supervisor, which sum the applicant also repeated in her evidence. The Notice of Answer and Counterproposal from the respondent states the sum to have been $900.00 each fortnight, and that being a positive statement of the sum, I accept it to be correct.

On the information presently before the Commission it appears that the applicant could readily have continued in casual employment with the respondent, the hours of which, and hence the earnings for which, Mr Ichallalene said he would increase when he was able. That he would so act I do not doubt. Although Mr Ichallalene mishandled the situation regarding employment in the kiosk, he valued the services of Ms Brenton as a kitchen hand, and I am satisfied he would have made a genuine effort to retain her and provide her with more hours of work had she been prepared to continue the employment. It was the decision of the applicant to forego this potential to continue earning and that is therefore to be taken into account. Furthermore, the applicant has engaged in minimal casual employment and no evidence was led to show that she had made other attempts to mitigate her loss. Reasonable compensation for the period claimed, given the unusual circumstances of this case, I assess to be $2500.

Appearances: Mr G. Patrick (of Counsel) on behalf of the applicant

Mr P. McEvedy (of Counsel) on behalf of the respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Fay Ann Brenton

and

P.D.R. Enterprises Pty Ltd T/A Jolly Frog Cafe Restaurant.

No. 434 of 1997.

5 August 1999.

Order.

HAVING heard Mr G. Patrick, of Counsel on behalf of the applicant and Mr P. McEvedy, 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 P.D.R. Enterprises Pty Ltd pay to Fay Ann Brenton compensation in the sum of $2,500 within 21 days from the date of this Order.

(Sgd.) C.B. PARKS,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Rachel Wendy Cooyou

and

Mawarnkarra Health Service Aboriginal Services.

No. 2146 of 1998.

COMMISSIONER J F GREGOR.

19 July 1999.

Reasons for Decision.
(Extempore)

THE COMMISSIONER: On 2 December 1998 Rachel, Wendy Mowarin (Cooyou), (the applicant) applied to the Commission for an order pursuant to section 29 of the Industrial Relations Act 1979. The applicant contended that her dismissal by the Mawarnkarra Health Service Aboriginal Corporation (the respondent), was harsh, oppressive and unfair.

Originally, the applicant sought orders for contractual benefits but in the hearing the Commission was told by her counsel that they are not pursued. That part of the claim will be dismissed.

As I understand the evidence, the respondent is located in Roebourne, Western Australia and provides medical services to Aboriginal people. To do so, it has a number of employees. An organisation chart was presented to the Commission bring the structure of the respondent. (*Exhibit L4)*

The organisation has an administrative section. It consists of a director, an assistant to the director, a bookkeeper and one or two other positions. In the clinic where the applicant was employed, there are 5 health workers, a cleaner, a gardener, a motor vehicle supervisor and 2 doctors.

The organisation has other activities: it deals with alcohol; it has an environmental health program; it has a social security program which apparently works through Centrelink; and it runs a safe house which was also referred to in the proceedings.

The applicant worked in the clinic. The association between the applicant and the respondent began on 12 October 1998, when the applicant wrote to the respondent expressing an interest in employment (*Exhibit R1*). The letter indicated that the applicant had been attending college, undertaking business studies and a certificate of general education. Attached to the letter was a resumé. This resumé was put to use 2 weeks later when Kerry Ayerst, the director's assistant, was instructed to fill a vacant clinical receptionist position. Ms Ayerst had a discussion with Joan Hicks, the clinic co-ordinator. Ms Hicks gave evidence to the Commission, it happens that she is the applicant's sister. I mention that for no other purpose than that it may indicate a closeness in relationship between witnesses. In saying that, I do not question the veracity of Ms Hick's evidence.

Kerry Ayerst also had a discussion with Bernie Ryder who was, at the relevant time, the director of the respondent. On his instruction, Ms Ayerst arranged for the applicant to do 2 weeks relief work at the clinic starting on the 27 October 1998. That intention became expressed in a memo from Ms Ayerst to Mr Ryder which regularised the instruction.

According to Ms Ayerst, she attempted to fill the position permanently at the same time. She did that by placing an advertisement in the press. I was not told which newspaper the application was placed in. I assume it was a locally circulating newspaper. *Exhibit R3* sets out the advertisement. It notifies that a full-time medical receptionist is required for the respondent's Roebourne establishment. It sets out a list of essential criteria. One of those, and it became a matter of controversy between the parties, was the necessity for an A class driver's licence.

The applicant then applied for the position. She referred to her resumé which had been placed before the respondent on 12 October 1998. I draw attention to it because the application for the full-time position does no more than bring forward the resumé. It does not address the essential criteria at all.

The respondent went about organising itself to conduct the interview process. On the evidence it was a thorough process. An appropriate interview panel was appointed. The interview panel shortlisted the applicant. The Chairperson of the respondent, Michelle Adams, and other committee members completed the shortlist. Joan Hicks recognised that she should not sit on an interview panel which considered her sister's application. This was quite proper. She did not interview her sister.

After the interviews took place there were difficulties. The interviewing panel, according to Ms Ayerst, knew of the problem with the applicant's licence. Ms Ayerst thought, and so did her colleagues, that the applicant would be a good appointment. This is contrary to the view of Ms Hicks who had someone else in mind. The interviewing panel could not overcome the difficulty of the applicant's the lack of a licence. The licence was, on the evidence before the Commission, necessary because of the difference in location of the clinic, the administration wing of the organisation and the post office. It was not possible for the medical receptionist to perform an essential part of the duties as described in the job description that is collate, collect and post mail, without having transport. It was essential that the receptionist be able to transport herself or himself to do this work. Even though there was a transport officer available, the main function of the transport officer was to move patients or clients around. It was the wish of the respondent to have a receptionist able to do this work. Knowing this, it was a matter of importance that the successful applicant should be licensed to drive a motor vehicle.

What happened after that is a matter of controversy. The sequence of events is this: Ms Ayerst rang Ms Hicks and asked her to tell the applicant, her sister, that according to Ms Ayerst, she would be appointed subject to her obtaining a licence. Ms Hicks said: "No. I am not going to do that. It puts me in a difficult position. I should not be involved with telling my sister this. That is your job. You do it." Ms Ayerst called the applicant and told her she was the preferred candidate but she must have a licence. It is the evidence of Ms Ayerst that she told the applicant, "You have to get an extraordinary licence." The applicant says she was not told that at all. "I was just told I have the job." That is the first difference between the parties.

There were a series of actions taken by Ms Ayerst to facilitate the achievement of an extraordinary licence. A letter of support was drafted, which is important. It was signed by Michelle Adams who was then, the chairperson, of the respondent. Formal parts omitted in the text of the letter—

> "In regards to Rachel's application for an extraordinary licence, Mawarnkarra Health Service would like to offer the position of medical receptionist to Rachel. As one of the essential criteria for the position is an A class driver's licence, Rachel will find this necessary to perform her duties. If you have any queries, please do not hesitate to contact me on the above number."

The letter was faxed to the applicant just after 1 o'clock on 17 November 1998. This means it was produced very quickly.

The evidence of Mr Ryder, the director, is that he was slightly uncomfortable about the letter. He was not sure that this letter should have been written. The chairperson was prepared to authorise it and the chairperson was obviously the person who has ultimate authority to do such things. The letter was produced. It was faxed to the applicant. According to her evidence, she inquired about getting an extraordinary licence. When she made an inquiry, she found, that she had a fine outstanding, which would cause some difficulty in obtaining an extraordinary licence.

It is also relevant to note, and in the context this is important, Ms Ayerst knew about the fine. In fact, she knew how

much money was owing. According to her contemporaneous note (*Exhibit R7*), she records this—

> "When Rachel rang me on Tuesday afternoon, she told me she wouldn't be able to apply for a licence until she had paid a fine which she said was in the vicinity of over $900. As the offer was made with the condition of the licence, Bernie, Michelle, Brenda would like to withdraw the offer and offer the position to Olivia."

This contemporaneous note is not at odds with her viva voce evidence. There was no attempt made, according to the respondent, to have the applicant appointed to the job. On the respondent's own criteria she could not be appointed, and they told her so. They wanted her, but they could not appoint her until she cleared the impediment of not having an A class licence. That was further complicated because it could not be done in the short term because of the financial impediment to her clearing the way so the court could hear her extraordinary licence application.

After it was decided that the applicant could not be appointed to the position. Ms Ayerst went to see her. Before she was able to do so, Ms Hicks and Ms Ayerst had a discussion. The matters relating to the applicant were on the tail-end of a discussion which was heated. Both participants were upset with each other. Ms Ayerst was so upset when she left, she was crying. She had to go and get herself in order before she went back to the main office. Ms Ayerst said that she explained to Ms Hicks that she had talked to Bernie, the director, Michelle, the Chairperson, and Brenda, regarding the offer. The offer was made on the condition that the applicant obtain an extraordinary licence.

Ms Hicks eventually had a discussion with the applicant. Ms Hicks thought the applicant had been offered the position. She was surprised now and thought there had been some reneging of the position by the respondent. Ms Hicks told the applicant that she was not going to get the position. This caused the applicant to immediately ring Mr Ryder. She had a heated exchange with him on the telephone. The evidence of Mr Ryder is that he did not know what she was talking about at the time because he was unaware how the information about not securing the position was presented to her.

Ms Ayerst said that she tried to explain the position to Ms Hicks. Ms Hicks suggested that they could try a 3 month probation and in that time the applicant could get her licence and, if not, there might be some other person suitable for the job. It was at that time, according to Ms Ayerst, that she said "Oh, well, I'm going to go back and talk to Bernie about this." I emphasise that this was a heated conversation. In heated conversations there is always potential for misunderstanding.

The outcome is that the applicant was, in the respondent's view, not offered the position. She was unable to qualify because the respondent was unable to remove the impediment which they say stopped them offering the position when they would have liked to do so. They instead offered it to her conditionally. The applicant was not able to remove the condition. Therefore the appointment did not go ahead.

The respondent says that if the applicant thought Ms Ayerst had offered her a job that could not be so because Ms Ayerst did not have the authority to do so. This was confirmed in the evidence of Mr Ryder and Michelle Adams, the Chairperson. Ms Ayerst herself said she did not have the authority. Insofar as her notifying the person who became the successful applicant for the job, Mr Ryder says "Well, she was authorised after council had agreed that appointment be made, and she was instructed to do so."

That, is a sufficient summary of the facts in the matter. In making a decision on this matter I have to apply some very simple tests. These are set out in a case called *Undercliff Nursing Home v. Federated Miscellaneous Workers Union of Australia (1985) 65 WAIG 385*. That decision says very simply that; an employer has the right to run its business in any manner it thinks appropriate as long as, in doing that, it does not abuse that right.

The case adopts a very old case in Australian Industrial Law called *Loty and Holloway -v Australian Workers Union (1971) AR 95 at 99* which established that in dismissals, there should be a fair go all round. That is, a fair go to the employee and a fair go to the employer. These are simple tests that have to be applied in this jurisdiction which was designed as a lay jurisdiction. This type of jurisdictions enables ordinary people to come and have other ordinary people hear their cases and decide them applying a non-legalistic approach.

In deciding a matter the Commission must draw conclusions about witness credibility. Sometimes that is quite difficult. It is not in this case. I deal with the applicant first. I believe the applicant told me exactly what she thought to be the truth of the matter. She did not come to the hearing with a story that was designed to put the Commission in a position where it did not understand the truth of the matter. I accept she truly believes that she was given an offer of the job. That was compounded in her mind by what her sister said to her afterwards, "You now do not have the job." Why would her sister say that, if she did not have the job in the first place? Therefore if she misunderstood Ms Ayerst, her sister reinforced the view that maybe she did not misunderstand and her recollection of what happened was correct. It was quite right of her to come and tell me her story as she saw it.

As for her sister Joan Hicks, Ms Hicks had an argument with Ms Ayerst about clinic matters before they discussed this matter. It was a heated argument. Ms Ayerst used words to the effect; "Why do we have second class equipment down here when you people up at admin have got the new computers. We have got old computers and they have got viruses in them". She was upset. It was clear from her evidence that she was upset during the conversation. It is clear from Ms Ayerst's evidence that she was upset as well.

In those circumstances, when looking at witness credibility, Ms Hicks remembered what she remembered. She thought that her sister had the job, that it had been taken away from her and she told her so. In doing so, I think she truly believed that to be the case.

I heard from Kerry Ayerst. She gave her evidence in a forthright way and importantly none of her substantive evidence was challenged in cross-examination. I am then in a position, where I must accept that evidence. I can not think of any other reason why I should reject the evidence. I can see no other reason. An important thing is that there was a contemporaneous note made. The note has been admitted. The note is coincidental to the evidence that Ms Ayerst gave the Commission, and I can not see any reason why I ought to conclude that she did not tell the truth from her point of view.

Mr Ryder also impressed as a truthful witness. He is a man of experience in important positions. He gave his evidence confidently and quietly. He had a good grasp of the facts. There is no reason why I should not accept his evidence and the evidence of Chairperson Michelle Adams. She had a clear recollection of what she did in the events—what she had the council do; who was responsible for various things; and who had the authority to do various things. I cannot conclude anything other than that Michelle Adams has told the truth.

We are in a situation where the Commission has a case where everyone is telling the truth. No one has tried to mislead the Commission. To resolve the truth I have to look to the evidence which corroborates one side or the other.

In my view, the mass of weight of the corroborating evidence falls on the side of the respondent. There were three witnesses on behalf of the respondent. Their evidence does not diverge in any major way. They were available to be cross-examined, to test the truth of their evidence. In the absence of real cross-examination, I am forced to conclude that where the evidence of the applicant varies from the respondent's, I am obliged to favour the evidence produced by the respondent.

I am required to make findings on what has happened on the balance of probabilities. I am required to make findings. I conclude that it is more likely than not that the applicant misunderstood Ms Ayerst when she first told the applicant about the job. Even if she was only slightly confused, her sister told her later that "Your job's been now taken away from you". It is understandable that the applicant reached the conclusion that she must have had it in the first place.

I find there was a fundamental miscommunication. I do not think Ms Ayerst told the applicant she had the job at all. I think Ms Ayerst was clear about the limits of her responsibility. She clearly acted under instructions. At all times she reported back to Mr Ryder and to the chairperson. Senior people in the organisation knew exactly what was going on. There were no

doubts in their mind. In fact, Mr Ryder was surprised when the whole scene came undone.

I do not think the case is any more complicated than that. We have a situation where there was a genuine misunderstanding on behalf of the applicant. I can not see that the respondent could have done any more than it did in the circumstances. There was no fundamental flaw in their procedure.

I am not asked to rule upon what should have happened after it was decided the applicant was not appointed. More likely than not she was never appointed and, in effect, continued as a temporary person until the permanent job was filled.

I conclude that there has not been unfairness in this case to an extent where the Commission ought to exercise the power to interfere with the right of the employer to bring the contract to an end. More importantly, it is probably more accurate to say that the contract was never made in the way suggested by the applicant.

The respondent's case succeeds on the first ground of opposition. I have no need to address the others.

Appearances: Ms M Le Soeur, of Counsel, appeared for the applicant.

Mr P Robertson appeared for the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Rachel Wendy Cooyou

and

Mawarnkarra Health Service Aboriginal Services.

No. 2146 of 1998.

COMMISSIONER J F GREGOR.

19 July 1999.

Order.

HAVING heard Ms M Le Soeur, of Counsel, on behalf of the applicant and Mr R Robertson, on behalf of the respondent, pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Commission 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.

Tanya Elizabeth Dobbie

and

Lakelands Holdings Pty Ltd T/A Cash Converters.

No. 655 of 1998.

4 August 1999.

Reasons for Decision

COMMISSIONER S A CAWLEY: This application is brought pursuant to section 29(1)(b)(i) of the Industrial Relations Act, 1979. By it Tanya Elizabeth Dobbie ("the applicant") claims that she was unfairly dismissed by Lakelands Holdings Pty Ltd T/A Cash Converters ("the respondent").

The respondent's business is dealing in second hand goods and pawn broking. It operates two premises by franchise. They are located in Victoria Park and Mandurah. Its managing director is Mr Martin Ferrari. At the relevant time he usually directly oversaw the operations of the Victoria Park business but on occasions during operating hours was absent from this store due to involvement in the other business. The applicant was employed in the Victoria Park premises. It appears five other employees worked there at the relevant time. The work is organised in two sections. One is known as "buys and loans". The other involves retailing goods.

The employment of the applicant by the respondent commenced on 21 October 1996. At the time of the termination of employment the rate of pay applying was $550.00 gross per week with the weekly hours of work totalling 42. The employment of the applicant ended on 31 March 1998. The position she took up in 1996 was that of full time sales assistant with a rate of pay of $400.00 nett per week. In March 1997 there was a change to that position. The parties are in dispute as to what it was. The applicant says in her application she was promoted to the position of manager but in the course of the proceedings variously described the position as that of trainee manager or assistant manager. The respondent says that the applicant was offered and accepted an opportunity to become a trainee manager.

The applicant says in evidence that about this time, another employee, Mr Dan Stafford, was put in charge (subject to Ferrari) of the buys and loans section and she was put in charge (subject to Ferrari) of the retail section. The respondent says that both positions were as trainee managers. Ferrari says the purpose of the appointments was to get to a position where he could leave the applicant or Stafford in charge in his absence. Stafford's evidence is that his position was that of trainee manager.

Having regard for all this, the applicant's somewhat equivocal evidence as to what her position actually was and the evidence of other employees at the relevant time, I have concluded that the position the applicant took up in March 1997 was that of trainee manager in the retail section with her duties largely involving sales representation, some supervisory duties and some decision making in the absence of Ferrari for the purposes of that section. In October 1997 Stafford left and it appears that the applicant picked up some of his duties and, in the absence of Ferrari, generally was in charge with the other employees to report to her. Responsibility for any disciplinary matters remained with Ferrari however.

Mr Clark argued that the dismissal was in fact summary and as such the respondent was required to discharge the onus of establishing the fact of misconduct on which it relied for the exercise of such a right. But there is no evidence of the exercise of such a right. The applicant was dismissed by Ferrari. She was paid two weeks' wages in lieu of notice at that time. No allegation of misconduct was raised and nothing the applicant put would give rise to a construing of the dismissal as actually summary in nature.

So far as onus is concerned it is well established in law that in a claim of unfair dismissal by an employer the dismissed employee must discharge the onus of establishing on the balance of probabilities that the action of the employer in terminating the contract of employment, whether lawfully or otherwise, is unfair. That is, a contract may be ended lawfully by the exercise by the employer (or employee) of a right within its terms to end it, say by the giving of notice or a payment in lieu, but the exercise of that right may still be found in all the circumstances of a particular case to be unfair. The onus lies with the applicant in such a case to satisfy the Commission that it should intervene so as to remedy an unfair exercise of the right to dismiss.

The applicant's fundamental proposition in this case is that, notwithstanding the respondent's position, the reason for the dismissal of the applicant on 31 March 1998 by Ferrari was the applicant's allegation of sexual harassment raised with him by her on Tuesday 24 February 1998.

There is no question that on Tuesday 24 February 1998 the applicant had a meeting with Ferrari at which she alleged that his conduct towards her in the workplace amounted to sexual harassment. Mr Clark submitted on behalf of the applicant that if the Commission concluded that the conduct complained of occurred then that strongly supported the contention that the real motivation for dismissing the applicant was the fact of the complaint of sexual harassment. It follows, according to this submission, that the dismissal was unfair.

However, and without going to the particulars of the allegation at this point, it seems to me that such an approach would be misplaced in a claim of this nature. If just the fact of raising an allegation of sexual harassment resulted in the exercise of

the employer's right to dismiss then it is difficult to envisage any conclusion other than that dismissal would be unfair. Sexual harassment in the workplace is a serious allegation which must warrant consideration. A finding that a dismissal has been effected in reaction to the fact of a complaint and in the absence of any consideration of it likely would be found unfair. But what is being urged on the Commission here is findings of fact as to conduct alleged to have amounted to sexual harassment, without any conclusion as to whether that was the result, and a presumption from those findings that the dismissal was a reaction to the fact of an allegation. This is too narrow. It ignores the obligation on the Commission to consider whether or not the dismissal was unfair having regard for all the circumstances.

Other grounds for the claim of unfair dismissal are raised. In the alternative, it is the applicant's submission that the respondent did not have sufficient grounds to dismiss her. It was submitted that, at law, there is no general duty to report suspicions of misconduct by another employee and, in this case, that it is relevant that though the applicant's position was labelled "manager" it was, in fact, a subordinate position. It was submitted that even if there was a duty to report, it did not extend to an obligation to report on rumour or innuendo, but only on substance. The applicant also further argues that other complaints, such as absenteeism and inadequate performance raised by the respondent in answers to this claim, were not put to her at the time of dismissal. And further, and in the alternative, the applicant submits that if there was a breach of duty by her, then the respondent has abused any right to dismiss by failing to provide procedural fairness by not providing the applicant with an outline of allegations, by failing to provide adequate opportunity for her to respond, by failing to have a proper investigation and for taping a conversation with the applicant without her knowledge.

An order from the Commission that the respondent pay her a sum equivalent to 6 months' pay ($14,300.00 gross) in compensation is sought by the applicant.

The respondent denies that the termination of the applicant's employment was harsh, unjust or unreasonable, opposes the order sought and seeks an order for costs against the applicant.

The applicant gave evidence. In addition, and by summons, the franchisor's State Manager, Mr Richard McGinn, was called to give evidence on her behalf as were former employees of the respondent, Mr Russel Goodwin, Mr Shane Matison, Mr Daniel Stafford and Mr Adrian Del Caro. Each former employee had worked at the Victoria Park premises.

Ferrari gave evidence for the respondent. In addition the respondent called an employee, Mr James McNeill, who worked at the Victoria Park premises and also Ms Janet Leonard who is contracted by the franchisor for 8 days per month to provide training services and course development for franchise holders.

First, the evidence of the making of the complaint and its aftermath. The allegation of sexual harassment of the applicant by Ferrari was raised with him by her at the workplace at about 3.00pm on Tuesday 24 February 1998. The applicant had not attended for work that day however. Indeed she had not been at work since leaving early on Saturday 21 February 1998. The applicant was accompanied at the meeting by her husband. The only evidence of the meeting was given by the applicant and Ferrari however. The applicant says that she had written down details of these for reference and Ferrari says that the applicant referred to such a document. No document was produced in the proceedings however. The meeting was short. It appears that the applicant identified the basis of her allegation as being comments or statements by Ferrari to her or about her to which she took exception.

Ferrari says he was shocked by the complaint and denied it. After the applicant and her husband had gone Ferrari telephoned Ms Janet Leonard. I accept his evidence that he did so not only because he was concerned about the allegation but also because he wanted it dealt with effectively and, as it was against him, considered it best that it be followed through by a person other than the principal of the respondent business and distinct from it. So he called Leonard. As he saw it, she knew the workplace as well as the applicant and himself through her work, was independent of the respondent and was an experienced professional woman.

Ferrari says that the details of the allegation raised by the applicant were not canvassed in his telephone call to Leonard. Leonard confirmed this in her evidence. Leonard was an impressive witness: clear, thoughtful, consistent and dispassionate. I accept her evidence as to the discussion on the telephone that day with Ferrari and subsequent events.

The following day Leonard attended in the workplace and invited the applicant to a discussion over a cup of coffee. That occurred. Leonard gave evidence of the discussion and notes of it, said by her to have been made in the week following the meeting, were produced. According to Leonard the applicant responded to her enquiry as to what was wrong with a complaint to the effect that Ferrari favoured her so much in comparison with other employees that she was a joke. Leonard says that the applicant complained of verbal comments of a sexual nature by Ferrari but no allegation of physical harassment was raised and, indeed, that the applicant expressly confirmed in answer to a question from Leonard that Ferrari had done nothing physically which made her feel uncomfortable.

A meeting the next day, Thursday 26 February 1998, was arranged between the applicant, Ferrari and Leonard. It started about 2.00pm. According to Leonard the purpose of the meeting was to see if some understandings could be reached which would facilitate Ferrari and the applicant being able to work effectively together in the future. Leonard's notes of this meeting, also made some time in the following week, include statements to the effect that when asked to explain his apparently lenient treatment of the applicant Ferrari said he had been motivated by concern for her as he knew she had personal problems. The meeting ended with Leonard suggesting that the three of them work on a method whereby Ferrari and the applicant could work together with Ferrari and the applicant agreeing then to individually detail how this might be achieved.

According to the applicant she left that meeting at about 3.00pm to take her five year old daughter to hospital and did not return for work until 4.40pm. Later that day she approached Ferrari, stated she did not wish to pursue the agreed course suggested by Leonard and proposed a different course for resolution of the matter which would involve the applicant taking payment for all annual leave for the purpose of looking for alternative work immediately. There was some discussion between the applicant and Ferrari on this proposal and an agreement in terms was reached. It was reduced to writing and appears in the evidence. It includes provision for the payment to the applicant of her total holiday leave entitlement, the production of a reference by Ferrari to her, and a commitment that if at the end of the leave the applicant had been unable to obtain a new position Ferrari would continue to employ her until such a job became available.

The applicant says that just prior to her leaving work that day she told Ferrari to watch another employee, Mr Adrian Del Caro. Ferrari denies this was said and maintains that the applicant only said she would return the following day and would see him then. Having regard for further evidence in relation to Del Caro I think it improbable that the applicant could have made the remark as claimed and Ferrari leaving at that. The evidence of Ferrari is preferred on this point.

The following day, Friday 27 February 1998, the applicant attended at the workplace and sought a meeting with Ferrari. It occurred. Unbeknown to the applicant Ferrari taped the ensuing conversation. That tape was produced in this hearing and played. The applicant identified herself as one of the two speakers recorded on most of the tape. The other was Ferrari.

It is convenient to note here that the tape was transcribed by the Commission's reporting service. Having regard for this transcription against a copy of a transcript Ferrari says he had produced from the tape, which copy was produced in evidence, I am satisfied that while there are some differences these are not substantial and questions directed to the applicant in the course of the hearing by reference to the respondent's transcript of the conversation between her and Ferrari which the applicant's solicitor successfully sought to be produced to her and which was entered as an exhibit, were not untoward.

It is also convenient to note here that the matter of this tape (and other tapes of subsequent conversations involving the applicant and Ferrari) was the subject of various communications between the applicant's solicitor and the respondent's

representative, as well as interlocutory proceedings and argument prior to the hearing proceeding. Copies of tapes were provided by the respondent to the applicant. Production of the original tapes was sought by the applicant. This occurred. The applicant then foreshadowed a claim that the respondent's tapes had been tampered with and, when the hearing proceeded, sought to call a person said to be expert to give evidence to this effect. The respondent successfully sought an adjournment on the basis that the expertise to be relied upon and any report should be disclosed to it prior to the hearing proceeding further so that it could have an opportunity to consider any expert advice it may seek to obtain. Subsequent to the adjournment, by way of letter of 3 March 1999 and attachments the respondent provided to the Commission a report identified as being by Professor Miles P Moody of the School of Electrical and Electronic Systems Engineering, Queensland University of Technology and a copy of a curriculum vitae said to be his. Solicitors for the applicant received copies of the same. The applicant's solicitors informed the respondent by way of letter of 15 March 1999 that the applicant had instructed that no expert evidence that the tape recordings identified in the respondent's list of documents for discovery had been edited was to be adduced. Effectively, the applicant's allegation of tampering or editing of the tapes was dropped by the time the hearing proceeded again.

It is noted that the applicant adopted two subsequent positions on the matter of the tapes during the hearing however. Notwithstanding earlier assertions that disclosure of the tapes was essential to her case, an order that the respondent be precluded from entering the tape of 27 February 1998 conversation into evidence was sought for reasons largely to do with the fact that she had not known the conversations were being taped at the time and a submission that the Commission, as a matter of public policy, should not encourage covert taping by employers. This submission was rejected then and I adopt the reasoning of the Industrial Magistrate in the case of Michael Ernest Game and Air Attention Pty Ltd, Joel Lawrence Dullard and Laurence Charles Dullard, in Complaints No. 191-197, 1996, for that conclusion. The other position put by the applicant arose in answers during cross examination. In effect she asserted that the tapes and transcript should not be accepted because the conversation was muddled up, out of order or "mumbo jumbo". In substance it amounted to a revisiting of the tampering charge; an untenable proposition in the circumstances and one that reflected poorly on the applicant's credibility.

It is the applicant's evidence that her conversation with Ferrari on Friday 27 February 1998 (which it turned out was taped) resulted from her concern to smooth relations with Ferrari in case she had to return to work at the respondent's business because she had been unable to obtain alternative work in the meantime. For this reason, she says, she lied to him to the effect that she had been manipulated to make the complaint against Ferrari by Del Caro with whom she had been having a "full on" relationship and in addition, informed him that Del Caro had told her he had stolen from the respondent. She says, in effect, that the Commission should largely disregard her statements to Ferrari on 27 February 1998 as mostly self serving lies.

But this explanation of why she made the statements is not convincing in the light of the evidence of a close bond between Del Caro and the applicant at least up to 20 February 1998 when the applicant says she became very upset when he told her he was not returning to work for the respondent because he had another job. The applicant says that this was because she needed his support in the workplace because Ferrari was harassing her. Then, she says, Del Caro told her he might be returning to work after all so, in order to improve on the situation between her and Ferrari at this time, she decided to inform Ferrari that Del Caro had admitted stealing from the respondent to her. Del Caro was not asked about any conversation to the effect that he told the applicant he would not be returning to work or any subsequent conversation with the applicant that he might. Further, Del Caro, who acknowledged he mishandled a sum of money belonging to the respondent, denies the applicant's evidence that he told her of other like actions.

In all I think it improbable that the applicant's action in informing Ferrari on 27 February about Del Caro was motivated by the reasons advanced at the hearing.

Towards the end of the paid leave period the applicant telephone Ferrari to inform him that she would be returning to work on Monday 30 March 1998. She was interviewed on that day by Ferrari who said words to the effect that because of her failure to disclose Del Caro's activities he no longer trusted her and was suspending her on pay while he reviewed the situation further. The following day the respondent terminated the applicant's employment with payment of two weeks wages in lieu of notice.

The claim that the dismissal was unfair because it amounted to retribution for the allegation of sexual harassment raised by the applicant on 24 February 1998 turns on the evidence. It is a question which must be determined on the balance of probabilities having regard for all the circumstances.

First, the particulars of the allegation. The conduct alleged in these proceedings as constituting sexual harassment by Ferrari can be summarised as unwelcome comments of a sexual nature to the applicant, preferential treatment of her over other employees and unwelcome physical contact consisting of rubbing or massaging her neck at the front counter of the store on one occasion and untwisting a brassiere strap on her back on another occasion.

It must be said that the witness evidence brought by the applicant about a pattern of conduct by Ferrari favouring her is very limited. The State Manager of the franchisor, McGinn, is summoned by her to give evidence that the applicant was nominated by Ferrari in 1997 for the award of employee of the year. His evidence is that she was not nominated in that year and had not been nominated at all. That was the end of that. Goodwin, who was employed by the respondent in June 1996 and left in October 1997 gave evidence that he thought the applicant was favoured by Ferrari. When questioned further, however, it seems this is based on his conclusion that although the applicant performed her work adequately she had been promoted "prematurely" to the position of manager over the head of Stafford when such a promotion was not fact. The only other example of favouritism he could come up with is said to be Ferrari's habit of referring to the applicant as "Miss Tan". That is all. Stafford, who worked for the respondent for approximately 2½ years to October 1997, says the only favouritism of the applicant by Ferrari that he saw was that she was allowed to go to lunch earlier than him a few times but he could not recall Ferrari treating the applicant more favourably than other staff. Matison, who was employed by the respondent for about four months to 11 November 1997 says the applicant was regarded as the "golden girl" by Ferrari who did not subject her to any name calling or castigation. But Matison then goes on to say he thought the applicant did her job well and had the impression that Ferrari thought so too.

Ferrari himself says he variously referred to subordinates as "arsehole", "anus breath", "peasant" and it appears he waved a toy gun around. It seems that this pathetic style of management may not have extended to the applicant and to that extent she was "favoured" but that does take the applicant's case very far in the light of the evidence of the other employees, including Matison, and the fact that the applicant was a trainee manager.

Nor does the evidence of these three witnesses called by the applicant and others go to the assertion of the applicant that she was favoured by Ferrari in the provision of goods and cut prices.

So far as the allegation of comments of sexual nature by Ferrari to the applicant are concerned, the evidence of Goodwin nor Matison does not support it. The evidence of Stafford is generalised and was to the effect that Ferrari engaged in jokey bloke talk "like any blokes do at work" about the applicant's good looks which amounted to statements to the effect that she could "leave her shoes under [the bloke's] bed any time" and adds such jokes were not made often. Del Caro says that he heard Ferrari comment on the applicant's "beautiful legs" and describe her as a beautiful woman but was only privy to Ferrari commenting directly to the applicant about her legs.

It is convenient to note here that the applicant's evidence as to Ferrari being jealous of Del Caro, and speaking negatively about the possibility of any relationship between as a result was vehemently denied by Ferrari who says he was always concerned at such a prospect because in previous instances it had disrupted the workplace particularly if a manager and a

subordinate. The evidence from the tape of 27 February suggests that this view had indeed been expressed to the applicant by Ferrari. And Del Caro's evidence supports that.

In all, the evidence of the applicant's own witnesses did not support the evidence of the applicant as to the intensity and frequency of the remarks to her or about her which she said demonstrated an unwelcome sexual interest in her.

In all, I think it probable on the basis of the evidence that Ferrari made some remarks in the workplace to the effect, at least, that he thought the applicant beautiful. But I would not put it higher than that and draw no conclusion at all as to the validity of her allegation in this respect.

Del Caro's evidence that he observed Ferrari fixing the applicant's brassiere strap and rubbing her shoulders at the front counter supports that of the applicant. But, having the advantage of seeing this witness give evidence, it must be said that it appeared rehearsed in this respect.

But there is another reason why I consider this evidence should be disregarded for the purposes of this matter. Leonard says that at the meeting of 25 February 1998 that the applicant explicitly excluded any physical conduct by Ferrari from her complaint against him. I accept this. Further, I think that had the applicant raised the incidents of physical contact alleged in these proceedings, in the subsequent meeting, Leonard would have recorded that. As it is, her evidence is that the complaint as raised and pursued by the applicant was that she had been subject to unwelcome remarks of a sexual nature and favouritism.

I have concluded that the complaint raised by the applicant on 24 February 1998 was limited to allegations of this type and did not include any allegation with respect to physical contact and that this position was maintained through to the (taped) meeting on 27 February 1998 when, in effect, the applicant told Ferrari that her judgement on all this was awry due to Del Caro's manipulation of her mind. In my view the evidence does not support any proposition that the respondent's decision to dismiss was motivated by any allegation of unwelcome physical contact because none had been identified by then.

Then there is the accommodation between Ferrari and the applicant reached on 26 February. Mr Clark suggests that the agreement was a convenient way for Ferrari to get rid of the problem of the claim of sexual harassment but it was confounded by the applicant's return to work. But this ignores the fact that at that point Ferrari had already agreed to a course aimed at resolution for the purpose of a reasonable resumption of a working relationship between him and the applicant and that the alternative, with the end of the employment relationship clearly identified in it, was initiated by the applicant. In this context, her return the next day to inform on Del Caro as a means, as she put it, to smooth over relations with Ferrari so she could return to the workplace if she had to is not convincing. But more significant is that, at this point so far as the respondent is concerned, the claim of sexual harassment against Ferrari is no longer maintained.

The applicant invites the Commission to conclude that over a month later the respondent dismissed the applicant because she made a complaint that Ferrari had sexually harassed her. That is, it is suggested that the dismissal was a reaction to the allegation of sexual harassment because there was substance to it. It is certainly not suggested by the applicant that the dismissal was a reaction to an allegation that had no substance. But the fact is that from 27 February the respondent had in its possession a tape recording of the applicant stating, effectively, that her allegation of sexual harassment was all a figment of Del Caro's manipulation of the applicant's mind. The proposition put up by the applicant ignores the fact that there was an effective retraction of the allegation on 27 February (now resiled from) and the fact that, unbeknown to the applicant, the respondent had a tape recording of that retraction. The proposition put is improbable in my view as a result.

Indeed, having regard for the evidence it is much more likely that the catalyst for the dismissal was the applicant's failure for some time to inform Ferrari that Del Caro had stolen from the respondent and her other conduct in relation to him.

While the applicant insisted there was no relationship beyond friendship with Del Caro, who commenced employment with the respondent in September 1997, this is not the point. It is not necessary to reiterate the detail of what was clearly quite a close relationship in the November 1997 – February 1998 period other than to observe that some outcomes from that relationship are relevant to the applicant's performance in the position of trainee manager with supervisory duties, including over Del Caro. The fact that she was in this position in relation to Del Caro is acknowledged in the evidence of both of them.

The applicant says no one in the workplace had cause to conclude there was anything other than friendship between her and Del Caro; the inference being that whatever was going on was of no consequence so far as her work was concerned. But the evidence is that it was of consequence in a number of respects.

First there is the evidence of McNeill, which I accept, of an overt display by the applicant and Del Caro of an intimate relationship following a staff party on 6 December 1997. The fact that it involved a supervisor with a supervised employee in the presence of another supervised employee is not irrelevant for this workplace. Given the applicant's evidence that every employee talked to everyone else in there and they told each other everything and McNeill's evidence that Del Caro, and to a lesser extent the applicant, talked to him about what was said to be going on between them, I think it was common knowledge in the workplace that Del Caro and the applicant had become very close in November/December 1997.

That there was such common knowledge does not of itself directly demonstrate anything about the applicant's work performance of course. It is her own evidence which does that. She acknowledges difficulty in getting Del Caro to take a direction from her. And, in at least two respects, the applicant withheld information about Del Caro from respondent which in her capacity of trainee manager she should have disclosed.

The most serious of these was that Del Caro had told her that he had stolen from the respondent. The applicant's evidence is variously that Del Caro told her this in early February or mid February 1998. But in any event it was not until 27 February that she passed this on to the respondent. The applicant's explanation that she did not do so before then because she thought Del Caro was just testing her out or was joking is unconvincing. Del Caro himself says he disclosed his position to the applicant because he was scared. It was no joke. And there is Ferrari's evidence, which I accept, that the applicant identified the object involved in the theft and informed Ferrari what it was so he could follow through. That is, the admittance by Del Caro was serious and the disclosure, by the applicant to Ferrari, when it occurred, was precise in some respects.

It was submitted that in the absence of any policy, written or otherwise, on reporting stealing or suspicion of stealing, there was no breach of duty by the applicant. I don't accept this. For one, the applicant was not just any employee. She had more responsibilities and held a position of trust. For another, it appears that it was well understood in the workplace that an employee suspecting another employee of stealing should report that to Ferrari. The applicant had reported on another employee earlier and other employees were unequivocal about a duty to report any suspicion of stealing to Ferrari.

In all, the applicant's explanation of why she waited until 27 February 1998 to tell Ferrari an employee had told her he was stealing from the respondent is unconvincing. Her failure to act amounts to a breach of trust.

There appears to be a further breach by the applicant. The applicant failed to disclose to Ferrari that, while Del Caro was on compassionate leave on the basis that his partner, pregnant with their second child and hospitalized for appendicitis, he obtained work elsewhere. The applicant says she actually fought Ferrari to get Del Caro compassionate leave so it follows she knew the reason leave was granted. The applicant says that she learned from Del Caro on 20 February 1998 that he had obtained another job and would not be returning to work for the respondent. She says she was very upset by this news. There is no suggestion that this was due to any concern about the misuse of compassionate leave however. The applicant says she was devastated at the prospect of the loss of Del Caro's support in the workplace. A week later, for reasons which are said to include the prospect now that Del Caro actually will return to the workplace, the applicant informed Ferrari that Del Caro has obtained another job. All very convoluted,

but what stands out for the purposes of this matter is her failure to act responsibly for some time with respect to apparent misuse of the compassionate leave.

Ferrari pursued the applicant's report of Del Caro stealing and he was dealt with. However the matter of the failures of the applicant was not then. Clearly this is because, at that time it was expected that she would not return to work. In this context the reference for the applicant prepared before her disclosures of her failings on 27 February 1998 was still handed over. That the respondent was prepared to continue with the agreed arrangements despite the effective resiling by the applicant on 27 February 1998 from her complaint reflected a judgement based on the respondent's convenience. It was not a matter of obligation. The applicant's admissions on the 27 February 1998 disposed of that.

Of course, contrary to expectations, the applicant returned to work at the end of the paid leave period and, it seems, expected as a "right" under the accommodation between her and Ferrari that the employment continue. It is noted that there is no evidence of specific efforts during the period by the applicant to obtain work, which was a condition precedent for any such "right" and she says she obtained work within a week of her dismissal, which would be relevant considerations in the event that I am wrong as to the standing of the accommodation after 27 February 1998. But, having regard for all the circumstances I am not convinced that the respondent's action in taking up the issue on the applicant's return to work of her failure to disclose relevant information to Ferrari before 27 February 1998 was unreasonable. It seems the applicant offered no mitigating circumstances. Indeed she appears she may not have even apprehended that she was an employee in a position of trust who, by her actions in relation to Del Caro, demonstrated that the trust was misplaced.

In considering its position on the return of the applicant in March the respondent was entitled to have regard for such matters as the applicant's work performance. Indeed if it was the case that it had been exemplary in all other respects save in relation to Del Caro it may have been argued that a failure to have such regard would be unfair.

The respondent says the applicant's work performance had deteriorated in late 1997. The applicant denies that her work performance had deteriorated as the respondent says. But this is not a position which stands up to scrutiny for a number of reasons. First it is quite clear on the evidence that the applicant's work performance fell away in the later months of 1997. Her weekly sales figures demonstrate that. A mystery shopper's report in September 1997 supports that as does her own acknowledgment that she did not always meet the lower budget figures allocated to her after Stafford left and failed to complete a sales course. The applicant says that Ferrari constantly told her that he was not concerned about her work performance. She says that therefore her work was not judged wanting by the respondent or in the alternative, by inference, demonstrated Ferrari's favouritism of her. Neither of these positions is supported by the evidence. Ferrari says he spoke to the applicant a number of times and was concerned about her work performance. Leonard's evidence of discussions with Ferrari about the applicant's work performance supports this as do the sentiments expressed in the applicant's personal Christmas card to Ferrari.

There is also the matter of the applicant's absences from work in late 1997/1998 which the respondent says was taken into account. The respondent says that the applicant had 17½ days off in the period 30 December 1997 to and including 24 February 1999. The applicant says that it was possible she had up to 20 days off. Medical certificates were produced by the applicant for 17 days of absence but that fact does not render any concern of the respondent as to those absences unreasonable. Here was a case of, perhaps, twice as much as the community standard of 10 days per 12 months of service being taken in a two month period. No evidence was led that the time actually taken off exceeded any accrued benefit the applicant may have had but it is a matter of common sense that the taking of that volume of sick leave, without notice, and in a period which encompassed the respondent's busiest season, would have been a source of significant inconvenience for the respondent. It would be surprising, in my view, if Ferrari was not concerned.

The applicant says that the cause of the absences was actually stress from the conduct of Ferrari. One of the medical certificates says that the applicant had to have "necessary and essential stress leave – unable to cope with any [work] duties" for the period 30 December 1997 – 12 January 1998. The other medical certificate, for 23-24 February 1998, does not identify any illness or cause for the applicant's unfitness for work.

The allegation that the absences of the applicant were due to stress caused by Ferrari's conduct can not be merely assumed on the basis of either the medical certificate or the absences. Indeed, if it is accepted that the applicant was suffering from medically diagnosed stress at the time she did not attend work during the period 30 December 1997 – 24 February 1998, and the absence of any expert opinion on the cause, it is open to conclude on the evidence that the applicant's apparently troubled life at the time may have been a factor. It is not necessary to detail all the evidence in support of this conclusion. It is enough to observe that notwithstanding the applicant's protestations it is plain her personal and working life were disastrously entwined from November 1997 to the end of February 1998 irrespective of anything Ferrari may have done. It seems to me that the suggestion that it was his alleged conduct which was to solely or largely to blame for stress she felt has to be set in the overall context of what was going on in her life.

The submission as to written outlines of criticisms needs to be considered in a common sense way too. There is no prescribed formula for the achievement of procedural fairness. Thus the absence of an ingredient in a process does not, as a corollary, mean automatic failure. A small workplace may involve a level of informality. Talk between the supervised and the supervising is not always converted to paper. Bureaucratic procedures and written protocols may not exist. But this does not mean that a denial of procedural fairness will result. Having regard for the circumstance I am not convinced the applicant was denied a fair go in the process.

I have concluded that the applicant's employment was ended by the respondent because Ferrari decided that he could not rely upon the applicant to carry out her duties and that this decision was reasonably open to the respondent. It follows that I am not convinced that the allegation of sexual harassment raised against Ferrari on 24 February 1997 was the reason why the applicant was dismissed. In all the applicant has not discharged the onus of establishing on the balance of probabilities that the respondent's right to end its contract of employment with the applicant was exercised unfairly on 31 March 1998. An order dismissing the applicant's claim will issue.

It remains to deal with the respondent's claim for costs against the applicant. Particulars of the costs and copies of any documentation in support are to be provided to the Commission as soon as possible, with the applicant to be provided with copies by the same time. Submissions on the application for costs will be subject of a hearing. Notice of that hearing is issued to the parties with these reasons.

6 August 1999

The respondent had not particularised the costs it sought by the time of the hearing and Mr Randles, for the respondent, said this was basically because of a lack of adequate time. It was suggested by him that the matter be adjourned so that a full schedule of costs in relation to the report obtained by the respondent on the tape of 27 February and the wages and salary costs involved in the respondent's principal and an employee giving evidence and other costs. I was not minded to allow this adjournment however and requested him to get instructions. The respondent proceeded then to submit a claim for $900.00 which was said to be the cost of obtaining the report and a claim for $2,060.00 for costs associated with an employee giving evidence and the respondent's principal giving evidence and some time in preparation.

Mr Gill, appearing for the applicant, objected on the ground that the respondent had failed to provide particulars as directed and in the alternative had not adequately established that the costs now claimed had been incurred. He also submitted that no costs should be awarded because there was nothing so unusual or extreme in this case as to warrant this course.

It is noted that Mr Bull and Mr Clarke had previously addressed the Commission generally on the respondent's

application for costs and these have been taken into account in reaching the conclusions now expressed.

The first question for the Commission where an application for costs has been raised is whether or not such an award should be made at all. The answer will depend on the circumstances of the particular case. As a general rule in this jurisdiction costs will only be awarded in extreme cases. Applying the test here it is my view that an award of costs is justified. In particular, I think the applicant's conduct in relation to the allegation that the tape of 27 February was tampered with was dishonest and reckless and, because of it, the respondent was forced to incur costs in an effort to rebut something which the applicant, who subsequently told the Commission that she made the statements recorded, reasonably must have known was false at the time. I accept that the costs of $900.00 was incurred by the respondent in obtaining the report in rebuttal. So far as the other figures raised by Mr Randles are concerned I think it likely, having regard for the totality of this case, that the estimate is conservative and note that a portion of those costs would have involved proceedings in interlocutory matters in relation to the tapes allegation.

Having regard for all the circumstances an award of costs totalling $1,500.00 will be made against the applicant. In the absence of any submission as to time for payment, I consider 30 days from date of the issue of the final order should apply.

Appearances: Mr L Clarke (of counsel) and later Mr A Gill (of counsel) appeared on behalf of the applicant

Mr G Bull and later Mr A Randles appeared on behalf of the respondent

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WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Tanya Elizabeth Dobbie

and

Lakelands Holdings Pty Ltd T/A Cash Converters.

No. 655 of 1998.

6 August 1999.

Order.

HAVING heard Mr L Clarke (of counsel) and later Mr A Gill (of counsel) on behalf of the applicant and Mr G Bull and later Mr A Randles 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 claim of harsh, oppressive and unfair dismissal be and is hereby dismissed.
2. THAT the applicant pay to the respondent the sum of $1,500.00 for costs within 30 days of 6 August 1999.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Stuart Owen Emery

and

Bruyereterre Pty Ltd.

No. 37 of 1999.

19 July 1999.

Order.

HAVING HEARD Mr S. Emery on his own behalf as the applicant and there being no appearance on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby—

1. DECLARES THAT Stuart Owen Emery has not been allowed by Bruyereterre Pty Ltd a benefit to which he is entitled under his contract of service.
2. ORDERS THAT Bruyereterre Pty Ltd forthwith pay to Stuart Owen Emery the sum of $16,074.00 being a benefit to which he is entitled under his contract of service.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Araceli Evans

and

Abellio Pty Ltd.

No. 1472 of 1997.

13 July 1999.

Reasons for Decision.

COMMISSIONER C.B. PARKS: The respondent company, so far as is material to the present application, operates a carvery in a food hall in which the applicant had been engaged as a cook until the termination of her employment. The applicant alleges that she was unfairly dismissed from her employment which the respondent company denies and asserts that she resigned from the employment.

It is not in dispute that the respondent acquired the carvery business and retained the services of the applicant who had been employed by the previous owner of the business. In the next following month the applicant sought and was granted a one week period of compassionate leave to visit her mother in the Philippines. Two months later the employment relationship terminated.

The applicant usually worked a five day week from Wednesday to Sunday, both days inclusive, and had Monday and Tuesday of each week off duty.

According to Ms Simone Rutherford, the Manager for the respondent, at the commencement of Ms Evans' working week, on the Wednesday two weeks prior to the termination of Ms Evans' employment, Ms Evans approached her and announced she was giving two weeks notice to terminate her employment and that the reason for that was she was pregnant. Ms Evans denies that she tendered notice to terminate her employment. The applicant does however concede that she announced to Ms Rutherford that she was pregnant but says that was a joke and it had been said to Ms Rutherford a week or two earlier than the Wednesday stated by Ms Rutherford.

On Friday of the same week Ms Evans was ill and ceased work early. Ms Evans did not attend work on both the Saturday and Sunday and on each of those days she contacted Ms Rutherford and advised her that she was unable to attend. On the Sunday the applicant also informed Ms Rutherford that she intended to consult a doctor.

Ms Evans was due to commence a new five day work period on the following Wednesday however it transpired that she did not do so. On that day a friend of the applicant visited the carvery and delivered a medical certificate, dated that day, which states that the applicant was unfit for work for a period of five days. Receipt of this written advice indicated to Ms Rutherford that the applicant would not be available for any part of that usual five day work period and prompted a telephone conversation between Ms Rutherford and Ms Evans that day. Each has a different version of what the other said on the day. According to Ms Rutherford the applicant questioned whether she would be paid wages for the next five days that she would be absent, and upon being informed that she had exhausted her entitlement to payment for such an absence, she indicated that she could not afford to lose the wages and stated

she would return to work. Ms Rutherford says that she told Ms Evans that she would not be permitted to return to work until she first gained a medical clearance, and in addition, she reminded the applicant that it was the second week of her Notice. Ms Evans, on the other hand, says that Ms Rutherford indicated to her that if she did not attend for work she would lose her job but that, after impressing upon Ms Rutherford how ill she was, Ms Rutherford relented and indicated she would expect to see her the following Wednesday.

The next five day work period was due to commence on the following Wednesday however that did not come to pass because the employment terminated. On that Wednesday Ms Evans arrived at the carvery, according to her, expecting to commence work, and was informed that she was no longer employed. Ms Rutherford told the Commission that the applicant did appear nonplussed when it was said she was no longer employed but accepted the situation without comment and departed.

Ms Rutherford says she had not been surprised when the applicant informed her that she was pregnant because other persons had earlier told her that Ms Evans had informed them that she was pregnant. Mesdames Linda Brown and Amelie Vert told the Commission that Ms Evans had told them that she was pregnant and both of them also say that the applicant did not appear to be joking at the time. Ms Brown also told the Commission that she knew there had been a telephone conversation between Ms Rutherford and Ms Evans during her absence from work and recollects that following this conversation Ms Rutherford commented regarding the matter and made mention of the applicant having resigned.

According to Ms Rutherford, although the unexpected arrival of Ms Evans at the carvery might have signalled a wish to continue in employment that was unacceptable because, on Thursday, the day following when Ms Evans submitted her Notice, and therefore almost two weeks earlier, she had sought and obtained a replacement cook who had commenced his first day of work with the respondent on that final Wednesday. Accommodation of the applicant meant she would have had to terminate the new cook and that she had not been prepared to do.

I found Ms Rutherford to be a forthright and credible witness. English is not the native language of the applicant and she appeared to have a degree of difficulty comprehending and communicating as a consequence. However I am also of the opinion that the applicant was evasive. Ms Evans both denied, and said she did not recall, whether she had applied for other positions of employment whilst employed by the respondent, yet both Mesdames Brown and Vert say that the applicant told them she had been seeking other employment. Additionally, Ms Evans denied that she had been convicted of a drug related offence and admitted such offence only after concerted cross examination. Where her evidence conflicts with that of Ms Rutherford, I prefer that of the Manager, accordingly I believe that the applicant did give Notice to terminate her employment but for some reason changed her mind. I am satisfied that her employment terminated as a result of her resignation and therefore there was no dismissal by the respondent. The application will therefore be dismissed.

Counsel for the respondent applied to the Commission for costs to be awarded against the applicant on the ground that the application is vexatious. The costs claimed are: $50, the cost of photocopying; $5, the fee for filing the answer to the application; $15 per hour, for each hour that Ms Rutherford attended the hearing before the Commission; and, travel costs for Mesdames Rutherford, Brown, and Vert, each based on 40 cents per kilometre for the distance of 36km from Fremantle to Perth and return.

It is well settled that the Commission will not award costs to a party unless there are special circumstances which warrant such an award. Given that I am satisfied that the applicant resigned from her employment and therefore had no cause of action against the respondent, the special circumstance exists entitling the respondent to an award of costs. The claim for the cost of photocopying of records provided to the applicant is reasonable and justified, as is the claim for the filing fee. It has not been shown to the Commission that Ms Rutherford suffered any personal financial loss as a consequence of her attendance upon the Commission and if the claim made implies that her attendance cost the respondent her wage for that period, such is a standing cost related to the employment of Ms Rutherford and does not translate to an additional cost which has occurred by reason of the application alone. Admittedly the absence of Ms Rutherford from her normal duties may constitute a degree of loss to the respondent however that has not been quantified to the Commission. Finally, the food hall in which Ms Rutherford is employed is located in Fremantle however there is no evidence before the Commission regarding where she, or the other two witnesses, travelled from in order to attend the Commission. The wage related and travel cost claims are therefore refused. Ms Evans will be ordered to pay $55 in costs to the respondent.

Appearances: Mr T.C. Crossley on behalf of the applicant

Mr M. Cox (of Counsel) on behalf of the respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Araceli Evans

and

Abellio Pty Ltd.

No. 1472 of 1997.

20 July 1999.

Order.

HAVING heard Mr T.C. Crossley on behalf of the Applicant and Mr M. Cox (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; and

THAT Ms Araceli Evans pay to Abellio Pty Ltd the sum of $55.00 within 21 days from the date of this order.

(Sgd.) C.B. PARKS,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Jonathan Martin Flower

and

Malam Pty Ltd.

No. 1777 of 1998.

COMMISSIONER J F GREGOR.

19 July 1999.

Reasons for Decision.

THE COMMISSIONER: On the 30 September 1998 Jonathan Martin Flower (the applicant) applied to the Commission for an order under section 29 of the Industrial Relations Act, 1979 (the Act) orders on the grounds that he had been unfairly dismissed from employment with Malam Pty Ltd (the respondent). The applicant was an excavator operator who was employed by the respondent in May 1998. He continued in that employment until September 1998. The applicant described himself as a full time casual. In his evidence to the Commission he said he had been a machine operator for 20 years specialising to some extent in the operation of excavators. He answered an advertisement in the West Australian Newspaper on the 9 May 1998 for machine operators. The advert had been placed by the respondent. He had an interview with Mario Morrone who is a principal of the respondent. As a result of that interview, he was asked to start on the following Monday. The applicant was then employed as a machine operator. The applicant rang his employer to talk to him about the matter, as the business was quiet, his employer said it would be fine for the applicant to leave straight away which he did. The pay arrangement with

the respondent was that he would start on $16.00 per hour and after three weeks he would receive $18.00 per hour. He eventually received $17.00 per hour but never $18.00 per hour. He took the work on the understanding that it was a full time position. He said he would not have left his current full-time employment, where he had been for some time, for a casual job. The respondent's principal, Mr Morrone, told the applicant he would work six days a week. Mr Morrone told the applicant that if there was no machine work he would come into the workshop and sometimes he would be asked to work on holidays as a special favour. Mr Morrone meant that when a job needed to be done Mr Morrone wanted him to do it. He was to work on every working day of the week unless he was sick. In the time the applicant was at the respondent's business, he was never ill. There were never any problems with his work performance. Mr Morrone had told the applicant he was quite happy with the applicant's performance.

The applicant was eventually sent to work on a job in Mindarie as an operator for the respondent who was doing work for WA Gravel and Paving company. The applicant was supposed to work until the job finished on 11 September 1998. The contractor told the applicant that he was doing a better job than their own machine as he was more productive. The contractor wanted the applicant's machine to stay for approximately 1-6 weeks. Around this time the applicant had a discussion with an employee of WA Gravel and Paving. The applicant was asked whether he was getting a travel allowance because it was known on the site that the applicant was travelling from Kelmscott to Mindarie. It took him $1^1/_2$ hours each way and was 150kms all up. He was told that he was entitled to a travel payment if he travelled more than 50kms one way. The applicant was advised to talk to his employer about it, which he did.

When the applicant arrived home he rang Mrs Beatrice Morrone who he understood to be a manager of the respondent and asked whether there was any possibility of a travel allowance. She said she would talk to Mr Morrone about it. The applicant felt that she was not in any hurry to do so, and he tried to ring Mr Morrone. The applicant could not contact Mr Morrone because his phone was turned off. The applicant then telephoned his supervisor, Andrew Allpike, to find out how to contact Mr Morrone. Mr Allpike told the applicant that Mr Morrone was not accepting any calls. The applicant asked Mr Allpike if he would speak to Mr Morrone about the travel allowance on his behalf. A short while later, Mr Allpike rang the applicant back and said that Mr Morrone would not provide the applicant with a travel allowance and that he would get someone else to do the job. There was some need to clarify the situation so, according to the applicant, Mr Allpike rang Mr Morrone again. Mr Allpike then rang the applicant and told him he was sacked. The applicant did not recall the exact words but remembered telling his partner, when he got off the phone, 'I've lost my job, I've been sacked'. The next morning, Mr Allpike telephoned the applicant informing him that his cheque was ready to be collected. The applicant went in to collect his deposit book and cheque. While on the premises the applicant attempted to contact Mr Morrone but to no avail. Over the next two weeks the applicant tried unsuccessfully to contact Mr Morrone. Eventually he did make contact with Mr Morrone by telephone. The applicant asked Mr Morrone why he had been sacked. Mr Morrone told the applicant that he had sacked himself. Mr Morrone did not want to talk to him and hung up in his ear.

The applicant was certain Mr Morrone had never at any time said to him that his job was available. The applicant would have accepted it for financial reasons. The applicant tried to get work after he had been sacked; he even went as far as Brisbane. Seeking employment in Brisbane did not work out and he returned to Perth. Two days after his return to Perth, the applicant obtained a position with his previous employer, for whom he worked before he joined the respondent. It was the applicant's evidence that his total loss suffered, which included having to withdraw an investment to do repairs on his car, totalled $5,500. This included $4,500 for lost wages. The applicant did not apply for social security during the time and had no other income.

Evidence on behalf of the applicant was also taken from Andrew Allpike. Mr Allpike was the applicant's supervisor during the time he was employed by the respondent. Mr Allpike no longer works for the respondent, but had been employed by the respondent for about $5^1/_2$ years. Mr Allpike's job, as the respondent's plant manager, meant that he ran the workshop, looked after the machines in the workshop as well as in the field, organised and passed on messages to the employees telling them where to go and what to do. Mr Allpike had knowledge of the applicant and described him as a good worker. As to the circumstances when the applicant ceased to work with the respondent, Mr Allpike advised that the applicant had called him and asked for Mr Morrone's home phone number. Mr Allpike declined on the basis that he was not allowed to release it, but he did offer to ring Mr Morrone on his behalf. Mr Allpike informed Mr Morrone that the applicant was asking for $10 per day for fuel money to drive from Kelmscott to Mindarie Keys. Mr Allpike's evidence was that he rang Mr Morrone, put the question to him and Mr Morrone said "… no, if he is going to cause trouble we'll sack him". Mr Allpike rang the applicant back and told him words to the effect that "Mario said he does not want you back because you are asking for more money". Mr Allpike was certain that he had terminated the services of the applicant. On the following Friday, which is payday, Mr Allpike telephoned the applicant and said he could come in and get his cheque. The phone call was made on Mr Allpike's own volition. Mr Allpike recalled that the applicant had attempted to contact Mr Morrone on two or three occasions. Messages were passed on to Mr Morrone but Mr Allpike was unsure about the outcome.

Under cross-examination by Mr Fayle, who appeared for the respondent, Mr Allpike gave clear evidence that although he did no interviewing, he took resumes and he did have the right to hire and fire—he had done it before. Mr Allpike did not recall phone discussions the following day with Mrs Morrone. He knew though that work was not as prevalent as it had been before. It had been a practise to keep employees in the yard as long as possible before letting them go. He did not know of any special status in the employment of the applicant. As far as Mr Allpike knew he was employed as an operator. He came into the yard every day, five days a week. He ceased to come in after the Thursday night when Mr Allpike told him that he had been dismissed.

Beatrice Morrone, who described herself as a manager of the respondent, gave evidence. She described the company structure as being two directors—Mario Morrone and herself. She remembered speaking to the applicant on the 10 November 1998, on two occasions. She recalled him raising the question of travelling allowance. She had said to the applicant that she would speak to Mr Morrone. About half an hour later, he rang back to say that Andrew Allpike had told him he was to be replaced. She asked him if he was going to the workshop but he did not answered. She then asked him to let her know before the next day because she needed to do some calculations. As far as she knew, he never called. Mr Allpike told Mrs Morrone the next day that the applicant did not attend the workshop.

Mrs Morrone does not remember the applicant saying he was sacked. When she asked him what had happened he merely said that Andrew had told him that he was to be replaced at Mindarie Keys. According to Mrs Morrone only herself and Mr Morrone have the authority to hire and fire. Most of the times, that is done personally. Mrs Morrone admitted that Mr Morrone perhaps takes a round about way to administer terminations.

Mrs Morrone gave evidence concerning the downturn in the company's operations and the necessity to let their children leave the firm. Under cross examination from Ms Drew-Forster, of Counsel, Mrs Morrone did not agree that the applicant had told her that he was dismissed and that he was not going to the workshop. She did not witness the conversations when the applicant was engaged. Mrs Morrone did admit that Andrew Allpike had terminated the services of other people but only on instructions from one of the Morrone's.

The Commission heard evidence from Mario Morrone. He described himself as a director of the company. Concerning the events leading to the applicant leaving the respondent he said he took two phone calls; one from his wife, and one from Andrew Allpike. Mrs Morrone told him words to the effect that the applicant would not go to the site because of some dispute. Mr Allpike had said that the applicant wanted to speak with Mr Morrone but he had told Mr Allpike that he would not

speak to anybody. He said words to the effect that if the applicant wants to go to work that (Mindarie) is where the job is, if he does not want to go to work [we] have not got anything else. Mr Morrone did not see the applicant come in on the following Friday to collect his wages. Mr Morrone denied that the applicant had tried to ring him on that day as he had been available. He could not remember any attempts by the applicant, to contact him. Eventually he spoke to the applicant on the phone. In the discussion, the applicant asked Mr Morrone why was he sacked. The applicant was told that that he had not sacked him. Instead, Mr Morrone thought he did not want to go to work. This caused the applicant to get angry. This upset Mr Morrone and he hung up on him. Fundamentally, the applicant was accusing Mr Morrone of ripping him off. Mr Morrone gave evidence that the applicant had put in his application that he was fit and well, yet he thought that the applicant had a bad back because of the way he dismounted from a vehicle. However, the applicant had never claimed any sick leave relying on a bad back. As far as Mr Morrone was concerned, a payment for travelling was incorporated in the wages. He was of the opinion that because the applicant was paid a flat rate, he was a casual employee.

In his cross-examination Mr Morrone altered his evidence concerning what he had told Mr Allpike. He told Ms Drew-Forster that he was not feeling well at the time and when Mr Allpike posed the question to him about the applicant's claim for travelling allowance, he had responded with words to the effect 'if he does not want to go there put another operator in his place'. Mr Morrone said that Mr Allpike did not have the power to sack anybody. He denied that he had ever asked Mr Allpike to do so. In fact, he said, he (Morrone) had not sacked anyone for 20 years.

It was Mr Morrone's view that the applicant had, in effect, sacked himself because he did not want to go to work. He had not made any contact with him until the time that they had had the discussion on the telephone some two weeks after the dismissal. As for the applicant's supposed back injury, Mr Morrone gave evidence that he took 'half an hour' to get inside the cab of a vehicle. When Mr Morrone asked him what the matter was, he said he had a bad back. Mr Morrone admitted that he made arrangements for the applicant to stay in the workshop, but he gave no guarantees. He refused to confirm that he had guaranteed the applicant six days of work per week.

The final evidence was taken from Linda Marie Tischhauser. Ms Tischhauser worked in the office and did administration and clerical duties. She produced in *Exhibit F6* a breakdown of the employment earnings of the applicant describing how much time he spent in the yard and how much on machine work, on service work, on the truck and on travelling.

What the respondent says about the claim by the applicant is that he was employed as a casual. Mr Fayle conceded that under the relevant law there is no such thing as a full time casual, however in the building trade there are such arrangements. That is, very simply employment is there when the job is to be done and that was the case in this instance. The applicant was given extra work at the initiative of the employer, who recognised he was a good operator and wanted him to be kept on the books. As the work dried up, more and more hours had to be found. There were varying times that the applicant worked and this can be shown by reference to *Exhibit F6*. The employment that was offered to the applicant was by way of casual contracts. The applicant had filled in an employment declaration that said he was a casual. There was the ability for him to show that he had been employed on a full time basis but he chose not to do so. Mr Fayle urged the Commission to accept the evidence of Mario Morrone that he merely asked the applicant to be told that if he did not want to do the job someone else would do it. The applicant was offered a casual contract of employment and could quite simply choose not to accept it. Mr Fayle conceded that Mr Allpike may have misunderstood what Mr Morrone had said to him but that might be a problem with language. If it had been, the applicant should have taken action to check it out. In summary, the respondent's position is that this is quite simply a case of a casual employee who chose not to accept casual employment offered. He has not attempted to continue with the relationship and even if there was a dismissal then there is a difficulty with remedy.

Ms Drew-Forster says on behalf of the applicant there is clear evidence before the Commission as to the style and type of contract. Mr Allpike was sure about what Mr Morrone had instructed him to do. Mr Allpike had acted on the instructions and acted in the way he had acted on other occasions. Mr Allpike had terminated the services of the employee as directed by Mr Morrone. This was a summary dismissal and clearly the evidentiary onus is upon the employer who affects the summary dismissal. Ms Drew-Forster says that the total amount lost was $4,500 but there should be some consideration to the applicant's costs for having to go and find work.

Before I make my assessments of witness credibility, I need to discuss the law involved. 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 of the circumstances unfair. The test for ascertaining whether a dismissal is harsh, oppressive or unfair is that outlined by the Industrial Appeal Court in *Undercliffe Nursing Home v. The 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, 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 itself will not necessarily mean the dismissal is unfair: see *Shire of Esperance v. Moritz (1991) 71WAIG 891* and also *Byrne v Australian Airlines (1995) 61 IR 32*.

In *Shire of Esperance v. Moritz (ibid.)*, Kennedy J observed—

> "*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*."

An employee as far as practicable will not be dismissed without receiving a warning as to the possibility of dismissal.

Whether or not the applicant was a casual worker is an issue for determination. The rules to be applied have been set out by His Honour The President in *Secro (Australia) Pty Ltd v John Joseph Moreno (1281 of 1995) WAIG 937*. Where His Honour wrote—

> *"The concept of casual employment within the common law of employment, untrammelled by award prescription, is generally taken to connote an employee who works under a series of separate and distinct contracts of employment entered into for a fixed period to meet the exigencies or particular work requirements of an employer, rather than under a single and ongoing contract of indefinite duration"*
>
> *(See Squirrell v Bibra Lakes Adventure World Pty Ltd t/a Adventure World (op cit) at page 1835 per Fielding C and Steward v Port Noarlunga Hotel Ltd (1980) 47 SAIR 406 at 420).*
>
> *The parties, or course, cannot by use of a label render the nature of a contractual relationship something different to what it is (see Stewart v Port Noarlunga Hotel Ltd (op cit) per Haese DPP at page 5-6).*
>
> *Certain indicia may be indicative of the nature of the contract, but they are not determinative, taken alone. These may include the classifying name given to a worker and initially accepted by the parties, the provision of the relevant award, the reasonable expectation that work would be available to him, the number of hours worked per week, whether his employment was regular, whether the employee worked in accordance with a roster published in advance, whether there was reasonable mutual expectation of continuity of employment, whether the notice is required by an employee prior to employee being absent on leave, whether the employer reasonably expected that work would be available, whether the employee had a consistent starting time and set finishing time, and there may be other indicia.*

I need to discuss the remedies available if I do make a finding of unfair dismissal. Section 23A of the Act sets out the powers of the Commission on the claims of dismissal.

The two primary remedies available to a successful applicant in an unfair dismissal claim are:

(a) reinstatement; or

(b) compensation in lieu of reinstatement.

As recognised by Senior Commissioner Fielding in *Jaggard v. Tranbury Pty Ltd (1996) 76 WAIG 4720*, the primary remedy is reinstatement, and only if the Commission is satisfied that reinstatement is impracticable, or if the employer fails to comply with an order for reinstatement, can it make an order for compensation in lieu of reinstatement. If an employer exercises the option available to it under s.23A(1a)(b) the Commission must fix compensation instead of making an order to reinstate or re-employ the claimant.

Accordingly, in the Senior Commissioner's view, the Act requires the Commission to make an evaluation of the practicalities of reinstatement based on common sense in the work place. As the Act is concerned with preventing and settling disputes in the work place it should not be interpreted as confining the inquiry to the physical impracticalities but should be taken as requiring an inquiry about the environment in the work place.

In *Jaggard's Case (ibid.)* the Senior Commissioner found that the employment relationship had irretrievably broken down and it was impracticable to reinstate the applicant. In his decision in *Smith v. C.D.M. Australia Pty Ltd (1998) 77 WAIG 307*, Commissioner Beech found that the respondent's trust in the applicant's ability to manage a warehouse and to abide by the company's administrative procedure was damaged. Accordingly, the applicant's actions were destructive of the necessary confidence which needs to exist between an employer and employee in a management capacity which made reinstatement impracticable.

The question of compensation may be an issue in this case. The contemporary situation for the assessment of compensation is cited in detail by His Honour, the President and Commissioner Kenner in the Supplementary Reasons for Decision *Ramsay Bogunovich v. Bayside Western Australia Pty Ltd No. 939 of 1998 (23 December 1998 Unreported)*. The Commission needs to examine the fact and law to make an assessment of loss and injury. Both of these matters are examined in the *Bogunovich Case*.

I had the opportunity of seeing all of the witnesses and I draw the following conclusions about their credibility. The applicant appeared to me to be straight forward and honest. He described himself as a full time casual. Although such a classification probably as a matter of law cannot exist, he nevertheless believed that was his status. He described clearly what had happened to him during his time working for the respondent. He had consulted his previous employer before he resigned, he had done so because he thought he would better himself by going to work for the respondent. I cannot see anything in his evidence which would lead me to conclude that he believed anything other than he had been sacked when Andrew Allpike told him he had been. His recitation of the events which took place afterwards when he tried to contact the employer, are chronologically sound and cogent and there is no reason to draw any conclusion other than that they are a reasonably accurate recollection of the series of events. I have no difficulties in accepting his evidence. Andrew Allpike is a person of similar character in my view. He told the Commission in simple straight forward language what he was told to do and what he did. Mr Morrone told him to dismiss the applicant and he did so. He did not say that he had any difficulties with Mr Morrone's language. There is no conclusion adverse to Mr Allpike that can be drawn from the fact that he has left the employ of the respondent himself. I accept his evidence as being truthful.

I accept the evidence of Beatrice Morrone as being her truthful recollection of the events that occurred. I think she truly believed that the ultimate responsibility to hire and fire rested with her and Mr Morrone and she was honest enough to admit that sometimes Mr Morrone goes about this in a round about way. I take that to mean that he asks other people to execute the terminations from time to time. I accept the evidence that Mrs Morrone gave me about the state of the company. I will make further comments about that later. I accept the evidence of Ms Tischhauser. The value of that evidence is doubtful given the precise nature of the task of the Commission in this matter, however the exhibits she prepared are of assistance. Finally I heard from Mario Morrone. In my opinion he was evasive, he gave me the impression of a man who did not see the need to be troubled with what he considered to be unimportant things. An example of an 'unimportant thing' may have been the application by the applicant for travel money. Another could well have been the appearance before the Commission. I am unsatisfied with the quality of his evidence. He is a lynchpin for the respondent in this case. He swore that he had not sacked anyone for 20 years. Mr Morrone's fellow director Beatrice Morrone, gave evidence to the contrary, concerning how the respondent went about the business of terminating employees and how she and Mr Morrone kept that responsibility to themselves except when he decided otherwise. I conclude that his evidence has many doubtful qualities and where the evidence of the respondent differs from that of the applicant, particularly in the case of Mario Morrone, I accept the evidence of the applicant.

The first thing that needs to be discussed in this matter is the status of the applicant. The indicia to establish whether or not the applicant was a casual worker has been described earlier in these reasons. Conceptually the arrangement is generally one where an employee works under a series of separate and district contracts of employment entered into for a fixed period to meet the exigencies of particular work requirements of an employer rather than a single and ongoing contract of indefinite duration. I fail to see even how the most gymnastic imagination could apply that concept to the type of employment contract here. There are some varying hours set out in *Exhibit F6* but not of the nature described by the President in *Serco (Australia) Pty Ltd (ibid)*. The only indicia which is of any assistance to the respondent is the classifying name that the employee gave the job, that is as a full time casual, but of course the use of a label cannot render the nature of the contractual relationship something different to what it is in reality. Whatever the applicant called himself, he was not a casual. This was not a casual contract of employment. There is not a scintilla of evidence, apart from that I have mentioned above, which would assist the respondent in convincing the Commission that it was a casual engagement. I therefore reject that argument.

On the balance of probabilities and having made the findings on credibility that I have, I find that the applicant had asked a simple question about an entitlement to a travel allowance. He put that question through his supervisor because he could not make direct contact with the director, Mario Morrone. Mr Morrone's response was more likely than not 'if he doesn't like what he is getting now he can leave, he can be sacked'. Andrew Allpike, supervisor, acted upon that response and terminated the services of the applicant. Andrew Allpike had exercised such powers before on Mr Morrone's instruction. It was not a new thing that Mr Allpike would terminate the services of an employee and I reject the evidence of Mr Morrone to the contrary as being untrue.

I accept the applicant's story that he tried to contact Mr Morrone and was unable to do so, until two weeks after. One can imagine that he was upset about what had happened to him and he questioned Mr Morrone closely about the matter. Whether he did nor not, Mr Morrone hung up the phone in his ear. There was no meeting of the minds at that time as to whether there had been a mistake or not. Surely one would have thought that the respondent would have enquired to a greater extent about the applicant's disposition. One can conclude that they did not make the enquiries because Andrew Allpike knew he had sacked the applicant so it was pointless talking to him. Mr Allpike knew that Mr Morrone did not want the applicant in his employ. It was therefore a useless endeavour to try and remedy the situation.

In my view the applicant was summarily dismissed. He had no chance whatsoever to raise the issue with his employer. He was dismissed because he had the temerity to ask for a travel allowance when he was travelling over 150kms per day. In short, he ran into an employer whose creed was: it's my way or the highway. He was unfairly dismissed and an order to that effect will issue.

The primary remedy is reinstatement. I am satisfied that reinstatement is impracticable after all of this time and the respondent's financial position is problematical. I therefore believe that it is appropriate that compensation be fixed. I have

commented on the law to be applied. The President has made it clear in *Bogunovich Case (ibid)* that the Commission is to compensate the unfairly dismissed person to the full amount of his loss subject to the cap set out in section 23A of the Act. The unchallenged evidence of the applicant is that he lost $4,500. He will be awarded the full amount of his loss quantified at $4,500. I need to consider the question of injury. Section 23A(1)(ba) provides that an assessment of compensation for an unfair dismissal may include recognition for a component of injury sustained. The established authorities indicate caution must be exercised in this regard as there is a degree of distress in every dismissal. The President has expressed a qualified view on this concept, albeit obiter. The President wrote in his supplementary reasons for Decision in *Bogunovich* that the word injury includes humiliation, injury to feelings, loss of reputation and nervous shock. The applicant has not produced any evidence which would assist me to make an intelligent assessment of the quantification of his injury. He did say that it had caused him and his family some inconvenience and that he had cased work in Queensland. That work did not eventuate and he returned to Western Australia where he eventually obtained work with his original employer. I accept though there is some injury to him due to his need to withdraw down on investments to sustain himself during this period. I will award him the sum of $500. In total the compensation to be awarded is $5,000. Orders will issue that the applicant was unfairly dismissed, that reinstatement is not viable and that the respondent shall pay the applicant the sum of $5,000 in compensation.

Appearances: Ms A Drew-Forster, of Counsel, appeared on behalf of the applicant.

Mr C Fayle, industrial agent, appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Jonathan Martin Flower

and

Malam Pty Ltd.

No. 1777 of 1998.

COMMISSIONER J F GREGOR.

19 July 1999.

Order.

HAVING heard Ms A Drew-Forster, of Counsel, on behalf of the applicant and Mr C Fayle, industrial agent, on behalf of the respondent, pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Commission hereby orders—

1. THAT the applicant was unfairly dismissed by the respondent;
2. THAT reinstatement is not a viable option;
3. THAT the respondent shall pay compensation to the applicant in the sum of $5,000 within 21 days of the date of this order.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

H

and

Traffic Operations Support.

No. 25 of 1999.

COMMISSIONER J F GREGOR.

19 July 1999.

Reasons for Decision.

THE COMMISSIONER: On 7 January 1999, H (the applicant) applied to the Commission for an order pursuant to section 29 of the Industrial Relations Act, 1979 (the Act). The applicant asserts that she was unfairly dismissed from her position as a single traffic warden in the traffic operations support branch of the Western Australian Police Service (WAPS)(the respondent).

The applicant was a long term employee of the respondent. She commenced employment with the respondent in June 1991 and remained employed on a part time basis, working 10 hours per week, until 10 December 1998. The applicant's services were terminated by Colin Carlisle who is the supervisor of the school crossing section of the traffic operations support branch.

Traffic wardens are employed to control road crossings in the vicinity of schools. They are supplied a uniform which consists of a wide brimmed white hat; a yellow or green safety vest for fine weather work and a white long sleeved dust coat. In wet weather they are supplied with a yellow full length rain coat. The office of the wearer is shown on the back of the coat where the words 'traffic warden' are printed. Wardens are required to put the uniform on as soon as they arrive at their crossing and before they put up their flags, they are not to take it off until the warning flags are down. In preparation for their work before each shift, they are to display warning flags down the road from where the crossing is marked. They are required to ensure that symbolic signs, road markings, safety bollards and pedestrian ramps provided are in good condition and correctly placed. Additionally, they are required to report any hazards they see as soon as possible.

Wardens are required to control the crossing in accordance with procedures, taught to them at the end of their training. These procedures are designed to ensure safe crossing for pedestrians and that drivers of vehicles have adequate warning that a crossing is in use. Wardens are required, in dealing with the public, to be polite. As representatives of the WAPS they are required to act courteously and in a professional and responsible manner. There are specific requirements as to conduct. For instance, wardens are not to delay emergency vehicles, wear or use radio headphones, smoke while on duty, wear thongs or open toe shoes or operate the crossing under the influence of drugs or alcohol or be involved in any other distraction. There are additional instructions as to where the warden should be located to ensure the best and safest operation of the crossing.

All of these requirements are listed in the Warden's Operating Instructions. The applicant in these proceedings received those instructions on 25 August 1998 (see *Exhibit E2*).

The applicant gave evidence before the Commission. The applicant is somewhat dithyrambic in her speech patterns and it is difficult to precisely recite her position. As best as can be gleaned from the evidence, she says, that in all of the time that she has been involved in traffic warden duties, there had been no problems with her work. She insisted that if there had been problems she would have received a letter advising her. She had received no such letters and therefore in her mind her work performance has not been in question. Under cross examination she continued to assert to Mr Eacott, who appeared for the respondent, the situation outlined above. In that context, according to her, her dismissal came as a surprise.

The applicant told the Commission that, on the morning of 10 December 1998, it was overcast when she went to work. She took her winter gear in her vehicle in case she needed it. When she arrived at work she put up her warning flags as usual. It looked as though it might rain so she parked her car close to the crossing so her raincoat was handy. The applicant

had some reading material because she knew that she would be waiting for a while. For some reason, which was unclear from her evidence, she thought that there would not be as many children as usual crossing that day. According to her evidence the applicant was getting ready to return to the cross walk when a vehicle pulled up containing a person she did not know. In her evidence, the applicant said that she was approached later by two men she described as a bus driver and another man she knew to be Colin Carlisle. She said that she was concerned about the bus driver's method of approach. The two men talked to the applicant and asked her what she was doing in her car. According to the applicant, the men told her that the crossing, on which she was working, would be closed. She asked about a transfer. They told her that a transfer was not available to her and an argument ensured. The applicant said that she was dismissed by Mr Carlisle. There was some evidence from a friend of the applicant who told the Commission that complaints that she and her boyfriend had made against the applicant were unfounded. The complaints had been lodged to try and get the respondent to move the applicant from the crossing so that the applicant's friend could do the work as it was close to her house.

It is relevant to record that the file contains considerable correspondence from the applicant to the Commission concerning the case. According to the records she has spent a great deal of time talking to officers of the Registry about the case. The applicant may have visited the Commission on at least 10 occasions with various complaints about the case, the conduct of the case or officers of the Commission.

The Commission heard evidence from Joseph Drinkald. Mr Drinkald was employed in the traffic support operations branch at the time of the dismissal and accompanied the supervisor Colin Carlisle to view the applicant's work. This was done, according to Mr Drinkald, because of complaints made about the applicant. Mr Drinkald said that when he and Mr Carlisle arrived on site the applicant was sitting in her car. Due to potential safety breaches, they asked the applicant to place herself on the cross walk to help pedestrians cross the road. A number of pedestrians had crossed without her help. The applicant entered into an argument with them. Eventually, Mr Drinkald was struck by the applicant's flag sticks. According to Mr Drinkald, the applicant was incoherent and he was unable to understand what she was saying. Mr Carlisle attempted to have a discussion with her about her work, this was unsuccessful and eventually Mr Carlisle dismissed her. The applicant was not told that the cross walk would be closed, that she had been transferred or that there was any other detriment to her position but she was told that she was required to act in accordance with the procedures that were laid down and she manifestly was not.

The Commissioner heard evidence from Colin Carlisle who is the supervisor of the school crossing section of the traffic operations support branch. Mr Carlisle told the Commission that since 1992 there had been a chain of events involving the applicant resulting from complaints concerning the applicant's failure to do her work properly. As early as 1993 a physician advised that she was unfit to be a traffic warden. However, for reasons unknown to Mr Carlisle, the employment continued. The complaints were so prevalent, that in November 1998, Peter Fryer, a survey officer of the branch was asked to investigate the complaints. Mr Fryer reviewed the records and conducted an investigation. A report of the investigation was submitted to Mr Carlisle from Mr Fryer on 11 November 1998.

The report describes the conduct of the applicant and her history with the WAPS. Rather than attempt to recite history it can be adequately gleaned from the memorandum that Mr Fryer submitted on 11 November. The memorandum is incorporated hereunder—

MEMO

"DATE 11 NOVEMBER 1998

COLIN CARLISLE
SUPERVISOR

FROM PETER FRYER
SURVEY OFFICER

SUBJECT TRAFFIC WARDEN
H

LOC#87
WALTER ROAD
Near LIGHT STREET MORLEY

BACKGROUND

A number of complaints have been received and H has been cautioned on numerous occasions in regard to her performance as a Traffic Warden.

17 11 92	Not giving sufficient warning to vehicles Wearing clothing over uniform Not wearing issued hat Parking on median
12 10 93	H's physician advises that she is unfit to be Traffic Warden. No letter clearing her return to work)
08 02 94	Pulling in flags too early
08 03 95	No whistle Holding flags incorrectly Walking off with pedestrians Failing to walk out onto crossing
08 03 95	RETRAINED
10 04 95	No whistle Flags not displayed correctly Walking off with pedestrians Failing to walk out onto crossing Leaving early VIDEO TAKEN
11 04 95	OFFICE INTERVIEW
18 05 95	DIRECTIVE TO RETRAIN
09 06 95	REPORT ON RETRAINING & ASSESSMENT
14 06 95	Complaint received
29 11 95	Complaint received
23 02 96	Complaint received
23 02 96	Warden not on carriageway Flags not displayed correctly Whistle not used Leaving crossing before clear of pedestrians Back to Pedestrians SPOKE TO WARDEN INVITED TO ATTEND OFFICE
26 02 96	INTERVIEW IN OFFICE FEMALE OFFICE (sic) IN ATTENDANCE
26 02 96	RETRAINED PM SHIFT AT CROSSING WARDEN SIGNED ACKOWLEGEMENT OF TRAINING
26 02 96	TRANSFERRED TO LOCATION 87 FROM LOCATION 73
08 03 96	WARDEN SIGNED LETTER ACKNOWLEDGING PROBLEM AREAS AND UJNDERSTANDING OF ACTION SHOULD WARDEN FAIL TO CARRY OUT DUTIES
26 03 96	WARDEN COMPLAINS TO COMMISSIONER IN WRITING
25 05 98	Wearing incorrect headgear Sleeves of coat rolled up Wandering back and forth across road for no apparent reason Warden walk over to car leaving crossing and stop flags unattended Waving/ displaying flags unnecessarily WARDEN ADVISED AND INSTRUCTED AS TO CORRECT UNIFORM AND BEHAVIOUR
mid late 1998	Complaints received
10 11 98	Stop Flags incorrectly displayed Entry and Departure from road incorrect and dangerous Stop Flags left unattended Wandering around and into crossing without apparent reason

ACTION

It would appear that this Wardens (sic) performance has not improved despite receiving instruction and or retraining on four separate occasions being,

08 03 95
09 06 95
26 02 96
25 05 98

The Warden exhibits no sign of long term correction of poor/ dangerous work habits that place herself, pedestrians and motorists at risk.

Specifically, Incorrect display of stop flags
Leaving equipment and crossing unattended
Whistle used incorrectly

It is my opinion that retraining of this Warden would not guarantee long term compliance with safety or correct work practice and for this reason I recommend that the employment of,

Traffic Warden H
Location #87
Walter Road near Light Street, Morley

Should be terminated.

NB Given the nature of some of the reports in the wardens file I recommend that H should be paid the one days wage in lieu of notice rather than have a possibly disgruntled warden attend a crossing.

Signed
PETER FRYER
SURVEY OFFICER
SCHOOL CROSSING SECTION"

(*Exhibit 3*)

It was against the background of this report that Mr Carlisle in company with Mr Drinkald went to investigate further complaints that were received in December. Mr Carlisle said that when they arrived on site they saw the applicant sitting in her parked car. There were people ready to use the crossing. They observed the applicant until it became clear that for safety purposes they should get her out on the job. They then approached her. According to Mr Carlisle the applicant was aggressive. Mr Carlisle tried to point out to her that she was incorrectly placed to do the job safely because the pedestrians were coming from the opposite direction to where her car was parked. The applicant was using her flags incorrectly so that they were difficult for drivers of oncoming traffic to observe and be aware that they might have to stop.

As with Mr Drinkald, Mr Carlisle was unable to give a precise recitation of what the applicant did. Mr Drinkald said that her conduct was erratic and very hard to follow. Mr Drinkald was certain that the applicant was not told the crossing was to be closed. In fact the crossing was not closed for some considerable period after. She was not told that she would be transferred. However, the applicant's conduct, in front of pedestrians, became so bizarre and out of control that it confirmed, in Mr Carlisle's mind, the recommendation of Peter Fryer was correct. Mr Fryer was of the opinion that there was no long term guarantee of compliance of safety or correct work practice and the applicant's services should be terminated. Mr Carlisle could not let the current conduct continue. He then terminated the services of the applicant.

The Commission must ensure in dealing in matters of this nature, that the rules in the Undercliffe case *(Miles v. Federated Miscellaneous Workers' Union of Australia, Hospital, Service and Miscellaneous, WA Branch (1985) 65 WAIG 385)* are applied and that there be a fair go all round to both the employee and the employer. Important issues are raised in this case of duty of care and correct work practice. The traffic wardens may, if they do not abide by the procedures that are set out, endanger themselves and others using the cross walk. In fact, the applicant seemed to think that because no one had been killed on her cross walk that her work practices were satisfactory. The history of the applicant's employment since 1992 indicates that her work practices are unsatisfactory. There has been a litany of complaints, there has been retraining on at least 6 occasions, there have been specific instructions as to correct uniform and behaviour and there have been regular complaints about failure to properly display flags. At the end of 1998, after retraining over a period of 3 years, it was concluded that the applicant showed no signs of long term correction of poor or dangerous work habits that place herself, pedestrians and motorist at risk. Mr Fryer had concluded that further retraining would not guarantee long term compliance. This led him to recommend her dismissal. That had not occurred up until the time Mr Carlisle received more complaints and he went to view her operations for himself.

The WAPS, through the provision of cross walk control attendants, accepts a duty of care to pedestrians who use the cross walks. The service is provided, specifically, to ensure the safety of pedestrians and in particular the safety of children. In those circumstances there is no room for failure by attendants to comply with fundamental and basic safety requirements.

The applicant has demonstrated, over a long period of time, that she will not comply with the instructions she is given. She seemed to think that if she had not received a letter then she could assert she had not been told about the employers concerns regarding her behaviour. There is no need for a letter to be written. What must occur is that the employer's concerns, be brought to the employee's attention. That has been done. Over a period of 5 years or more the applicant has been subject to retaining. None of it appears to have had the desired effect of having her work in a safe manner.

In the lead up to this case and during its conduct the Commission has done everything to ensure that the applicant receive justice in this application. In my view, no more could have been done to assist her to put her case. It is unsatisfactory that an applicant of the nature of this applicant with her obvious difficulties cannot get representation. The applicant's employment is crucial to her and she was under great difficulties arguing her case. It should be noted that the Commission directed the Registrar to make enquires as to whether there was any public legal support available to the applicant and despite enquires with a number of agencies, legal advice was not able to be obtained for her.

The Commission has born in mind the lack of representation in dealing with this case and has done everything possible to ensure the applicant had the opportunity to put her side of the story. Having seen and heard her it is difficult to understand how she could maintain a position as a cross walk attendant given the onerous responsibilities. On the face of it, it would seem to be a simple job, however the repercussions of a traffic warden not acting in a safe manner could result in a fatal accident. Therefore, it is understandable that the respondent has taken the action that it has in this instance. In my view, it has acted properly in the circumstances. It cannot be suggested that it has been precipitant in its conduct. In fact given the safety implications one can only wonder why it took so long before something positive was done to either assist the applicant into another position or if the position was not available, to terminate her services.

While one may have sympathy with the applicant, on a proper analysis of the evidence, the employer has not been unfair to her in any sense at all. None of the tests established in the authorities have been breached and for those reasons the application will be dismissed.

APPEARANCES: The Applicant on her own behalf.

Mr D Eacott appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

H

and

Traffic Operations Support.

No. 25 of 1999.

COMMISSIONER J F GREGOR.

19 July 1999.

Order.

HAVING heard the applicant on her on behalf and Mr D Eacott on behalf of the respondent, the Commission, pursuant to the

powers vested in 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.

Neil Hung Ho

and

Leighton Contractors Pty Ltd.

No. 1854 of 1998.

COMMISSIONER A.R. BEECH.

3 August 1999.

Reasons for Decision.

Mr Ho was employed by Leighton Contractors Pty Ltd for just over 1 year. He commenced his employment on 1 September 1997 and was terminated by reason of redundancy on 30 September 1998. Mr Ho had been employed as an estimator. He does not accept that the reason given for the termination of his employment was genuine. Rather, he believes that his termination was due to what he described as office politics. The main thrust of Mr Ho's evidence was that he alleged that Mr Dunkley, the general manager for Leighton Contractors in WA, had made comments to him from time to time which offended Mr Ho. For example, according to Mr Ho, on a site visit to Kalgoorlie Consolidated Gold Mines some 2 to 3 months prior to his redundancy, as he was driving to the minesite Mr Dunkley, who was with him, made a comment "I personally don't think you're a good estimator but definitely a good driver." Further, on the tender review of "Black Granite-Kimberley" Mr Dunkley told Mr Ho not to sit next to him because he wanted Mr Chivers, the senior estimator, to sit next to Mr Dunkley. Furthermore, Mr Dunkley had made it plain that Mr Ho would always be responsible for any mistakes made in tender documents. Finally, one day during morning tea Mr Dunkley had asked Mr Ho about the tie he was wearing. When Mr Ho indicated that it was a tie bought for him by his partner, he alleges that Mr Dunkley said that he knew that Mr Ho wouldn't have such good taste. According to Mr Ho everyone then laughed but Mr Ho found it a humiliating comment.

Mr Dunkley gave evidence. He does not recall the specific comments he is alleged to have made but concedes that he cannot recall whether he did or not. If he did make them, they were the kind of comments he would make by way of office banter. Nothing further was meant by it.

Prior to Mr Ho's redundancy, there was no suggestion that his work was not satisfactory to the company. While there is evidence that Mr Ho made mistakes, there is no evidence of anything other than that those mistakes were brought to Mr Ho's attention. There is no evidence that Mr Ho was other than a satisfactory employee overall.

It is clear from the evidence, even from Mr Ho's own evidence, that the reason given to him for his dismissal was redundancy. It is also clear from the evidence that from approximately June 1998 onwards, there was a significant fall-off in the mining tenders which the company submitted. Mr Ho's area of expertise was in mining. On the evidence before the Commission, at the time that Mr Ho commenced employment the company was submitting approximately 6 tenders per quarter. In the March quarter 1998 there were 3 tenders submitted and in the June and September quarters only 2 tenders were submitted. The downward trend was not temporary, for only one tender was submitted in the March quarter 1999 and no tenders in the June quarter 1999. Furthermore, the value of the 2 tenders submitted in the June and September 1998 quarters were the lowest value of any of the quarters from March 1997 to March 1999. The fall-off in business is also shown in the financial turnover of the company per quarter. Although there is a time-lag involved as existing projects come to fruition, branch turnover fell to its lowest point in the March 1999 quarter. The numbers of employees within the company correspondingly reduced such that the 150 staff employed at the end of the June quarter 1997 had reduced to 130 staff by the end of the September quarter 1998.

There is nothing which would cause me to reject this evidence. There is nothing in Mr Ho's own evidence which would contradict the financial information before the Commission. Indeed, Mr Ho does acknowledge that his work was reducing although he may not concede that there was insufficient work to keep him on at all. For example, although he accepts that the work involved in tenders fell away, he still performed some of his duties, although only a small proportion of them, in relation to budgeting requests. I have taken into account the annual reports which he has tendered as part of his evidence to the Commission. However, the most that can be said for the information in those annual reports is that it is effectively countered by the direct evidence regarding the WA branch operation's financial position. The effective countering of the end of year reports submitted by Mr Ho simply means that he has not produced evidence which could persuade the Commission that the financial circumstances of the WA branch were not as portrayed by the company's exhibits.

I am satisfied therefore that it was open to the company to make one estimating position redundant. While Mr Ho may be correct in showing that no other employee from head office itself was made redundant, that fact by itself does not show that his dismissal was, for that reason, unfair. I accept the evidence of Mr Dunkley that the WA branch operations overall saw a 25% staff reduction over the period. Although Mr Ho was not the only estimator in head office, I also accept that the company preferred to retain Mr Chivers who was a senior estimator with longer service within the company.

Furthermore, there is nothing in the evidence before the Commission apart from Mr Ho's suggestion which shows that the decision to make Mr Ho's position redundant was in any way linked to the allegations made against Mr Dunkley by Mr Ho.

It leads the Commission irresistibly to the conclusion that Mr Ho has not been able to show to the Commission that he is correct in his allegations. It is noted that in Mr Ho's statement, he states that Mr Chivers overheard one of the comments he attributes to Mr Dunkley. However, Mr Ho did not call Mr Chivers to give evidence and accordingly Mr Ho's allegations remain unsubstantiated.

Mr Ho objected to the fact that he was paid wages in lieu of notice and required to leave the premises forthwith. Further, there were not, in Mr Ho's view, any discussions regarding alternatives available to the redundancy of his position. However, apart from the fact that the manner of a dismissal is merely one factor in deciding whether a dismissal is unfair, the evidence before the Commission is that the sensitive commercial nature of the manner in which the respondent prepares its estimating meant that the respondent prefers its employees to leave their employment forthwith. Furthermore, although there are some differences in the evidence between Mr Ho and Mr Wyatt regarding the detail of the conversation between them when Mr Ho was dismissed, I accept that there were discussions regarding the company's reasons for the dismissal. In the absence of there being any clear alternative employment available to Mr Ho, it is difficult to view the evidence overall, including all of the facts I have referred to in these Reasons and not just what happened at the dismissal itself, as allowing the Commission to reach a conclusion that the dismissal of Mr Ho was unfair. While I appreciate that Mr Ho has disagreed with the decision to dismiss him and has not been able to find alternative employment, those facts on their own are insufficient to allow the Commission to reach a conclusion that the dismissal was unfair.

In the absence of any evidence that Mr Ho's allegations are correct, and especially in the absence of any evidence which links the decision to make Mr Ho redundant with any proven allegations, Mr Ho has not proven his claim and for that reason it will be dismissed.

An order will therefore issue which dismisses Mr Ho's application.

Appearances: The applicant on his own behalf.

Mr R.H. Gifford on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Neil Hung Ho

and

Leighton Contractors Pty Ltd.

No. 1854 of 1998.

3 August 1999.

Order.

HAVING heard Mr N. Ho on behalf of himself as the applicant and Mr R. Gifford on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act, 1979*, hereby orders—

THAT the application be dismissed.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

James King

and

Power West.

No. 252 of 1999.

CHIEF COMMISSIONER W.S. COLEMAN.

15 July 1999.

Reasons for Decision.

CHIEF COMMISSIONER: The applicant was employed as a loader and rock breaker operator for the period from 4th November 1998 until 15th February 1999. Prior to the termination of his employment Mr King was on sick leave. This commenced on 9th January 1999. The date from which he was fit to resume work is the issue that has given rise to his claim for an outstanding contractual entitlement.

The applicant claims that he attended the respondent's office on the 20th January and advised a supervisor that he had a clearance from his doctor to return to work. He claims that the respondent advised him that he had to have a certificate from the specialist who was treating him and that on the receipt of that he would be put back on shift.

On 2nd February the respondent received by facsimile a letter from the medical specialist who had treated Mr King certifying his fitness for work. Mr King resumed shift work on the 9th February. He claims that payment is due to him under his contract of employment for the period from the 21st January until the 8th February, the period dating from when, Mr King claims his general practitioner had passed him fit for work until the day immediately before being put back on shift.

On the 15th of February Mr King was summarily dismissed from his employment with the respondent. He claims that dismissal to be unfair. It arose in circumstances where he claims to have been pursuing payment for the period following sick leave when he claims he was fit to resume duty but was not placed on shift.

The respondent states that the applicant was informed that a medical clearance was required from his treating specialist prior to a resumption of work. It is said that this was made clear to Mr King each time he raised the issue of a return to work. When the clearance was finally received on the 2nd February, Mr King was placed on the shift roster at the first available time.

As to the claim for unfair dismissal the respondent through Mr Ibbotson the Manager, claims that Mr King was invited to attend the office after he had made a threatening phone call to Mr Ibbotson earlier that day. The phone call involved Mr King's claim for payment of wages for the period during which he wanted to work from the 21st January. It was alleged by Mr Ibbotson that in the course of that telephone discussion Mr King had become agitated and had threatened the company in that "he could cause plenty of damage if he did not get his money". Mr Ibbotson claims that after the telephone conversation was terminated he wrote notes of the discussion (Exhibit A), and considered the position in the light of Mr King's work record where he had previously received two warnings on his attitude and performance as an employee. In the light of the threat that was made and the fact that Mr King operates equipment to the value of approximately one million dollars, Mr Ibbotson decided that he could not ignore the threat and decided to summarily terminate Mr King's employment. This was carried out that afternoon when Mr King attended the office. Mr Ibbotson claims that Mr King was taken out of the office and driven home in the utility which the applicant had been using. He claims that there was a confrontation over the use of the vehicle which ended up with Mr Ibbotson standing in front of it to prevent the applicant from driving off. Mr Ibbotson took the keys and drove Mr King home.

The applicant denies that the telephone call to Mr Ibbotson on the 15th February involved a threat of any kind and that his attendance at the office later that day had been on the pretext of Mr Ibbotson's invitation to discuss the resolution of his claim for the payment of wages. Furthermore Mr King claims that there was no altercation between him and Mr Ibbotson following the termination of employment other than that he had insisted on being able to retrieve his diary from the utility.

With respect to the first matter, the contractual benefit arising from the period prior to Mr King being placed back on shift following his sick leave, the applicant presented three certificates. The first is a notice from the Kalgoorlie Regional Hospital certifying that he was unfit for work from the 19th January to the 17th January 1999, that certificate is dated the 12th January 1999. The second certificate (undated) is that from Dr Neville Joseph certifying that Mr King is unfit for work from the 18th January 1999 to the 20th January 1999. While Mr King claims that he was fit for work from the 21st January the only document which certifies his fitness is the one received from Dr Mark A Ireland dated the 2nd February 1999 (Exhibit 3). That certificate does not specify the date from which Mr King was fit to resume work.

It was Mr Ibbotson's evidence that the certificates from Dr Neville and from Kalgoorlie Regional Hospital were received later than the certificate from Dr Ireland.

Mr King is emphatic that he approached a number of supervisors on site protesting his availability for work. He was annoyed that they failed to positively respond to his requests nor facilitate work within the yard prior to resuming his normal duties. It is the respondent's position that from the outset Mr King was aware of the requirement for the company to be provided with a certificate of fitness from the treating doctor. When this became available Mr King was placed back on shift on the first available date.

As far as the respondent is concerned the telephone call from Mr King on the 15th February was interpreted as a threat against the safety of other employees and well being of the company and it's property. Seen within the context of his previous actions and attitude the respondent elected to terminate the contract of employment. The telephone call was considered to be an incident of further misbehaviour.

As far as the application for outstanding contractual benefits is concerned if Mr King had presented a certificate of fitness for work on the 20th or 21st of January there is no doubt that he would have been eligible for payment. However, it appears that the only certificate that he was in possession of was that of a certificate of unfitness. Whilst he can claim that he was fit following the expiry of that document it would seem reasonable that the employer should exercise the prerogative indeed the necessity of having a certificate of fitness submitted before accepting any liability for an employee to

recommence work. This was not done until the 2nd February and on that basis Mr King's claim for back payment to the 21st January is unfounded. This aspect of the claim is dismissed.

However, I am prepared to accept that whilst the employer found it convenient to place Mr King on shift from 9th February that, having regard to his anxiety to return to work and their knowledge of that, that a week's delay was unreasonable. I believe that the only contractual entitlement that obtains to the applicant is that for payment of one week's pay from the 2nd to 8th February inclusive; the period immediately prior to when the shift commenced.

The applicant's claim that he was unfairly dismissed requires an acceptance that the conversation that took place between him and Mr Ibbotson on the 15th February merely involved the handing over a termination payment and little else. I am satisfied on the evidence presented that Mr King's telephone call to Mr Ibbotson did involve a threat and that there was reasonable apprehension on Mr Ibbotson's part that the safety of other people and property could be prejudice by the applicant's continued employment. The applicant was aware of previous warnings concerning his attitude and behaviour and in this respect the termination was justified. I do not believe that the applicant was unfairly dismissed and this part of the application cannot therefore succeed.

The application claiming unfair dismissal will be dismissed.

An order will issue for the payment of one week's wages for the period from 2nd February to 8th February inclusive. On the evidence presented that will be a net amount of $559.00.

Appearances: Mr King appeared on his own behalf.

Mr Ibbotson appeared on behalf of the company.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

James King

and

Power West.

No. 252 of 1999.

CHIEF COMMISSIONER W.S. COLEMAN.

22 July 1999.

Order.

HAVING heard Mr King on his own behalf and Mr Ibbotson 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 applicant be paid a net amount of $559.00 representing one week's wages for the period from 2nd February to 8th February inclusive.
2. THAT the application for unfair dismissal is hereby dismissed.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

THE WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Stephen Robert Martin

and

IPF Finance Corporation Ltd.

No. 66 of 1999.

COMMISSIONER A.R. BEECH.

15 June 1999.

Reasons for Decision.

Mr Martin was employed for approximately 7 months until his redundancy on 23 December 1998. He had been employed as the Manager, Finance and Administration for the respondent on a salary of $79,550.00 per year. Upon his termination, he was paid 6 weeks' salary. Mr Martin's contract of employment provided for the payment in lieu of notice of 2 weeks' salary in order to terminate the employment. Mr Martin's termination payment is therefore properly characterised as being 2 weeks' salary in lieu of notice plus a further 4 weeks' salary as an *ex gratia* payment. He claims that his dismissal by reason of redundancy is harsh, oppressive and unfair. He states that his position was a senior management position with potential career opportunities and directions. For the respondent to have decided that the position created 7 months earlier was no longer required is "grossly unfair" and not the real reason for the dismissal. Mr Martin claims that the appointment of another person 2 days prior to him being made redundant to do essentially the same duties as performed by Mr Martin but on a lower salary is a further indication that the reason for his termination was not genuine. Rather, Mr Martin believes that it was his querying of certain management practices which he regarded as imprudent lending decisions to be a factor in his dismissal.

The respondent denies the claim made by Mr Martin. It acknowledges that his position was made redundant. Some of his duties were taken on by the managing director. A senior finance officer position was created and filled which covered that part of Mr Martin's responsibilities relating to credit applications, approvals and collections. The senior finance officer position has a salary of $36,000 per annum which is approximately half the salary of the position held by Mr Martin.

It is convenient to deal with Mr Martin's claim in the following manner. Although Mr Martin claims that redundancy was not the real reason for his dismissal, the evidence presented by him to the Commission, including by his calling as witnesses the general manager Mr Wells and a former director of the respondent Mr Baker, is that a significant restructure took place within the respondent during the period July to December 1998. I have no difficulty accepting the evidence of Mr Wells that a culture change occurred within the organisation which was necessary because it was losing money. It needed to significantly reduce its operating costs. Indeed, it was a matter of the survival of the company. Thus, approximately 15 employees departed the company for one reason or another during that time. The departures also included the previous general manager, with the resultant saving of his salary. I accept Mr Wells' evidence regarding the financial affairs of the company during this period. The evidence is not seriously contested and, in all fairness to Mr Martin, I understand Mr Martin's evidence as accepting that the respondent needed to "break even" by November 1998. Within that context, the abolition of the position held by Mr Martin and the division of his work among others is entirely consistent with those moves.

Mr Martin's point, however, is that in some cases, the 15 employees who departed the company were offered the opportunity to continue working for the respondent in a slightly different role and with a lesser salary. Thus, in his own case, Mr Martin states that one of the reasons why his dismissal was unfair is that he says he was never offered the opportunity to work in the position of Senior Finance Officer at the lower salary. As I understand his evidence, he states that if it had been offered, he would have accepted it although only as a "stop gap" position. The respondent, however, insists that Mr Martin was indeed offered that lower position. The evidence

of Mr Baker, once again, a person called by Mr Martin himself, is that when he informed Mr Martin that Mr Martin's position was to become redundant and he would be dismissed, he asked Mr Martin whether he would be interested in the Senior Finance Officer's position. Mr Baker's evidence is that Mr Martin indicated that he would not be interested. There is therefore a direct conflict between the evidence of Mr Martin and the evidence of Mr Baker on that point.

Despite that direct conflict, however, the evidence of the need to make significant changes to the respondent's organisation and the need to reduce its operating costs means that Mr Martin's primary objection to his dismissal, that is that redundancy was not the real reason for his termination, is simply not made out. Mr Martin occupied the position of Manager, Finance and Administration on a salary of $79,550 per year. The abolition of that position and the consequent saving to the respondent of that salary is precisely the manner in which the respondent restructured its organisation and reduced its operating costs in other positions at that time. The Commission is irresistibly lead to the conclusion that this was therefore the reason why Mr Martin's position became redundant. What happened to his position is no different from the abolition of other positions of which examples were given during the course of the hearing and the division of the duties attaching to the position to other employees or new employees on significantly lower salaries. That is what happened in this case.

The fact that a position becomes redundant does not lead automatically to the dismissal of the employee in that position. It is only if there are no other employment opportunities within the respondent that the employee's employment will be terminated. There are therefore two steps involved in a redundancy. One step involves the position occupied by the employee. It is the position, not the employee, which becomes redundant. The second step is the consequence upon the employee of his or her position becoming redundant. It is the blurring of these two steps into one step which has been the cause of many a successful unfair dismissal claim where the reason given for the dismissal was redundancy. In Mr Martin's case it was a term implied in his contract of employment that where the respondent decided to restructure Mr Martin's job, or to make him redundant, he was entitled to be informed by the respondent as soon as reasonably practicable after the decision had been made of the restructure, or the redundancy. Furthermore, he was entitled to discuss with the respondent the likely effects of the restructure upon him, the likely effects of the redundancy upon him and also measures that may be taken by Mr Martin or the respondent to avoid or minimise the effects of the restructure *(Minimum Conditions of Employment Act* ss. 5, 40, 41; and see also the case of *Gilmore v Cecil Bros* (1998) 78 WAIG 1099 in which the effect of that Act and a failure to follow its terms was considered by the Industrial Appeal Court). If there was any discussion at all as required by Mr Martin's contract of employment it was the discussion between Mr Baker and Mr Martin of which mention was made earlier in these Reasons. Mr Baker's evidence of the discussion is that he met with Mr Martin over a cup of coffee and informed Mr Martin that his position was to be made redundant. Mr Baker informed him that the respondent was going to change the position from Manager, Finance and Administration to a Senior Finance Officer's position on a salary of $36,000. Mr Wells, the general manager, would perform some of those duties in the interim period. According to Mr Baker, he then asked Mr Martin whether he was interested in the Senior Finance Officer's position. His evidence is that Mr Martin said he was not interested in the position at that figure and that he would pursue the matter further. That was the end of the conversation, so far as is relevant to these proceedings. Mr Baker does not recall being requested to put the position in writing to Mr Martin.

Mr Martin's evidence of that conversation is not dissimilar. However, and crucially, he stated that Mr Baker informed him that the position was to be made redundant and then asked him what did Mr Martin want to do? Mr Martin is adamant in his evidence that Mr Baker did not put to him the option of the lower paid Senior Finance Officer's position. Mr Martin requested that the respondent put its position in writing.

It is not a straightforward matter to resolve this direct conflict between the evidence of Mr Baker and of Mr Martin on this point. Both gentlemen gave their evidence in what I appreciated as an honest and straightforward manner. Clearly, one of them is incorrect in their recollection of the events which occurred some 5 months ago. I accept that both gave their evidence as truthfully as each is able to recall the events of that day. Nevertheless, the difference between their evidence remains. In order to resolve that difference I turn to the other evidence before the Commission. I note Mr Martin's memorandum to Mr Wells on 22 December 1998 (Exhibit number 1) which was 3 days after he had been informed of his redundancy in the conversation with Mr Baker. The memorandum is therefore contemporaneous with the discussion and it speaks for itself. There is no mention in that memorandum of the offer of alternative employment as related by Mr Baker in evidence. Whilst that is not a decisive indication, it is also not insignificant that Mr Martin's memorandum did refer to a comment of Mr Baker's when Mr Baker asked "what did I want to do". This was described by Mr Martin in his memorandum as a strange comment. Mr Metaxas, on behalf of the respondent, submitted that the shock experienced by Mr Martin, on being informed of his redundancy, might mean that Mr Martin's recollection of the conversation, as with any employee in that circumstance, would not be entirely accurate. I do not, with respect, place great weight upon that submission. Rather, I accept the submission of Mr Martin that he would have been most interested in any offer which might have at least mitigated the effect of the loss of his job, even if it was only as a stop gap. I also take into account, despite the submission of Mr Metaxas, the evidence of Mr Wells that in his view, he would have had some problems with Mr Martin accepting the Senior Finance Officer's position. In Mr Wells' view, Mr Martin would need a greater speed of work and have a change to his work ethic and culture before it would be acceptable to Mr Wells. While there is no evidence to suggest that Mr Wells had any influence or involvement over whether or not the Senior Finance Officer's position was offered to Mr Martin, I do note Mr Wells' senior position within the respondent's organisation. I do not think it an unfair inference to draw that his professional concerns regarding an employee, in this case Mr Martin, would be out of step with the thinking of the respondent as such. If that be an inference that is open to be drawn, it assists me in drawing the conclusion that the respondent did not particularly want Mr Martin to continue working in that organisation because the respondent saw a need for him to change his attitude, as well as believing that the salary reduction would be greater than Mr Martin would find attractive.

These considerations lead me to conclude, on balance, that Mr Martin was not offered the Senior Finance Officer's position as Mr Baker would have it. Alternatively, if Mr Baker did indeed make the offer, it was made in a manner which was less formal than one might expect of an alternative job offer such that, in the context of the shock Mr Martin was experiencing during the discussion, the offer simply did not register. It is surely the responsibility of the respondent making the offer to ensure it was received and understood by Mr Martin. I am therefore not persuaded that the conversation between Mr Baker and Mr Martin met the requirement for a discussion as to the likely effects of the redundancy or measures that could be taken by Mr Martin or the respondent to avoid or minimise the effects of the restructure. While the Commission is not a body which will enforce the *Minimum Conditions of Employment Act*, a failure to follow that Act may well render a dismissal unfair as well as unlawful (see again *Gilmore v. Cecil Bros*). It follows that I find Mr Martin's dismissal to have been unfair to him. Certainly, if the respondent had been serious about offering the Senior Finance Officer's position to Mr Martin, the steps it took to do so were inadequate to communicate its intention.

Reinstatement is not sought by Mr Martin. In any event, I am satisfied that the position of Manager, Finance and Administration no longer exists and there is no position to which he can be reinstated. There is no evidence of an alternative position that is available in which he could be re-employed and I therefore find that reinstatement or re-employment is impracticable.

I turn to consider the issue of compensation. Mr Martin's claim in this regard is quite straightforward. He claims that his redundancy payment ought to have been equal to 13 weeks' salary. He seeks no more by way of compensation. In my view, his claim is eminently reasonable although his claim should

recognize that he was in fact paid a total of 6 weeks' salary upon his dismissal. This will be taken into consideration by the Commission. Furthermore, I accept his evidence that he found alternative employment on the 15 March of the following year and also some casual employment for perhaps a month at a salary of $25.00 per hour for perhaps 25-30 hours per week. Accordingly, Mr Martin's termination payment constituted payment of the wages he would have earned until approximately 5 February 1999. The granting of Mr Martin's claim therefore involves the loss suffered by him from then until his commencement of new employment on 15 March 1999, less monies earned by him during his casual employment.

I do not ignore the evidence of Mr Martin which referred to the devastating effect it had upon his self-esteem, including the fact that his redundancy took place on the day prior to Christmas Eve. In the circumstances, I have not found it necessary to consider whether this evidence amounts to a separate reason why Mr Martin's dismissal may have been unfair if, in all other respects, it had not been unfair.

The matter is determined accordingly and the parties are requested to either implement the terms of these Reasons themselves and advise the Commission accordingly, or to agree on the sum to be calculated and request the Commission to issue an order in the terms of that sum. The parties are requested to advise the Commission either way within 14 days of the issuance of these Reasons.

Appearances: The applicant on his own behalf.

Mr A. Metaxas (of counsel) on behalf of the respondent.

THE WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Stephen Robert Martin

and

IPF Finance Corporation Ltd.

No. 66 of 1999.

COMMISSIONER A.R. BEECH.

16 July 1999.

Supplementary Reasons for Decision.

Following the publication of the Commission's Reasons for Decision on 15 June 1999 the parties were requested to agree on the sum to be calculated. They have been unable to do so and what follows is the Commission's Reasons for the Order which now issues.

Mr Martin states that he found it difficult "to see the fairness" in any monies earned by him since his dismissal being taken into account by the Commission in the compensation now to be ordered. He states that had he not sought further employment and not received any income then, presumably, the respondent would be required to compensate him in full. The issue raised by Mr Martin is the obligation on an employee who has been dismissed to mitigate his loss. It is an obligation to act reasonably and seek employment which a reasonable and prudent person would ordinarily undertake. To put it another way, the respondent, even if it has acted unfairly in dismissing Mr Martin, should not be required to pay compensation for a period of time when Mr Martin could have, acting reasonably and prudently, found acceptable alternative employment. This obligation on a dismissed employee is well-recognised and was recently re-stated in detail in the decision of the Full Bench in *Growers Market Butchers v. Backman* (1999) 79 WAIG 1313 at 1316, 1317. Reference should be made to that case if any further explanation is required.

In the Reasons for Decision which issued in this matter the Commission decided that the compensation to be ordered involved calculating the loss suffered by Mr Martin from the 5 February 1999 until the commencement of his further and alternative employment on 15 March 1999, less monies earned by him during his casual employment. With respect to the parties, that is not a difficult mathematical exercise. However, there is no agreed position between them.

Firstly, the respondent's calculations are based upon Mr Martin's "weekly salary". As Mr Martin's subsequent letter to the Commission points out, the value to Mr Martin of 5 weeks' salary is to be based upon his salary being $79,550. The difference between the parties is, apparently, due to the fact that Mr Martin's remuneration comprised $65,000 per annum, $10,000 car allowance and 6% superannuation (Exhibit 8). The respondent has used as the basis of its calculation merely the fortnightly salary. Mr Martin, as I find correctly, uses his total remuneration as the proper basis of calculation. The reason why Mr Martin is correct is that the loss to Mr Martin which the Commission determines should be compensated is not merely the loss of his weekly salary. It is the loss of his remuneration in total. He stated that on his Notice of Application as $79,550, a figure with which the respondent has not demurred. It is appropriate therefore to use that figure as the basis of the calculation of the compensation to be ordered by the Commission. Given that finding, the value of 5 weeks' salary to Mr Martin is $7,649.04.

Secondly, Mr Martin concedes that he earned $3,612.50 gross from his casual employment. The compensation now to be ordered by the Commission will be the simple difference between the two, being $4,036.54. That is the sum of money which reflects the Commission's Reasons for Decision and is therefore the sum which is now ordered to be paid.

A Minute of that Order now issues as required by s.35 of the Act.

THE WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Stephen Robert Martin

and

IPF Finance Corporation Ltd.

No. 66 of 1999.

22 July 1999.

Order.

HAVING heard the applicant on his own behalf and Mr A. Metaxas (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—

1. DECLARE THAT—
   (a) IPF Finance Corporation Limited unfairly dismissed Stephen Robert Martin; and
   (b) reinstatement is impracticable.
2. ORDER THAT IPF Finance Corporation Limited pay Stephen Robert Martin the sum of $4,036.54 within 3 business days from the date of this Order by cheque mailed to Mr Martin's home address.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Greg Mayfield

and

Pino Gangemi.

No. 914 of 1998.

COMMISSIONER S J KENNER.

30 June 1999.

Reasons for Decision.

(Given extemporaneously at the conclusion of the proceedings, taken from the transcript as edited by the Commission)

THE COMMISSIONER: This is an application pursuant to section 29(1)(b)(i) and (ii) of the Industrial Relations Act 1979 by which Mr Greg Mayfield claims against Pino Gangemi that he was unfairly dismissed and was denied contractual benefits.

Counsel for the respondent raised as a preliminary question the issue of the Commission's jurisdiction to entertain the applicant's claim by reason of the applicant's failure to name the correct employer. The respondent said that the applicant's proper employer at all material times, was Bronze Wing Investments Pty Ltd as trustee for the P & F Gangemi Family Trust ("the Company").

The applicant disputed this and said that at all material times Mr Pino Gangemi, as named in the notice of application, was in fact and in law, his employer.

In support of the various contentions by both the applicant and the respondent, brief evidence was led. Mr Mayfield gave evidence on his own behalf as follows. He said that he obtained his employment in the first instance through an advertisement placed in "The West Australian" newspaper, which advertisement was tendered as exhibit A1. I pause to observe that the advertisement does not refer to a named employer, but merely described the position sought to be filled as that of "farm manager, Pinjarra area", with a description of the work to be performed and the provision of contact telephone numbers.

The applicant also gave evidence in relation to the circumstances surrounding the formation of his employment contract at the material time, and says that he met Mr Gangemi at Mr Gangemi's farm property and discussed the nature of the job and inspected the property.

Exhibit R2 which is an employment declaration dated 12 December 1994, was put to the applicant in his evidence. That document refers to Mr Victor Gregory Mayfield as the employee and describes the employer as the Company. There is a signature on exhibit R2 which the applicant said that whilst it was similar to his signature, he did not concede that he in fact signed the document. It is fair to say however that he could not recall that event at the time.

The applicant also testified that during the course of his employment he was paid by cheque, and he produced in evidence two documents, they being exhibits A2 and A3. Exhibit A2 was a facsimile from the Challenge Bank dated 6 August 1998 and referred to a cheque transaction dated 16 December 1994 in the amount of $700 which made reference to the drawer's name as "P & F Gangemi". In that connection, the applicant referred to a bank statement from the Westpac Banking Corporation identified as for his account, which is exhibit A3. That statement also referred to a transaction on the applicant's bank account of 16 December 1994 bearing the description "pay" in the amount of $700. The applicant said in evidence that this established that the cheque he received on that occasion was from "P & F Gangemi" and none other, although he also conceded in evidence that there may have been other writing on this cheque and other cheques, which writing may have also included reference to a family trust.

During the course of his employment from its commencement in 1994 up until its termination, the applicant said that he received documents in the nature of group certificates for taxation purposes. Exhibit R3 was a bundle of documents which were two group certificates for the financial years 1997 and 1998, respectively. Those documents refer to the name of the employer as being the Company and the employee being the applicant, Mr Gregory Mayfield. The applicant's evidence, which was uncontested in this regard, was that he received group certificates in the same terms identifying the Company as the employer in other years, apart from the two to which I have referred.

The applicant also tendered other documents in support of his allegation that Mr Pino Gangemi was the employer and not the Company. I refer to exhibits A4 and A5. Exhibit A4 was a one-page document that purports to reflect an agreement between Mr Greg Mayfield and Pino Gangemi of 50 Holmes Road, Maida Vale, 6057, about certain employment matters. The applicant testified that whilst this agreement was never concluded, he nonetheless relies upon the reference to Mr Gangemi in person in support of his submission.

Likewise, exhibit A5 was a document in the name of Mr Pino Gangemi and dated 22 August 1996 addressed to Mr Mayfield. The applicant said that this document referred to a bonus cheque that he received in the course of his employment. I pause to observe that the cheque that he said was attached to exhibit A5 was not produced in evidence before the Commission.

Also before the Commission is exhibit A6. That document was a letter dated 15 May 1998 on the Company letterhead to Mr Mayfield, signed by Mr Pino Gangemi. The applicant testified that he received this letter when his employment was terminated at the material time. I pause to observe that when his attention was directed to it, the applicant acknowledged that in the third paragraph of that letter in the last sentence, the following appears—

> "This will mean that your employment with **our company** will cease on Friday 12 June 1998." (My emphasis)

There were other documents tendered by the applicant, they being exhibits A7 and A8 in relation to cattle sales, however I need not refer to those matters any further to determine this matter.

In cross-examination the applicant conceded that his tax returns as prepared on his behalf identified the Company as his employer. Additionally, at the time he commenced these proceedings and completed Form 1 Notice of Application, filed on 27 May 1998, he appeared not to have checked his papers before doing so.

On behalf of the respondent, a number of documents were tendered in support of its submission that the proper employer was the Company and not Mr Pino Gangemi. I refer firstly to the terms of exhibit R1. That document is a company extract dated 25 July 1999 in respect of the Company ACN 009 254 746. The company extract reveals that the Company was registered on or about 30 June 1987. Its registered office is described as Ruthven, Gangemi & Associates, Unit 4, 25 Victoria Street, Midland, Western Australia, 6056. The principal place of business of the Company is described as "50 Holmes Road, Maida Vale, WA, 6057", which I pause to observe was identified by both Mr and Mrs Gangemi as their residential address. The directors of the Company are described as Francis Gangemi and Pino Gangemi respectively, with the secretary being Francis Gangemi. The company extract also discloses that both Pino Gangemi and Francis Gangemi hold one ordinary share each in the Company.

I have referred already to exhibit R2, which is the employment declaration which the respondent says evidences the applicant's employment with the Company. I have also already referred to the terms of exhibit R3, which are two group certificates that were identified by the applicant as being received by him.

Exhibit R4 is a trust deed in respect of the P & F Gangemi Family Trust. That document records that the trust settled on or about 1 September 1987, with a Salvatore Martello of 37 Orana Way, City Beach in the state of Western Australia, as the settlor and the Company of care of 64 James Street, Perth as the trustee. I note also that the signature page to the trust deed records that the Company's common seal was affixed to the document and there appear two signatures of both a director and director/secretary.

In support of the respondent's submissions, evidence was adduced from Mr Pino Gangemi, who is the natural person

identified on the notice of application. His evidence was to the effect that since in or about 1987, his farming businesses were conducted through a family trust structure and he identified the Company as the trustee company. I should also observe that the terms of exhibit R4, whilst not dealt with in his evidence, do record Mr Gangemi as a director of the Company from in and or about that time. His evidence was also to the effect that all salary cheques made to the applicant during the course of his employment were in the name of the Company.

Mrs Gangemi also gave brief evidence in support of the respondent's position. Mrs Gangemi was at all material times, and I note remains, a director of the Company. She testified that during the course of the applicant's employment, she was responsible for preparing the applicant's salary payments. She said that those payments were prepared and made by way of a cheque, all in the name of the Company. The applicant did not contest this.

I turn now to my findings in relation to the evidence adduced in the matter. On balance I find that the applicant did in fact complete an employment declaration form in the terms of exhibit R2, and signed that document in or about December of 1994. I am satisfied that the signature on the document bears a sufficient resemblance to the signature on documents by which the applicant commenced these proceedings, for me to reach that view. There was no evidence to seriously contradict that in my opinion.

I am also satisfied from the evidence that the applicant did receive his salary payments by way of cheque, either handed to him personally or posted to him. Those cheques were in the name of the Company that name being identified in the group certificates set out in exhibit R3 and others to which the applicant has referred in his evidence. I should observe that the applicant did say, and I find accordingly, that he also received his payments by way of direct transfer into his bank account. I am also satisfied from all of the evidence that the Company was and is a trustee company for the "P & F Gangemi Family Trust."

Whilst the applicant said in evidence that all his dealings were with Mr Pino Gangemi and not the Company, in my view that is hardly surprising, as it is the case that a corporation will conduct its affairs through natural persons. This puts the applicant's submissions in this regard into their proper context.

On balance, having regard to all of the evidence which is before the Commission, I am satisfied that at the material times of the applicant's employment, that being the period from in or about December of 1994 to on or about 12 June 1998, his employer was the Company.

Having made those findings of fact based upon the evidence, I now turn to a consideration of the relevant principles. It is trite to observe that the onus is on the applicant in proceedings such as these when commencing an action to cite the proper employer. That matter is not one of mere technicality, as it goes fundamentally to the Commission's jurisdiction to inquire into and deal with such applications.

The notice of application before me which, as I have already observed, was filed in the Commission and reflects the Registrar's date stamp of 27 May 1998, named Pino Gangemi of 50 Holmes Road, Maida Vale as the respondent employer. Furthermore, the declaration of service evidencing service of the notice of application also refers to Mr Pino Gangemi as the respondent served by registered mail at that same address.

I note also for the record, that there appears to have been a notice of answer and counterproposal filed which is in the name of Mr Pino Gangemi, and signed by him but in my opinion, that is not determinative of this matter.

There is undoubtedly within the Commission's procedural powers under section 27(1) of the Industrial Relations Act, 1979 ("the Act") a power to correct or amend any process before the Commission. The relevant principles in that connection were set out in my decision in *Denver Wilcox v Antonio D'Angelo* (1999) 79 WAIG 300. I need not repeat what I said in that case as to the relevant principles, suffice to say that I refer to and rely upon what I said in that decision.

The power to amend does not extend to a case where the effect of such a step is to substitute an entirely new entity for the entity already named as a respondent in proceedings in the Commission. In my opinion, from all of the evidence in the instant case, the principles to which I referred in *Wilcox* do not apply to these proceedings. As was the case in *Wilcox*, this application has been commenced against a natural person. However, the employer of the applicant was a corporate entity. In my opinion, one cannot simply be substituted for the other.

I should say that it is regrettable that this matter has arisen at such a late stage in these proceedings. That is indeed most unfortunate for the applicant. However, I am bound to conclude that in all the circumstances and for the reasons that I have set out, the application is fatally flawed. Accordingly the application is dismissed.

APPEARANCES: Mr G Mayfield appeared on his own behalf.

Mr R Mancini of counsel appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Greg Mayfield

and

Pino Gangemi.

No. 914 of 1998.

COMMISSIONER S J KENNER.

26 July 1999.

Order.

HAVING heard Mr G Mayfield on his own behalf and Mr R Mancini 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.) S.J. KENNER,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Kerrianne Mills

and

Hamersley Iron Pty Ltd.

No. 130 of 1999.

COMMISSIONER A.R. BEECH.

21 July 1999.

Reasons for Decision.

INTERLOCUTORY MATTER

ON 21 April 1999 the Commission otherwise constituted issued a formal direction that the parties file and serve upon each other particulars of claim and a reply to those particulars respectively. The direction further provided for mutual discovery. Order 4 required the applicant to file and serve statements of evidence of each witness. Order 5 required the respondent to file and serve statements of evidence of each witness no later than 7 days after the applicant filed its statement of evidence. It is the Commission's understanding that Order 4 would operate on or about 19 July. On 15 July the applicant's representative requested that the Commission issue an order rescinding Orders 4 and 5 on the basis that it is now apparent to the applicant that there may be substantial conflict between the applicant and the respondent's witnesses, or some of them. Resolution of that conflict would not be assisted by orders for witness statements because of the time difference between the provision of the applicant's witness statements and the respondent's witness statements. The respondent strongly opposed the application to rescind Orders 4 and 5. The respondent submits that the filing of witness statements is common custom and practice in the Commission and is not

confined to cases where there is not a substantial factual dispute between the parties. In this case, the respondent sees the applicant's particulars as vague and wide-ranging and it may be necessary for the respondent to call up the 14 witnesses to give evidence. However, the respondent will not be in a position to make a final decision on the witnesses to be called until it receives the applicant's written statement of evidence. Rescinding Orders 4 and 5 will mean that the respondent will not be in a position to make that decision until the hearing. It states that the witnesses which may be called are primarily based in the north west of the state and also in the eastern states and it refers to the costs the respondent will incur in having them present at the hearing, an expense which may turn out to be wasted depending on the course of evidence at the hearing. The respondent estimates the provision of witness statements will reduce the time taken for the hearing by 5 days. The respondent reject any suggestion that the delay between the receipt by it of the applicant's witness statements and the provision of its own witnesses' statements may provide an opportunity for persons to alter their evidence.

The Commission gave both parties a brief opportunity to be heard on 20 July. At the conclusion of those proceedings the Commission indicated that it was not prepared to rescind Orders 4 and 5 in the terms requested. However, it would be prepared to amend the Direction such that the applicant's witness statement and the witness statements of one or more specified persons from the respondent who were party to a particular incident or incidents with the applicant be exchanged simultaneously.

In the view of the Commission the provision of witness statements has been part of the direction since it was given on 21 April 1999. The Commission takes into account that the respondent may have structured the preparation of its case on the understanding that it does not need to decide at the moment who its witnesses will be. The Commission accepts that the provision of the witness statements may shorten the hearing in the manner suggested. The Commission does, however, recognise that the ability to cross-examine witnesses is most important. If the Commission accepts Mr Schapper's assessment that Ms Mills' case may well turn on issues of credibility, this ability is able to be met by providing that in relation to a critical incident or incidents about which there will be conflict in the evidence, the witness statements of the persons involved in those incidents may be exchanged simultaneously. Such a variation will also preserve to the respondent the ability to decide on which witnesses it will call in accordance with the manner it has structured its preparation of its case.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Kerrianne Mills

and

Hamersley Iron Pty Ltd.

No. 130 of 1999.

22 July 1999.

Order.

HAVING HEARD Mr D.Schapper (of counsel) on behalf of the applicant and Mr A. Lucev (of counsel) on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act, 1979*, hereby orders—

1. THAT subject to order 2 hereof, the application to rescind Directions 4 and 5 of the Direction dated 21 April 1999 is refused.
2. THAT liberty is reserved to the applicant to apply to have the Direction dated 21 April 1999 varied so that her witness statement be exchanged simultaneously with the witness statement of any person or persons party to a particular incident or incidents with the applicant.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Michael Anthony Rogers

and

Oragay Contract Crushing Pty Ltd.

No. 1756 of 1998.

COMMISSIONER J F GREGOR.

6 August 1999.

Reasons for Decision.

THE COMMISSIONER: On 22 September 1998, Michael Anthony Rogers (the applicant) applied to the Commission for orders subject to s.29 of the Industrial Relations Act, 1979. The applicant alleged he had been unfairly dismissed from employment with Oragay Contract Crushing Pty Ltd (the respondent) on or about 1 September 1998. By his application, the applicant sought reinstatement.

The respondent in this matter was at the relevant time engaged as a contractor at the Gidgee Gold Mine which was then operated by Arimco Mining. The applicant was employed by the respondent to crush ore and other associated activities. He undertook a number of tasks which accompanied that classification. According to Mr Bull, who appeared for the respondent, the applicant was employed on 16 March 1998 until his dismissal on or about 3 September 1998, by a director of the respondent, Mr Rod Thompson. The employer dismissed the applicant because he had a reasonable belief that the applicant was stealing as a servant by removing, without authority, diesel fuel from a tank located at the Gidgee Gold Mine. The tank and the fuel were the property of Arimco Mining. The respondent and all of its employees have access to the tank. The diesel fuel is used for company vehicles, plant and machinery and for powering lighting plants.

According to the respondent, there were reports received from the site that the applicant had been using fuel in his own vehicle. He was seen putting fuel in the vehicle and in a drum carried on the back of his vehicle when he travelled to Sandstone, during his week off.

The applicant, along with other employees worked a 21 day roster and then had 7 days off. It was the practice of the applicant to travel to Sandstone for that period. The respondent claimed that in early August it was informed the applicant was utilising company fuel for his own private purposes. This was raised with him by a director of the company at a toolbox meeting held on 23 August 1998. He was told to cease the practice. When that occurred, according to the respondent, the applicant denied the allegation in an aggressive manner. On 1 September 1998, Mr Thompson received a phone call from his son, who was working as an operator at the mine, that he had information from another employee that the applicant had been seen to fill three or four 200 litre drums of diesel on the back of his private vehicle, leave the site and return later without the drums.

Mr Thompson immediately tried to contact the applicant and located him in Sandstone. He had a telephone conversation with him. During that telephoned conversation, the applicant denied the allegation and he was dismissed forthwith. About that time, Mr Thompson reported an alleged theft of fuel to the Mt Magnet Police. The dismissal, allegedly, took place on the basis of a reasonable belief that the applicant had been stealing diesel fuel from the respondent for some time. There was a discussion with the person who was alleged to have seen the fuel taken. That employee confirmed that he had witnessed the events and in consideration of all of the circumstances, and in the face of the denial by the applicant, the respondent decided to dismiss the applicant.

The contention of the respondent in this matter was supported by evidence from Mr Thompson, a director of the company. It is not necessary to recite his evidence in detail other than to say that in a general sense he thought the applicant initially was a reasonably good worker. The applicant was not very keen on shovelling and even though he was sometimes reluctant to do things, he still did the work. At a tool box meeting Mr Thompson had raised with him an allegation that he was taking fuel for his vehicle for private use and the practice should stop. The applicant rejected the contention that he

was doing so. Mr Thompson had bought the issue up as it had been mentioned to him on a couple of occasions by other workers. When it was reported to Mr Thompson that the applicant had been seen filling drums and taking the fuel off site, he took immediate action by trying to ring the applicant at his home. He could not make the contact immediately. Later that evening, Mr Thompson did contact the applicant and put to him that he had been seen taking fuel. In the face of his denial, Mr Thompson said to the applicant that if he was to return the three drums of fuel there would be nothing more said. The applicant told Mr Thompson that he had not taken the fuel. Mr Thompson told him that in view of his response he would have no option but to report the matter to the police, which he then did. The conversation then concluded with Mr Thompson telling the applicant that the respondent no longer required his services.

Evidence was also received on response from Mr Dwayne O'Brien who was employed as a plant operator between August 1998 to January 1999 on the respondent's works at Gidgee. He had worked crossed shifts with the applicant and attended toolbox meeting at which he was present. He recalled the argument between the applicant and Mr Thompson about the use of fuel. Mr Thompson told the applicant that he knew that he was taking fuel, that he should not be doing so and wanted him to stop doing it. There was an argument as a result of the allegation. In cross-examination, Mr O'Brien remembered that the applicant had gone to Meekatharra for treatment of an injury but he was unable to give evidence about how the applicant travelled there.

Evidence was also taken from Mr Simon John Townsend, who was a machine operator. He recalled that he was on shift from 1 September 1998 with the applicant. In the early hours of the morning another worker mentioned to him that he had seen the applicant fill three or four 200 litre drums of fuel and return without them. He told the other employee that he would have to tell his father, Mr Rod Thompson, because it was his company. The response of the other employee was he did not mind except that he did not want his name mentioned. Mr Thompson gave evidence that an altercation had occurred between himself and the applicant during his time at Gidgee. On occasions, the applicant had told his father, Rodney Thompson, "to get f—ed".

This caused his father to tell the applicant to settle down and say to him "I know that you have been stealing fuel and I want you to stop". The response of the applicant was words to the effect "If you don't like it, why don't you do something about it" and then, "…you don't have the guts to do something about it".

The Commission heard evidence from the applicant in person. His version of events was that he had received employment on site and that he did possess a diesel utility, which was used from time to time for the respondents business on the authority of Rodney Thompson. In return, he was supplied fuel. He gave examples of instances when he had been asked to drive to nearby towns to obtain goods for the respondent's business. On one occasion, he presented an invoice to the respondent but was told it would be easier to top up his tanks on the site. There were a number of occasions where he did similar tasks and topped up his tanks. He had driven to Meekatharra on one occasion and used fuel from the respondent's bowser. In a discussion, at a toolbox meeting when other workers were raising issues of air fares, Mr Thompson had directed his attention to the applicant and told him that he was not going to be paid because he was. He denied it at the time because he did not believe that he was stealing fuel. He was only taking what he thought he was allowed. He did concede that the discussion with Mr Thompson at the toolbox meeting became quite heated and he challenged the respondent to sack him. He recalled that he had been challenged by Mr Thompson about stealing three drums of fuel. The applicant said that it was a ridiculous allegation. Mr Thompson's response has been that he had no option but to dismiss the applicant. The applicant responded that he would see the respondent in court. The applicant later called in at the Mount Magnet police station and asked about the fuel complaint. The police asked him for a statement, the applicant told the Commission that he had telephoned Mr Clohessy, his agent in these proceedings, who advised him not to make any statements. He did not admit to the police that he stole any fuel. He gave evidence that there may have been drums which were used to take rubbish to the tip and there may have been some confusion about the use of them for that purpose.

In cross-examination, the applicant admitted to Mr Bull that he regarded himself as a contractor and that is how he arranged his taxation. He believed that he had an arrangement with Rod Thompson to use fuel to travel to Sandstone on his week off. He claimed that when he drove to Mt Magnet, he did so to collect company equipment and therefore could use company fuel. He also admitted that he had no permission to fuel up his vehicle when he went to Sandstone for personal reasons but he nevertheless did so. He admitted to Mr Bull, who appeared of the respondent, that he stole fuel but denied stealing 600 litres on the day in question.

Before I discuss the law to be applied, I will deal with the question of the witness evidence. I have heard from the applicant in this matter. It is clear from his cross-examination that he did not tell me a completely accurate story about his employment history while working with the respondent. Clearly, he had altercations with other employees. He had argued with Rodney Thompson. He challenged Mr Thompson to dismiss him. Under cross-examination he admitted that he stole fuel from the employer or at least what he did could be described as stealing although he denied stealing the large quantities alleged which led to his dismissal. I gathered that he told the Commission only those parts of the story which would suit his contentions and left out information which would help the Commission develop a complete picture of his approach to his work and to his use of employer's property.

I heard evidence from Mr Rodney Thompson who is the director of the respondent. I have no reason to doubt what he has told the Commission in evidence. There was an allegation by Mr Clohessy that Mr Thompson may have been drunk on site but there is no evidence to support this. There is no information before the Commission which would lead me to conclude that Mr Thompson was not in a competent state to make the assessments to be made of the applicant's conduct. Mr Simon Thompson and Mr Dwayne O'Brien appeared to give the Commission truthful evidence. If there are choices to be made between the evidence of the applicant and the respondent, I favour that given by the respondent.

I need to discuss the law 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 nevertheless acted harshly, unfairly or oppressively in its dismissal of the applicant. It is for the applicant to establish that the dismissal was in all these circumstances unfair. The test for ascertaining whether a dismissal is harsh, oppressive or unfair is 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.

The respondent has accused the applicant of theft in this matter and relies upon those grounds to dismiss him. I therefore need to examine the law relating to situations of alleged theft in the workplace. There are two authorities that deal directly with this;

The first is *British Home Stores Limited (BHS) v. Burchell* (1978) IRLR 379. This is a decision of the English Employment Appeal Tribunal.

In *BHS v. Burchell* Arnold J held at 380 that—

> "*What the Tribunal have to decide every time is, broadly expressed, whether the employer who has charged the employee on the ground of the misconduct in question (usually, though not necessarily dishonest conduct) entertained reasonable suspicion amounting to a belief in*

the guilt of the employee of the misconduct at that time. That is really stating shortly and compendiously what is in fact more than one element. First of all, there must be established by the employer the fact of that belief; that the employer did believe it. Secondly, that the employer had in his mind reasonable grounds upon which to sustain that belief. And thirdly, we think, that the employer at the stage at which he formed that belief on those grounds, at any rate at the final state at which he formed that belief, had carried out as much investigation into the matter as was reasonable in all the circumstances of the case. It is the employer who manages to discharge the onus of demonstrating these three matters, we think, who must not be examined further" [emphasis in original].

The principles in the decision of *BHS v. Burchell* have been followed in this jurisdiction in *TWU v. Tip Top Bakeries (1993) 73 WAIG 1632.*

In the *Tip Top Bakeries* case at p 1632, the Commission cites a lengthy extract from Fielding C in the Full Bench case of *"C" v Quality Pacific Management Pty Ltd* (which adopts the *BHS* principles) and goes on to say at p 1633 *"… the Commission, presently constituted, respectfully accepts and adopts, for the reasons given by Fielding C. (op cit), that a reasonable belief of theft by an employer after a proper consideration of all the circumstances by the employer, constitutes sufficient grounds for dismissal of the employee" [emphasis added].*

In my decision in *FMU v. Board of Management, Fremantle Hospital* (1993) 72 WAIG 1418. I proposed four heads of test. These are set out on p 1420. They are—

(a) was the termination lawful under the Award?

(b) was the employer given a proper opportunity to be heard and to put his/her own case prior to termination?

(c) has the employer at senior level considered all the relevant factors including consideration of lesser options, and also balancing the employment history of the worker concerned with the behaviours complained of in the instance leading to the termination?

(d) was the termination made in accordance with a well-known policy?

It is well settled in decisions of the Commission that its task is to assess whether the dismissal was industrially fair in the accepted sense, irrespective of whether there is a breach of contract or not. That assessment is to be made not according to technical rules but according to equity, good conscience and the substantial merits of the case as is recited in Section 26 of the Act. The employer is not required to act as a police officer or lawyer would, but as a reasonable employer in the same circumstances.

Matters such as this are not to be determined as if the applicant was on trial for stealing. Rather, the issue is whether in dismissing him, the respondent acted fairly in the accepted industrial sense. The Commission is not to answer that question by reference to what it would have done in the circumstances, but by reference to an objective standard of whether the respondent acted as a reasonable employer in the circumstances disclosed in these proceedings would have acted.

I have mentioned previously the *Undercliffe* case of which the preceding is the ratio. I suggest too that the comments made by Denning MR in *British Leyland UK Ltd v. Swift* (1981) IRLR 91 at page 93 are relevant, even though they were made in relation to United Kingdom legislation. In discussing how a reasonable employer would have acted, Denning MR said '*it must be remembered that in all circumstances, there is a band of reasonableness within which one employer might reasonably take one view and another quite reasonably take a different view'*.

I turn to my analysis in this matter. There are some difficulties in assessing the evidence in this case. These centre around at least initially, the main reason for dismissal. The operator of the Gidgee Gold Mine provided a fuel tank and bowser. The tank was said to be of 30,000 litres capacity. There is no evidence at all before the Commission about recording the amount of fuel taken at each particular time from the bowser. It seems that anyone who needed fuel for work on the site could take their machine to the fuel tank and fill it up. Therefore, no record was produced before the Commission, which would show 600 litres were taken at the one time, which is what is alleged in this case. By Statutory Declaration, David Yates, before the Commission, by Statutory Declaration, has said that he did not actually see the nozzle of the bowser in the drums on the back of the applicant's vehicle. But did not recant from what was alleged in his original that fuel had been taken by the applicant. However, it must be said that his evidence through the Statutory Declaration is equivocal about actually witnessing the event.

Nevertheless, the suggestion was made to Mr Rodney Thompson's son that there had been theft of fuel in a large quantity. Mr Simon Thompson reported this to his father. Mr Thompson senior, tried to check the allegation. He was unable to do so with absolute accuracy which would allow him to confront the applicant with the allegation in a positive sense, so he put it to him on the basis that he had been seen removing the fuel. The applicant denied this. The respondent, through Mr Thompson, was so sure that it had happened and he then effected the dismissal and report the matter to the police. The question is; is the respondent entitled on what had happened during the employment life of the applicant to reach the conclusion that it was more likely than not that the applicant had stolen the fuel as was alleged by another workmate. What is important in this case, is that, previously, Rodney Thompson had confronted the applicant about his use of the fuel, had accused him of stealing and told him stop. This, the applicant conceded in cross-examination, he specifically acknowledged that what he did could be construed as stealing. Therefore, when Rodney Thompson had information placed before him that there had been a considerable amount of fuel stolen by the applicant, he was entitled to be extremely suspicious about the matter because here was a man that had already been accused of stealing fuel. Mr Thompson knew full well that the applicant had taken fuel. He had a partial authority to do so but only when that fuel was used in connection with the respondent's business. Mr Thompson's complaint about the applicant, prior to the allegation of the major theft, was that the applicant had made a welter out of his right to use the fuel, so much so that he could be accused of stealing it. As a matter of fact, Mr Thompson was not prepared to give him benefits which were going to other workers because he thought that he had already got enough out of the respondent's business by his use of the fuel on his rostered days off.

A police officer or a lawyer might not have concluded that the applicant had, beyond reasonable doubt, stolen fuel on the day in question. The applicant advanced a story that he may have used the drums, which were available on the site, for rubbish purposes on that day and the other worker may have seen those. There is no corroboration of such a suggestion. As Mr Bull said, it appears to be self-serving. For instance, the applicant did not say that he had the task of emptying the rubbish drums on a particular day of the week nor would there be any particular reason why he would use his own vehicle on the site to do such work, even thought the applicant claimed on a number of occasions that he was forced to use his vehicle because of the state of the vehicles owned by the respondent.

This matter therefore resolves itself simply to whether the employer was entitled to dismiss in the circumstances. Here was a situation where the respondent was told that a theft had occurred and the applicant was confronted with the allegation. He denied it and his response was that he would see the employer in Court. This denial came from a person who the employer knew to have improperly used fuel in the past and who had been told by the employer to desist and when he was he challenged the employer to sack him. When the employer did not, the applicant then said that he did not have the courage to do so.

On the balance of probabilities, the employer was entitled to take the view that it did about the stealing of the fuel; given its knowledge of the applicant's previous conduct to do so was not harsh, unjust or unfair. The application will be dismissed.

Appearances: Mr Clohessy appeared on behalf of the applicant.

Mr Bull appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Michael Anthony Rogers

and

Oragay Contract Crushing Pty Ltd.

No. 1756 of 1998.

COMMISSIONER J F GREGOR.

6 August 1999.

Order.

HAVING heard Mr Clohessy on behalf of the applicant and Mr Bull on behalf of the respondent, the Commission pursuant to the powers vested in 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.

Denver Wilcox

and

Delsana Holdings Pty Ltd ATF D'Angelo Family Trust
Trading as Villa Della Luna.

No. 2195 of 1998.

COMMISSIONER P E SCOTT.

23 July 1999.

Reasons for Decision.

Extempore

THE COMMISSIONER: This is an application made pursuant to section 29(l)(b)(ii) of the Industrial Relations Act 1979, by which the Applicant claims that he has been denied a benefit, not being a benefit arising under an award or order of the Commission but pursuant to his contract of employment. The benefit he claims is the rate of pay, being the difference between the amount of $650.00 net per week which was originally paid to him, and the rate of $14.00 per hour which was paid to him for the last 3 weeks of his employment.

The evidence before the Commission is that prior to his commencing employment with the Respondent at the Respondent's restaurant, the Applicant was known to Mr D'Angelo. Mr D'Angelo believed on the basis of his observations of the Applicant and of the Applicant's indications to him that the Applicant was competent to perform the work of floor manager and he engaged the Applicant to undertake that work. There was some discussion between the parties as to the rate of pay which would apply and in the end it was agreed between them that in this capacity he would be paid an amount of $650.00 net per week. Time and wages records and the evidence indicate that in the weeks ending 20 and 27 May, 3 and 9 June 1998, the Applicant was paid according to that arrangement.

There is evidence that Mr D'Angelo was dissatisfied with the Applicant's performance in the capacity as floor manager and discussed with the Applicant that he would remove him from that position and have him undertake work as bar manager on a temporary basis. This appears to have occurred prior to any reduction in the Applicant's rate of pay. In fact, Mr D'Angelo's evidence indicates that the Respondent continued to pay the Applicant $650.00 net per week for over a week prior to his rate of pay being reduced. Mr D'Angelo then discussed with the Applicant that he was not prepared to continue to pay him $650.00 per week in the circumstances. He says that he asked the Applicant what the Applicant thought he could expect when undertaking bar work. Mr D'Angelo says that the Applicant told him $14.00 per hour was the appropriate rate for bar work and Mr D'Angelo says that the Applicant agreed to be paid $14.00 per hour to undertake this work.

The Applicant's evidence is that he understood the point that Mr D'Angelo was making, that he could not justify paying him $650.00 per week net in light of the hours that he was working, but the Applicant explained to him that he was prepared to put in all necessary hours to perform the work. The Applicant asked Mr D'Angelo to put the change in writing but it appears that this did not occur.

The Applicant continued to work for the Respondent undertaking this bar work and receiving $14.00 per hour for each hour worked for the week's ending 16 and 24 June 1998 and l July 1998. During those weeks he worked 35, 32½ and 28½ hours respectively.

The employment has come to an end in circumstances which are not substantially in dispute between the parties.

I have considered all of the evidence in this matter. I conclude that the Applicant's contract of employment which was established on the basis of his being the floor manager and being paid $650.00 per week net was changed, firstly in that the work he undertook was changed and then later, the rate of pay he was paid was changed.

I am not satisfied from the evidence that those changes were opposed by the Applicant. On the contrary, the Applicant continued to work for 3 weeks under an arrangement for a lesser rate of pay and for a period longer than that, in a capacity different to the one in which he was originally engaged. I am satisfied that the change to the arrangements between the parties was by agreement. Although the Applicant may not have been happy with that arrangement, he did not protest to the extent necessary to demonstrate that he had rejected the changes that were being put to him and to satisfy the Commission that he is entitled to have continued at the previous rate of pay.

There is one point that I wish to comment on, in particular, and that is Exhibit 1. This is a letter dated 8 June 1998 and refers to the Applicant being employed as the restaurant floor manager and setting out his salary at $650.00 per week net. I note that the date of this letter is, in fact, during the time when the Applicant was being paid in accordance with the terms of this letter. I am not satisfied that the letter can be taken to override the arrangements which according to the evidence were changed after that time and therefore is not relevant to the matters before the Commission other than to confirm, for other purposes, matters largely agreed between the parties.

Accordingly, the application will be dismissed.

APPEARANCES: Mr B Walker appeared on behalf of the Applicant.

Mr D'Angelo appeared on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Denver Wilcox

and

Delsana Holdings Pty Ltd ATF D'Angelo Family Trust
Trading as Villa Della Luna.

No. 2195 of 1998.

COMMISSIONER P E SCOTT.

23 July 1999.

Order.

HAVING heard Mr B Walker on behalf of the Applicant and Mr D'Angelo on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT this matter be, and is hereby dismissed.

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

SECTION 29 (b)—Notation of—

Applicant	Respondent	Number	Commissioner	Result
Abel F	EFMoriarty	650/1999	Kenner C	Discontinued
Ambrosini C	Hartley Poynton Ltd	1941/1998	Beech C	Discontinued
Anderson A	Boral Resources (Qld) Pty Ltd t/a Boral Shotcrete	631/1999	Beech C	Discontinued
Anderson D	Michael Swain	542/1999	Beech C	Discontinued
Bankcroft M	AAA Charter Pty Ltd	646/1999	Beech C	Discontinued
Bokay JP	AK Phillips & Co Pty Ltd t/a Budget Books Distributors	597/1999	Beech C	Discontinued
Bortolotti P	Country Tel Pty Ltd	219/1999	Kenner C	Discontinued
Breznikar N	2 Much Fun	746/1999	Kenner C	Discontinued
Budjak E	Lube Over Australia Pty Ltd	590/1999	Gregor C	Withdrawn
Clayborough K	Jostek Enterprises Pty Ltd t/a Jostek Group	680/1999	Kenner C	Discontinued
Clifton GY	Ocean Drive Hotel	508/1999	Gregor C	Dismissed
Cook RW	Lazco Refrigeration	606/1999	Gregor C	Discontinued
Delborrello J	Top Models International	704/1999	Parks C	Dismissed
Dennis K	Raunchy Promotions	494/1999	Parks C	Dismissed
Devenish ED	Cassidy Holdings Pty Ltd t/a Pool Spa Cottesloe	2225/1998	Kenner C	Dismissed
Dimitrovich E	North Metropolitan College of TAFE	458/1999	Beech C	Discontinued
Drabble P	Denvale Holdings Ltd	570/1999	Gregor C	Dismissed
Evans JW	WA Police Traffic Branch School Crossings Section	354/1999	Scott C	Withdrawn
Feodorovs WS	Century Drilling Ltd	1640/1998	Gregor C	Discontinued
Fitzgerald C	BSC Motion Technology	953/1999	Scott C	Withdrawn
Forster J	Bikard Holdings-Duck Café -Jonathan Wang	807/1999	Gregor C	Discontinued
Fraser T	John Notte t/a Wesco Fuels	2222/1998	Kenner C	Dismissed
Graham KL	Ogden Corporation Pty Ltd t/a Windsor Hotel	1962/1998	Scott C	Dismissed
Hall CR	Palmland Investments Pty Ltd t/a Fin's Seafood Grill	2017/1998	Parks C	Dismissed
Hannah JA	Alliance Marketing Corporation	778/1999	Beech C	Discontinued
Hewson AC	Gulshan Chopra t/a Moss & Co	1498/1998	Beech C	Discontinued
Honeybone D	Lanstal Pty Limited	491/1999	Cawley C	Discontinued
Howard RC	Inkcot Pty Ltd (Best Western Tree Top Walk Hotel)	571/1999	Gregor C	Discontinued
Hunter RJ	Perth Emergency Services	651/1999	Parks C	Dismissed
Ierace A	Random Access (WA) Pty Ltd	2063A/1997	Cawley C	Discontinued
Jaksic H	Chotif Pty Ltd t/a Elizabeth Wiese & Associates	184/1999	Beech C	Discontinued
Jasaroski B	Canea Pty Ltd t/a Italia Gold	509/1999	Beech C	Discontinued
Johnson F	Advanced Technical Research Organisation Pty Ltd	2034/1998	Parks C	Discontinued
Jordon AJF	JFK Engineering Pty Ltd	538/1999	Kenner C	Discontinued
Kanya P	Haggar's Restaurant	390/1999	Gregor C	Discontinued
Kendall DG	Glazewell Pty Ltd	723/1999	Gregor C	Consent Order
Koupatsiaris S	Longwood Pty Ltd t/a Drakesbrook Hotel	712/1999	Gregor C	Withdrawn
Leighton NR	H Kleyn	641/1999	Kenner C	Discontinued
Liacopoulos G	Cortev Pty Ltd t/a Wanneroo Autos	435/1999	Beech C	Discontinued
Mader M	Smith Madden Group (Australia) Pty	168/1999 169/1999	Cawley C	Discontinued
Maes RW	Coates Hire Operations Pty Ltd	469/1999	Gregor C	Discontinued
Manderson M	White Eagle Hotels Pty Ltd t/a Norwood Hotel	346/1999	Parks C	Discontinued
McAleer P	GIO General Ltd	397/1999	Scott C	Dismissed
Mcphee GN	Mamma Marias	653/1999	Kenner C	Discontinued
Melhuish GD	Smith Nominees Pty Ltd	373/1999	Beech C	Struck Out
Michaelson J	Sign Supplies (1986) Pty Ltd	742/1999	Kenner C	Discontinued
Munster B	Winteroak Pty Ltd t/a Fresh Cup Coffee Co.	1769/1998	Beech C	Discontinued
Murcia TF	Cherry Holdings Pty Ltd, Durbeck Pty Ltd and Armen Holdings Pty Ltd t/a Boatshed Fresh Markets	762/1999	Beech C	Discontinued
Murray S	Cook's Construction Pty Ltd	200/1999	Scott C	Dismissed
O'Brien S	Interval Resort Networks (Australasia) Pty Ltd	616/1999	Gregor C	Dismissed
Polini LM	Mustique Pty Ltd t/a Bojangles Hairstylists ATF The Dines Family Trust	415/1999	Cawley C	Discontinued
Quinn SJ	V & V Walsh Pty Ltd	1005/1999	Beech C	Discontinued
Rokita DB	Shadriga Pty Ltd t/a Morrisbank Realty	335/1999	Gregor C	Consent Order
Rouessart C	Nando's Chicken	459/1999	Beech C	Discontinued
Satie G	STW Channel Nine	727/1998	Scott C	Dismissed
Scott I	Dowell Schlumberger (Western) SA	94/1999	Beech C	Discontinued
Shepheard K	A-One Audio	498/1999	Scott C	Dismissed
Skinner RL	Interval Resort Networks (Australasia) Pty Ltd	617/1999	Gregor C	Dismissed
Smit S	Albany Seafood Market	813/1999	Scott C	Dismissed
Smith R	Jenalla Corporation Pty Ltd t/a Pepperino's Café Bar	2119/1998	Parks C	Discontinued
Smith R	Interval Resort Networks (Australasia) Pty Ltd	567/1999	Gregor C	Dismissed
Smith S	NS Komatsu Pty Ltd	2268/1998	Cawley C	Discontinued
Stevens M	Kelsie Enterprises Pty Ltd t/a Pingelly Machinery Centre	2143/1998	Scott C	Dismissed
Stribley SM	Imdex Ltd	734/1999	Kenner C	Discontinued
Vickers D	Fitness Express (WA) Pty Ltd	243/1999	Beech C	Struck Out
White M	Kiam Corporation Pty Ltd	923/1998	Kenner C	Discontinued
Whitehead S	ZF Australia Pty Ltd	2094/1998	Beech C	Discontinued
Williams K	Better Choice Fuel Mandurah	454/1999	Scott C	Withdrawn
Woods GA	Ausmic Environmental Industries (WA)	1015/1999	Kenner C	Discontinued
Woolcott TN	Forum Takeaway	699/1999	Kenner C	Discontinued

CONFERENCES—
Matters arising out of—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Eltin Surface Mining Pty Ltd

and

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

No. C221 of 1999.

6 August 1999.

Interim Order.

WHEREAS the parties to this matter are in dispute as a result of the employer objecting at speaking to the minutes on 4 August 1999 in Matter No. AG 72 of 1999 which is an application by the employer for registration of an industrial agreement which to that point had been a matter of consent between them; and

WHEREAS the employer says that changed circumstances in relation to its principal and the Boddington mine site will make the shift work provision in the agreement impracticable and onerous; and

WHEREAS the employer now says the registration of that agreement should not proceed, the status quo should apply pending negotiations between the parties with a view to reaching an alternative agreement to be in place prior to 1 October 1999; and

WHEREAS while the union says it is happy to discuss this prospect with the employer and expeditiously it seeks an order from the Commission finalising the registration now; and

WHEREAS as a consequence of the dispute over finalising the registration and having been informed of industrial action in this workplace already in relation to the prospect of shift work changes from what currently applies and was to be reflected in the agreement to be registered, the Commission called a conference on its own motion pursuant to section 44; and

WHEREAS the parties discussed the situation then and subsequently and it appears that progress has been made towards a resolution of the issues of concern to the respondent; and

WHEREAS having regard for all the circumstances including the current ability of the employer (and the union) to give notice of intention to withdraw from the registered industrial agreement after 30 days while now objecting to the finalisation of the registration of the intended replacement agreement, I consider the situation may confound the goodwill necessary to continue those discussions expeditiously; and

WHEREAS in all these circumstances, and on the basis that in the meantime the union does not seek to finalise the registration, I consider it will assist the progression of discussions between the parties if an interim order is issued so that the terms of the erstwhile agreement are put in place for a period; and

WHEREAS the statements of the respondent are that it intends to maintain the status quo while those discussions continue anyway; and

WHEREAS it is intended that such an interim order should only have force for the purposes of encouraging the process of negotiation to resolution by mid September or earlier; and

WHEREAS it is not intended that such an interim order be used as a bargaining tool in that process; and

WHEREAS for this basis the question of why such an order should continue at all should be subject to consideration on or shortly before the elapse of 30 days from issue;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 and specifically section 44 (6) (ba) (i) do hereby order —

1. THAT the schedule of terms produced in minute form in Matter No. AG 72 of 1999 shall apply with effect on and from the 6th day of August 1999.
2. THAT this order shall be deemed cancelled with any registration of an agreement to replace the existing registered industrial agreement applying at the Boddington site.
3. THAT in the event that 2. hereof does not occur within 30 days of the 6th day of August 1999, any party wishing the order to continue to apply shall make application for that within seven days from the end of that 30 day period.
4. THAT in the event of no such application per 3. hereof this interim order shall be deemed cancelled.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Inghams Enterprises

and

The Food Preservers' Union of Western Australia, Union of Workers.

No. 132 of 1999.

No. 139 of 1999.

6 August 1999.

Order.

WHEREAS having regard for the record in these matters, and formed the view that these matters should be closed; and

WHEREAS having given notice of that intention and no objection having been raised;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order—

THAT this application shall be and is hereby discontinued.

(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

Pac Rim

No. CR 137 of 1999.

COMMISSIONER S J KENNER.

19 July, 1999.

Order.

WHEREAS the applicant sought and was granted leave to discontinue the application, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the application be and is hereby discontinued by leave.

(Sgd.) S.J. KEENER,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Axis Consolidated & Others

No. CR 140 of 1999.

COMMISSIONER S J KENNER.

26 July 1999.

Order.

WHEREAS the applicant sought and was granted leave to discontinue the application, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the application be and is hereby discontinued by leave.

(Sgd.) S.J. KENNER,
[L.S.] Commissioner.

CONFERENCES—Notation of—

PARTIES		NUMBER COMMISSIONER	DATE	MATTER	RESULT
Australian Workers Union	BHP Iron Ore Pty Ltd & Others	Fielding SC C185 of 1999	7/7/99	Industrial Relations Agreement	Discontinued
Australian Workers Union	Theiss Contractors Pty Ltd	Gregor C C169 of 1999	29/7/99	Dismissal	Discontinued
Australian Workers Union	P & O Catering & Services Pty Ltd	Parks C C143 of 1999	24/5/99	Unfair Dismissal	Referred
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	MacMahon Contractors (WA) Pty Ltd	Fielding SC C148 of 1999	31/5/99	Unfair Dismissal	Referred
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Cooks Construction	Kenner C C179 of 1999	16/7/99	Alleged Unfair Dismissal	Referred
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Compass Ford	Kenner C C174 of 1999	—	Alleged Unfair Dismissal	Discontinued
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Makjap Pty Ltd	Kenner C C58 of 1999	30/4/99	Pay Arrangements	Discontinued
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Monadelphous Group of Companies	Kenner C C166 of 1999	28/7/99	Travelling Time	Discontinued
Builders' Labourers, Painters and Plasterers Union & Other	Newman Steel	Kenner C C150 of 1999	7/7/99	Wages and Other Entitlements	Discontinued
Builders' Labourers, Painters and Plasterers Union	Charlie Musca	Kenner C C135 of 1999	9/7/99	Outstanding Wages	Discontinued
Civil Service Association	Director General Education Department of Western Australia	Beech C PSAC28 of 1999	6/7/99	Victimisation and harassment by another employee	Concluded
Civil Service Association	Family and Childrens Services	Fielding SC PSAC14 of 1999	8/4/99	Restructure of the McCall Centre	Discontinued
Civil Service Association	Director General Education Department of Western Australia	Scott C PSAC37 of 1999	—	Entitlement to Accommodation or Accommodation Allowance	Withdrawn
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers' Union	West Australian Newspapers Limited	Cawley C C136 of 1999	23/7/99	Written Warning	Discontinued
Forest Products, Furnishing and Allied Industries Industrial Union	Dyno Industries (WA) Pty Ltd	Beech C C170 of 1999	—	Redundancy Package	Concluded
Independent Schools Salaried Officers' Association	St Joseph's College & Others	Cawley C C195 of 1999	26/7/99	Position of School Psychologist	Discontinued
Liquor, Hospitality and Miscellaneous Workers' Union	Chesterfield Child Care Centre Pty Ltd	Beech C C130 of 1999	16/6/99	Dismissal	Referred
Liquor, Hospitality and Miscellaneous Workers' Union	Pro Guard Security Pty Ltd	Gregor C C60 of 1999	29/7/99	Change in Employment Status	Discontinued
Liquor, Hospitality and Miscellaneous Workers' Union & Another	Ministry of Justice	Cawley C C277 of 1998	6/8/99	Negotiating an Enterprise Bargaining Agreement	Dismissed
Liquor, Hospitality and Miscellaneous Workers' Union & Another	Ray Mullins and Sons Pty Ltd	Parks C C113 of 1999	—	New Roster	Discontinued
Media, Entertainment and Arts Alliance of WA Union	W.A. Sports Centre Trust	Cawley C C187 of 1999	23/7/99	Annual Leave Shift Penalty	Discontinued
Transport Workers' Union	Pioneer Concrete (WA) Pty Ltd	Beech C C332 of 1998	25/11/98	Pay Rates	Referred

PROCEDURAL DIRECTIONS AND ORDERS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Amelia Ierace

and

Random Access (WA) Pty Ltd.

No. 2063 of 1997.

23 July 1999.

Interlocutory Order.

WHEREAS by this application Amelia Ierace claims that she was unfairly dismissed and has been denied contractual benefits by the respondent; and

WHEREAS a significant period of time has elapsed since the alleged dismissal and the applicant, having regard for that and in consideration of other limiting factors beyond her control has, in response to a query from the Commission, advised that she does not object to these claims being divided and the claim of unfair dismissal being discontinued provided that the claim of denied contractual benefits is preserved from the date filed;

NOW THEREFORE, having regard for all this and pursuant to the powers conferred by the Industrial Relations Act, 1979 and specifically section 27(1)(s), the Commission hereby orders —

1. THAT the claim of unfair dismissal be and is hereby divided from Matter No. 2063 of 1997 and to be identified as Matter No. 2063A of 1997.
2. THAT Matter No. 2063 of 1997 shall be limited to the claim of denied contractual benefits per the application filed on the 7th day of November 1997.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Barbara Anne Allison

and

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

No. 2054 of 1998 and 917 of 1999.

COMMISSIONER P E SCOTT.

9 August 1999.

Order.

HAVING heard from Mr D Moss on behalf of the Applicant and Mr R C Wells 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 name of the Respondent in applications 2054 of 1998 and 917 of 1999 is to be amended to the "Australian Rail, Tram and Bus Industry Union Employees, Western Australian Branch".

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mark Davies

and

HVAC Pty Ltd.

No. 44 of 1999.

16 July 1999.

Order.

HAVING heard Mr R. Kelly (of counsel) on behalf of the applicant and Mr P. Harris (of counsel) on behalf of the respondent, the Commission, pursuant to powers conferred on it under the *Industrial Relations Act, 1979*, hereby orders—

THAT the names HVAC Process Services Pty Ltd and HVAC Construction (Qld) Pty Ltd be substituted in lieu of HVAC Pty Ltd as respondents to this application.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Peter McAleer

and

GIO Australia Ltd and GIO General Ltd.

No. 397 of 1999.

COMMISSIONER P E SCOTT.

22 July 1999.

Order.

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the Industrial Relations Act 1979; and

WHEREAS on the 19th day of July 1999 the Commission convened a conference for the purpose of conciliating between the parties; and

WHEREAS at that conference the Applicant sought leave to amend the application by deleting the named Respondent, "GIO Australia Ltd". The Respondent did not object to the amendment as sought;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT the application be amended by deleting the named Respondent, "GIO Australia Ltd".

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Robert Laurence Manning

and

Hilgold Holdings Pty Ltd.

No. 658 of 1999.

COMMISSIONER J F GREGOR.

19 July 1999.

Order.

WHEREAS on 12 of May 1999, Robert Laurence Manning applied to the Commission for an order pursuant to s. 29 of the Industrial Relations Act, 1979; and

WHEREAS on 15 July 1999, the Commission conducted a conference at which time the matter was not settled but the applicant sought and the respondent consented to the issue of orders for production of documents; and

WHEREAS the Commission directed that the applicant submit a Minute of Proposed Orders and on receipt of the Minute, Orders would issue in the terms agreed between the parties at the conference; and

WHEREAS the matter was not settled and would be listed hearing in due course;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Commission hereby orders by consent—

THAT within 14 days of the date hereof, the respondent shall produce for inspection of the applicant and or his solicitors the following documents—

1. Minutes of Meetings of the Board of Directors of 6 February 1998 and July 1998;
2. Cheque butts and any other documents showing any monies where the wages are not paid to the applicant by the respondent;
3. All documents submitted by the applicant to the respondent by way of claims for reimbursement of expenses incurred by the applicant.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Robert Laurence Manning

and

Hilgold Holdings Pty Ltd.

No. 658 of 1999.

COMMISSIONER J F GREGOR.

2 August 1999.

Correcting Order.

WHEREAS on the 19th day of July 1999, an order in this matter was deposited in the office of the Registrar; and;

WHEREAS the said order had an error in paragraph 2; and

WHEREAS the order should have read—

1. Minutes of Meetings of the Board of Directors of 6 February 1998 and July 1998;
2. Cheque butts and any other documents showing any monies, whether wages or otherwise, paid to the applicant by the respondent;
3. All documents submitted by the applicant to the respondent by way of claims for reimbursement of expenses incurred by the applicant.

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

AWARDS/AGREEMENTS—Consolidation of—

MASTERS, MATES AND ENGINEERS PASSENGER FERRIES AWARD.
No. A 9 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Merchant Service Guild of Australia, Western Australian Branch, Union of Workers and Another

and

Boat Torque Cruises Pty Ltd and Others.

No. A 9 of 1996.

Masters, Mates and Engineers Passenger Ferries Award.

COMMISSIONER A.R. BEECH.

25 June 1999.

Further Reasons for Decision.

THIS matter has proceeded, primarily at the request of the parties, in a manner that allows the parties continue their negotiations and, from time to time, request the Commission to decide a particular issue or a particular clause. Following any decision of the Commission as requested, the parties resume their negotiations. Thus, Reasons for Decision in this matter have already issued on 15 September 1998 and also 21 January 1999. The parties have now informed the Commission that they have concluded their negotiations and are not confident that they are able to reach an agreement on the matters that remain outstanding between them. They have therefore requested the Commission to consider their written submissions on the matters in issue between them, decide the matters, and issue the decision in the form of a consolidation of the original award which issued as the "Masters, Mates and Engineers Passenger Ferries (Interim) Award" in August 1997.

In accordance with the requests of the parties the Commission now turns to determine the remaining matters between them.

Clause 8.—Hours of Duty

The respondents propose the insertion of the following subclause—

(3) By mutual consent between an employer and an employee, the hours of duty may be arranged to allow an employee to work their ordinary hours over less than a 5 day period.

The respondents submit that the sub-clause is essential because employees employed by Rottnest Express who presently work their ordinary hours over four days of the week need to be protected. Failure to insert the provision must, in the employers' submission, result in a diminution of conditions enjoyed by employees of Rottnest Express and for other employees engaged within the industry. It would institute an unnecessary inflexibility in the way hours of work can be performed.

The proper approach to the respondents' claim in this matter is to appreciate the role and function of a first award under the current state wage principles. The award is to provide a safety net of wages and conditions. Individual respondents to the award, such as Rottnest Express, are free to negotiate an enterprise bargaining agreement with the unions which will be able to prevail over precise conditions within the award. On the information before the Commission, the respondents' proposed sub-clause will accommodate the working conditions of one respondent which may be at variance with the working conditions of other respondents. However, a first award will not be able to prescribe all of the different conditions of employment which might well vary from respondent to respondent. The issue regarding hours of work is an example of this. In the context of the current emphasis on enterprise bargaining, the respondents' submission ought be rejected on the understanding that the sub-clause is able to be negotiated during the course of enterprise bargaining negotiations dedicated to the operations of a particular respondent.

The respondents also propose the following sub-clause—

(5) A rest period of at least 8 hours shall be observed between the cessation of one shift and the commencement of the next shift.

The respondents submit that an 8 hour break between shifts reflects current industry practice. They again make reference to the First Award Principle which has as its main consideration that the award meets both the needs of the particular industry or enterprise and ensures that employees' interests are also properly taken into account. The respondents refer to the relevant provisions of the Australian Maritime Safety Authority's Marine Orders Part 28, ss 4.2 and 4.4. It is submitted that the employees to be covered by this award do not "work" for the whole duration of the shift thus avoiding excessive fatigue.

The unions, however, oppose the claim as being directly contrary to employees' interests. The unions note that it has been agreed between the parties that the normal shift length will be 9 hours. It is therefore necessary to ensure employees are afforded adequate opportunity for rest between each day's work. The unions submit that the community's standard, and indeed the Commission's standard, is that there should be a mandatory break of between 8-10 hours after the cessation of one period of work and the commencement of the next. They refer to the potential for health and safety consequences to the industry if employees fail to have an adequate rest break during a 24-hour period. They submit that it can lead to a transient state of profoundly poor performance and mood. This can have

profound consequences when the person concerned is in charge of a vessel carrying up to 200 passengers.

The principle of a 10-hour break, as distinct from an 8-hour break, between the completion of work on one shift and the commencement of work on the next shift, has been recognised in one of the main awards of this Commission since 1972 (52 WAIG 965 at 967). However, that award is not directly applicable here and the evidence of a 10 hour break operating in the industry covered by this award is not great. Certainly, the Marine Orders referred to emphasise that the minimum rest in any 24-hour period should be 10 hours. However, the Commission notes that the *Deckhands' (Passenger Ferries, Launches and Barges) Award* No. 15 of 1972 (as consolidated at 67 WAIG 1169) does not contain a provision for a 10-hour break. Rather, it contains a provision for an 8-hour break in the event that an employee has been continuously on duty for 18 hours. Further, the *Masters' and Deckhands' (Passenger Ferries, Launches and Barges) (Fremantle Launch and Tug Company Pty Ltd) Award 1993* (74 WAIG 89) provides a sliding scale of time off duty compared to the hours worked. The Commission also notes the comparable provision of the *Fremantle Port Authority Maritime Services Agreement 1999* which provides a 10-hour break for day workers and an 8-hour break for shift workers before being required to commence the next day's work. These awards do not suggest that a 10-hour break is a standard for the industry covered by this award. The First Award Principle provides for a balancing of the needs of the industry and the needs of the employees. Furthermore, there was no evidence about rest breaks between shifts, and its effects upon employees, when this award was the subject of formal hearings before the Commission prior to the issuance of this award. The awards and agreements to which reference has been made by the Commission also do not establish that a 10-hour break is a standard within this industry. Accordingly, the provision to be inserted in the award will provide for an 8-hour break.

Clause 9—Overtime: casual employees

The respondents propose the inclusion of a clause which excludes casual employees from the provisions of overtime. The respondents claim that the non-payment of overtime rates is common in the hospitality industry and refer to the corresponding exemption for casuals pursuant to the *Restaurant, Tearoom and Catering Workers' Award*. The unions oppose any exclusion of overtime from a person designated as a casual.

On this matter, the unions' argument is correct. A casual employee is agreed by the parties to be an employee who is not employed on an annual basis. Such an employee is paid a 20% loading on the hourly rate of pay in lieu of public holidays, annual leave, long service leave and sick leave. However a casual employee is still required to work on particular days and will be engaged for particular hours of work. There is no reason in principle why the overtime payments which the parties agree are between the parties to be paid for other employees who work in excess of their allocated hours should not apply to casual employees. In such a case, the principle is that if time is worked in excess of the time for which the employee is engaged, then overtime rates should be paid.

Clause 16—Disputes Avoidance Procedure

The respondents propose that the dispute settlement procedure which they had previously agreed with the unions and which is already prescribed in the interim award should now be amended to "focus the onus on the employer and employee in the first instance to resolve grievances". Where the dispute is not resolved, the employee can elect to notify a union or such other representative as the employee deems appropriate. This is seen as being more in line with "modern industrial relations practices" and is consistent with the approach taken by the Full Bench of the Australian Industrial Relations Commission in its award simplification test case decisions. The unions oppose any alteration to the clause which had been agreed between the unions and the respondents.

The fundamental difficulty with this claim is that the Disputes Avoidance Procedure has already been decided and is not now before the Commission given the Order which issued on 27 August 1997. However, even if an application was made to the Commission to vary the award, the fact remains that the clause was originally agreed between the parties. Given this is a first award, the Commission would need evidence that it has not operated as intended to agree to change what was otherwise an agreed provision. If, once the award comes into full operation, that is, that it is no longer an interim award, there is sufficient need to change the dispute settlement procedure, then the necessary application should be made. As to the point made by the respondents, that "the clause currently assumes that all employees will be a member of a union and that the employee will want his/her union automatically involved in all disputes" the clause in its current form in clause 3(a) does not appear to assume that all employees will be a member of a union. If the employee concerned is not in a union, then clause 3(b) does not come into operation.

Clause 20 – Holidays: (1) Easter Saturday

The respondents propose that the public holidays recognised by the award should be the 10 standard days. They therefore oppose the claim by the applicant unions for the recognition of Easter Saturday. The respondents' arguments are sound. The standard of this Commission of 10 public holidays has been established ((1971) 51 WAIG 1205). There is nothing in the material before the Commission which permits the Commission by arbitration to impose greater than that standard in this case.

Clauses 20 – Holidays: (2) penalty rate

The unions' claim is for the penalty rate for working on a public holiday to be double time. Indeed, the unions submit that this was previously agreed to by the respondents. The respondents, however, argue that currently only time and one half is paid. The unions' claim will therefore bring about "an immediate and unjustified cost increase we submit is clearly contrary to the First Award Principle".

Although the respondents' submissions to the Commission of 14 May 1999 indicate that the penalty previously agreed is now no longer agreed, the Commission takes seriously the fact that the parties had reached agreement in relation to the penalty. The difficulty which is presented to the Commission by one party to an agreement seeking to undo the agreement which was reached in negotiations is that the Commission is not privy to the "give and take" which goes with such negotiations. It is entirely consistent with the thrust of the Commission's wage-fixing principles that the parties should negotiate their differences and arbitration should be a last resort. Accordingly, unless the Commission is able to assess with particularity the effect of the withdrawal by one party of part of a matter previously agreed, then it should be reluctant to interfere with that earlier agreement.

In relation to the merit of the claim for a penalty rate of either time and one-half or of double time the following is relevant. The prescription of a penalty rate at all was opposed in principle by some of the persons who gave evidence on behalf of the respondents during the earlier hearing. Nevertheless, the respondents are prepared to pay a penalty rate of time and one half for Master, Mates and Engineers who work on a public holiday. A penalty rate is a recognition that employees under the award may be obliged to work on a day when the rest of the community is enjoying a holiday. If there is sufficient evidence produced to show that community expectations are such that Masters, Mates and Engineers may be regularly expected to work at times when the community is enjoying a holiday then there may be grounds to warrant a lesser penalty. Those circumstances have not been demonstrated at the moment. It can safely be said that the decision of this Commission referred to above which set the standard of 10 public holidays also set the rate payable generally in awards of the Commission for work performed on a public holiday at double time and one-half (above at p.1207). It is not suggested that the rate in this award should be double time and one half.

The Commission is to have regard to the First Award Principle which of necessity requires some balancing of the needs of the industry, which recognises that time and one-half is the rate currently payable in the industry, versus the needs of the employees which also recognises that they may be regularly expected to work at times when the community is enjoying a holiday. The balancing of those factors results in the payment of double time while permitting the costs of any increase in the penalty to be taken as time off during the off-season. Accordingly the penalty will be double time with provision, as agreed, that the employer and employee may agree to time off in lieu of the payment.

Clause 21 – Sick Leave: provision of medical certificates

In relation to sick leave, the respondents propose that employees be required to produce a medical certificate when they are absent for one day or more. It is submitted as a more appropriate requirement than the proposal of the unions that proof of illness not be necessary until the employee had been absent for in excess of 3 days. The Commission's standards in this matter have been quite clearly laid out in the 1979 decision of the Commission in Court Session (59 WAIG 1377). The Commission recognises that sick leave may be abused by employees and that there are few avenues open to an employer to prevent abuse of sick leave. Thus, an employer might see the requirement to produce a medical certificate when employees are absent for one day or more as reducing the prospect of employees abusing sick leave entitlements. However, in the absence of any evidence that abuse of sick leave requirements in the industry covered by this award is significant, there is no warrant to deviate from the accepted standard that employees shall not be required to produce a certificate from a medical practitioner with respect to absences of two days or less unless after two such absences in any year of service the employer requests in writing that the next and subsequent absences in that year, if any, shall be accompanied by such certificate.

Clause 21 – Sick Leave: payout of untaken sick leave

The respondents propose that an incentive be included within the sick leave provisions of the award to allow an employer and an employee to agree to the payment of a cash incentive in recognition of sick days not taken in the preceding year of continuous service. Where such an agreement is entered into, accumulated days would be lost.

While the payout of unused sick leave has not previously been recognised by the Commission, it is also the case that provisions such as those now suggested by the respondents are sometimes contained in agreements reached between parties to enterprise bargaining. On that basis, it is more appropriate that the award remain a "safety net" and that the kind of provision now sought should be available for discussion between the parties during the course of enterprise bargaining.

Conclusion

The matters referred to the Commission have been decided in accordance with these Reasons. The Commission now produces the Minute of a Proposed Order which incorporates into the interim award those decisions and also the matters which have been agreed between the parties. The Commission has deleted from the title of the award any reference to "interim". Given that this application has been dealt with by way of written submissions over a long period of time and that the parties have had many negotiations outside the Commission, the parties should take care to ensure that the Minute of Proposed Order truly reflects the interim award, the agreements reached between the parties as well as the Commission's decisions on the disputed clauses.

Appearances: (By way of written submissions)

Mr E. Boronovskis on behalf of the Merchant Service Guild, Western Australian Branch, Union of Workers and on behalf of the Australian institute of Marine and Power Engineers, Western Australian Union of Workers.

Mr L. Joyce on behalf of the respondents.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Merchant Service Guild of Australia, Western Australian Branch, Union of Workers and Another

and

Boat Torque Cruises Pty Ltd and Others.

No. A 9 of 1996.

Masters, Mates and Engineers
Passenger Ferries (Interim) Award.

20 July 1999.

Order.

HAVING heard Mr E. Boronovskis on behalf of the Merchant Service Guild of Australia, Western Australian Branch, Union of Workers and on behalf of the Australian Institute of Marine and Power Engineers, WA Union of Workers, and Mr L. Joyce on behalf of the respondents, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

That the Masters, Mates and Engineers Passenger Ferries (Interim) Award be amended and consolidated in the terms of the schedule attached hereto from the beginning of the first pay period on or after the 20th day of July 1999.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Award shall be known as the "Masters, Mates and Engineers Passenger Ferries Award".

2.—ARRANGEMENT

3.—AREA AND SCOPE

This Award shall apply to Masters, Mates and Engineers employed on or about surveyed passenger vessels or other vessels operated in coastal waters.

4.—TERM

The term of this Award shall be for a period of eighteen months from the 13th day of August, 1997.

5.—DEFINITIONS

In this Award unless a contrary intention appears:

(1) "Employee" means any person who is employed upon any of the work prescribed by this Award.

(2) "Master" means an employee having the command, charge or management of a vessel.

(3) "Mate" means any person second in command and working on a vessel of 35 metres length or more.

(4) "Engineer" means an employee who is qualified under any statute or regulation of the State or Commonwealth to be in charge of the machinery of a vessel.

(5) "Commission" means the Western Australian Industrial Relations Commission.

(6) "Passenger" means every person carried on a vessel other than the Master or crew.

(7) "Month" means calendar month.

(8) "Ordinary Rate" means the weekly rate prescribed in Clause 6.—Payment of Wages of this Award.

(9) "Hourly Rate" means 1/45th of the Ordinary Rate.

(10) "Time and a half" means 1.5 times the Hourly Rate.

6.—PAYMENT OF WAGES

(1) Employees, including casuals, shall be paid fortnightly.

(2) An employee whose employment is terminated shall be paid within four office hours from the time of the termination of employment. If this period is exceeded, he/she shall be paid at ordinary rates from the time of the termination of employment until he/she is paid.

(3) When an employee leaves his/her employment before the usual pay day he/she shall, on giving notice of his/her intention to leave, be paid his/ her full wages on the day he/she leaves.

7.—RATES OF PAY

(1) The hourly rates of pay shall be—

Classification	$ per annum	$ per hour
Skipper	38,610	16.50
Engineer	37,440	16.00
Mate	32,760	14.00

(2) This award shall not operate to cause an employee to suffer a reduction in ordinary time hourly earnings that such employee is receiving prior to the implementation of this award.

(3) Casual employees shall receive a 20% loading in addition to the appropriate hourly rate for all hours worked.

8.—HOURS OF DUTY

(1) The ordinary hours of work shall be any spread of 9 consecutive hours from 6am to 2am in a 7 day period and shall not exceed 45 hours per week. The ordinary annualised hours per calendar year shall be 2340 hours per annum inclusive of annual leave and public holidays.

(2) A shift shall consist of 9 hours.

(3) Where a shift is cancelled due to inclement weather a minimum of 4 hours pay shall be paid.

(4) A rest period of at least 8 hours shall be observed between the cessation of one shift and the commencement of the next shift.

(5) The first 9 hours per day shall be calculated at single time rate. All hours in excess of 9 hours in excess shall be calculated at time and a half.

(6) Where a permanent employee aggregates more than 45 hours pay in any given week the employee can elect to either be paid out the hours in excess of 45 as pay, or he may elect to place these hours in a credit bank and draw from this credit bank in the off season, in the eventuality that the employer cannot gainfully employ him for 45 hours in a week.

(7) Should a permanent employee resign or leave his/her employment then any overtime hours owing to him/her shall be paid on termination.

9.—OVERTIME

(1) For the calculation of overtime each day shall stand alone, and overtime shall be calculated on an hourly basis for every hour worked over and above 9 hours per day.

(2) All overtime shall be calculated at the rate of 150% of the normal hourly rate.

10.—MEAL HOURS

(1) The recognised meal hours shall be—

(a) Breakfast—Any consecutive sixty minutes between 0700 hours and 0900 hours. Provided that no breakfast hour will be observed where employees commence work at 0600 hours or later.

(b) Lunch—Any consecutive thirty minutes between 1200 hours and 1300 hours.

(c) Tea—Any consecutive sixty minutes between 1700 hours and 1900 hours.

(2) Any employee who cannot be released for the appropriate mealtime within the times specified in subclause (1) of this clause shall take such meal break at a mutually convenient time.

(3) For the purpose of this clause the time when a vessel is under way shall be counted as time actually worked.

11.— CONTRACT OF SERVICE

(1) Except in the case of a casual employee, whose engagement shall be by the hour, the contract of service of every employee shall be a weekly one terminable on either side by one week's notice given on any day or by payment on any day of one week's wages in lieu of such notice.

(2) Any employee not attending for duty shall lose his/her pay for the actual time of such non-attendance subject to any sick leave entitlement, or when such absence is on account of holidays to which the employee is entitled under the provisions of this Award.

(3) This clause does not affect the right to dismiss for misconduct in which case wages shall be paid up to the time of dismissal only.

12.—ANNUAL LEAVE

(1) (a) Except as hereinafter provided, a period of four consecutive weeks' leave with payment of ordinary wages together with a loading of 17.5% of his/her wages, shall be allowed to an employee by the employer after a period of twelve months' continuous service with such employer.

(b) An employee's annual leave is to be taken within six months of falling due.

(2) If any award holiday falls within an employee's period of annual leave and is observed there shall be added to that period one day being an ordinary working day for each such holiday observed as aforesaid.

(3) An employee may be rostered off and granted annual leave with payment of ordinary wages as prescribed prior to the completion of twelve months' continuous service, in which case, should the services of such employee terminate or be terminated prior to the completion of twelve months' continuous service, the said employee shall refund to the employer the difference between the amount received by him/her for wages in respect of the period of his/her annual leave and the amount which would have accrued to him/her by reason of the termination of his/her services.

(4) (a) Subject to paragraph (b) of this subclause, when computing the annual leave due under this clause, no deduction shall be made from such leave in respect of the period that an employee is on annual leave and/or holidays: Provided that no deduction shall be made for any approved period an employee is absent from duty through sickness, with or without pay, unless the absence exceeds three calendar months, in which case deduction may be made for such excess only.

(b) Approved periods of absence from work caused through an accident sustained in the course of employment shall not be considered breaks in continuity of service, but the first six months only of such period shall count as service for the purpose of computing annual leave.

(5) In the event of an employee being employed by an employer for a portion only of a year, he/she shall only be entitled to such leave on full pay as is proportionate to his/her length of service during that period with such employer.

(6) Any employee who may resign or be dismissed for any cause, other than for peculation or theft, shall be entitled to receive payment for any annual leave which may have been due up to the time of leaving the service: Provided always that if the employee has been dismissed for peculation or theft no claim for annual leave shall be recognised. Misconduct herein referred to shall not affect accumulated annual leave or payment thereof.

(7) When work is closed down for the purpose of allowing annual leave to be taken, employees with less than a full year's service shall only be entitled to payment during such period for the number of days leave due to them: Provided that nothing herein contained shall deprive the employer of his/her right to retain such employees at work during the close-down period as may be required.

(8) "Ordinary Wages" for the purposes of subclause (1) of this clause shall mean the rate of wage the employee has received for the greatest proportion of the calendar month prior to him/her taking the leave.

(9) The leave provided by this clause shall be taken in such periods as agreed between the employer and the employee provided that no period of leave shall be less than one week.

(10) The provisions of this clause shall not apply to casual employees.

13.—LONG SERVICE LEAVE

The Long Service Leave Standard Provisions published in Volume 77 of the Western Australian Industrial Gazette at pages 1- 4 inclusive are hereby incorporated in and shall be deemed to be part of this Award.

14.—COMPASSIONATE LEAVE

(1) An employee shall, on the death within Australia of a wife, husband, father, mother, brother, sister, child or step-child, be entitled, on notice, if leave up to and including the day of the funeral of such relation and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in two ordinary working days. Proof of such death to be furnished by the employee to the satisfaction of his/her employer.

(2) Payment in respect of compassionate leave is to be made only where the employee otherwise would have been on duty and shall not be granted in any case where the employee concerned would have been off duty in accordance with 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 works "wife" and "husband" shall include a person who lives with the employee as a de facto wife or husband.

15.—EXPENSES

(1) The employer shall reimburse an employee any expenses reasonably incurred by him/her in the service or interest of the employer, provided the employee is able to prove such expense by way of receipts.

(2) As well as to the other matters, this clause shall apply to injuries as to casualties or as to the conduct of employees and to proceedings for any alleged breach of any maritime or port or other regulation unless the Authority conducting the inquiry or proceedings find that the matter has been occasioned by the wilful default or serious misconduct of the employee.

16.—DISPUTES AVOIDANCE PROCEDURE

(1) The Unions and the Employer shall undertake all necessary steps to ensure that the following procedure herein applies in the event of a question, dispute or difficulty arising under this Award; the intention being that any or all disputes shall be promptly resolved by conciliation in good faith.

(2) Matters Likely to Become Industrial Disputes

The employer and the relevant union shall respectively notify each other as soon as possible of any industrial matter which in the opinion of the party notifying might give rise to an industrial dispute including consultation prior to the introduction of a new method of work or new technology.

(3) Disputes at Job Level

(a) In the event of a dispute arising at the job level, the employee and the General Manager shall confer immediately.

(b) If not resolved the employee's Union will be notified and will confer as soon as practical with the General Manager in an attempt to resolve the issue without delay.

(4) Final Reference

(a) Should the foregoing steps fail to resolve the issue within a reasonable time, the matter(s) in dispute shall be referred by either party to the Commission.

(b) The dispute settlement procedures shall not preclude the right of any party to refer a dispute to the Commission at any stage of this procedure if the procedures are not being observed or are otherwise inappropriate in the circumstances.

Provided that with effect from 22 November, 1997 it is required that persons involved in the question, dispute or difficulty shall confer among themselves and make reasonable attempts to resolve questions, disputes or difficulties before taking those matters to the Commission.

17.—CASUAL EMPLOYEES

(1) A casual is a person who is not employed on an annual (i.e. 12 months) basis. Such person shall receive a 20% loading on their hourly rate of pay in lieu of long service leave, annual leave and sick leave.

(2) A casual employee is not entitled to the entitlements prescribed in clauses 12, 14, 20 and 21.

18.—UNIFORMS

(1) If the employer requires that an employee shall wear a uniform then the employer shall supply such uniform or make a payment of $2 per shift worked for Masters and Mates and Engineers.

(2) Uniforms for the purposes of this clause shall include whites and blues (white & blue clothing) caps, epaulettes, socks and shoes.

19.—PROTECTIVE CLOTHING

(1) Protective clothing shall be supplied on an as is needed basis on each vessel.

(2) Protective clothing shall consist of hard hats, sun-screen lotion, wet weather gear, safety glasses, safety shoes, sunglasses and overalls, ear protection devices.

20.—HOLIDAYS

(1) Except as hereinafter provided, each of the following days, or the days observed in lieu thereof, shall be allowed as a holiday at all employees and be paid for, namely: New Year's Day, Australia Day (26th January), Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Queens Birthday, Christmas Day, Boxing Day.

(2) Whenever one of the holidays specified in subclause (1) of this clause falls on an employee's ordinary working day, and the employee is not required to work on that day, he shall be paid for the ordinary hours he would have worked on that day if it had not been a holiday. If the employee is required to work he shall be paid at the rate of double time for all work performed. Alternatively the employer and employee may agree to time off in lieu of the overtime payment.

(3) Payment for holidays shall be in accordance with the usual hours of work.

(4) Payment shall not be made for any holiday which occurs whilst an employee is off duty owing to leave without pay, or sickness, including accidents off duty, excepting time for which he is entitled to sick pay.

21.—SICK LEAVE

(1) An employee shall be entitled to payment for non-attendance on the ground of personal ill-health at the rate of 10 days per year of service, accumulated on a pro rata basis.

(2) This clause shall not apply where the employee is entitled to compensation under the Workers' Compensation and Rehabilitation Act 1981.

(3) An employee shall not be entitled to receive any wages from his employer for any time lost through any accident not arising out of or in the course of his employment or for any accident wherever sustained arising out of his own wilful default or for sickness arising out of his own wilful misconduct.

(4) No employee shall be entitled to the benefits of this clause unless he/she produces proof satisfactory to his/her employer of sickness, but the employer shall not be entitled to a medical certificate unless the absence is for two days or more.

(5) Notwithstanding the provisions of subclause (4) of this clause, an employee who in any calendar year, has already been allowed paid sick leave on one occasion for one day only, shall not be entitled to payment for any further absence unless he produces to the employer a medical certificate stating that he was unable to attend for duty on account of personal ill-health.

(6) Sick leave shall accumulate from year to year so that any balance of the period specified in subclause (1) of this clause may be claimed by the employee and, subject to the conditions herein before prescribed, shall be allowed by his employer in any subsequent year without diminution of the sick leave prescribed in respect of that year. provided that an employee shall not be entitled to claim payment for any period in excess of 50 days in any calendar year.

SCHEDULE 1

Unions Party To This Award

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

Australian Institute of Marine and Power Engineers, Western Australian Union of Workers.

SCHEDULE 2

Respondents

Anthony & Sons t/a Oceanic Cruises

The Old Ferry Company Pty Ltd

Rottnest Cruises Pty Ltd.

Vyscot Pty Ltd t/a Captain Cook Cruises Pty Ltd.

Banwell Pty Ltd t/a Boat Torque 2000

WA Steamship Company Pty Ltd t/a Paddle Steamer "Decoy"

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Merchant Service Guild of Australia, Western Australian Branch, Union of Workers and Another

and

Boat Torque Cruises Pty Ltd and Others

No. A 9 of 1996.

Masters, Mates and Engineers
Passenger Ferries (Interim) Award.

27 August 1997.

Order.

HAVING heard Mr E. Boronovskis on behalf of the Merchant Service Guild of Australia, Western Australian Branch, Union of Workers, Mr R. McDonald on behalf of the Australian Institute of Marine and Power Engineers, WA Union of Workers, Mr J.A. Long (of counsel) intervening of behalf of the Seamen's Union of Australia, West Australia Branch and Mr L. Joyce on behalf of Respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby—

(1) Makes the Masters, Mates and Engineers Passenger Ferries (Interim) Award in the terms of the Schedule attached hereto to operate on and from the 13th day of August, 1997 unless otherwise provided within the term of the Award;

(2) Orders that the balance of this application be listed for hearing and determination by the Commission.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Award shall be known as the "Masters, Mates and Engineers Passenger Ferries (Interim) Award".

2.—ARRANGEMENT

3.—AREA AND SCOPE

This Award shall apply to Masters, Mates and Engineers employed on or about surveyed passenger vessels or other vessels operated in coastal waters.

4.—TERM

The term of this Award shall be for a period of eighteen months from the 13th day of August, 1997.

5.—DEFINITIONS

In this Award unless a contrary intention appears—

(1) "Employee" means any person who is employed upon any of the work prescribed by this Award.

(2) "Master" means an employee having the command, charge or management of a vessel.

(3) "Mate" means any person second in command and working on a vessel of 35 metres length or more.

(4) "Engineer" means an employee who is qualified under any statute or regulation of the State or Commonwealth to be in charge of the machinery of a vessel.

(5) "Commission" means the Western Australian Industrial Relations Commission.

(6) "Passenger" means every person carried on a vessel other than the Master or crew.

(7) "Month" means calendar month.

(8) "Ordinary Rate" means the weekly rate prescribed in Clause 6.—Payment of Wages.

(9) "Hourly rate" means 1/40th of the sum referred to in subclause (8) of this clause.

(10) "Time and a half" means 1.5 times the hourly rate.

(11) "Double time" means twice the hourly rate.

(12) "Double time and one half" means 2.5 times the hourly rate.

6.—PAYMENT OF WAGES

(1) Employees shall be paid fortnightly.

(2) An employee whose employment is terminated shall be paid within four office hours from the time of the termination of employment. If this period is exceeded, he/she shall be paid at ordinary rates from the time of the termination of employment until he/she is paid.

(3) When an employee leaves his/her employment before the usual pay day he/she shall, on giving notice of his/her intention to leave, be paid his/her full wages on the day he/she leaves.

7.—MEAL HOURS

(1) The recognised meal hours shall be—

(a) Breakfast—Any consecutive sixty minutes between 0700 hours and 0900 hours: Provided that no breakfast hour will be observed where employees commence work at 0600 hours or later.

(b) Lunch—Any consecutive thirty minutes between 1200 hours and 1300 hours.

(c) Tea—Any consecutive sixty minutes between 1700 hours and 1900 hours.

(2) Any employee who cannot be released for the appropriate meal time within the times specified in subclause (1) of this clause shall take such meal break at a mutually convenient time.

(3) For the purpose of this clause the time when a vessel is under way shall be counted as time actually worked.

8.—CONTRACT OF SERVICE

(1) Except in the case of a casual employee, whose engagement shall be by the hour, the contract of service of every employee shall be a weekly one terminable on either side by one week's notice given on any day or by payment on any day of one week's wages in lieu of such notice.

(2) Any employee not attending for duty shall lose his/her pay for the actual time of such non-attendance subject to any sick leave entitlement, or when such absence is on account of holidays to which the employee is entitled under the provisions of this Award.

(3) This clause does not affect the right to dismiss for misconduct in which case wages shall be paid up to the time of dismissal only.

9.—ANNUAL LEAVE

(1) (a) Except as hereinafter provided, a period of four consecutive weeks' leave with payment of ordinary wages together with a loading of 17½% of his/her wages, shall be allowed to an employee by the employer after a period of twelve months' continuous service with such employer.

(b) An employee's annual leave is to be taken within six months of falling due.

(2) If any award holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day, there shall be added to that period one day being an ordinary working day for each such holiday observed as aforesaid.

(3) An employee may be rostered off and granted annual leave with payment of ordinary wages as prescribed prior to the completion of twelve months' continuous service, in which case, should the services of such employee terminate or be terminated prior to the completion of twelve months' continuous service, the said employee shall refund to the employer the difference between the amount received by him/her for wages in respect of the period of his/her annual leave and the amount which would have accrued to him/her by reason of the termination of his/her services.

(4) (a) Subject to paragraph (b) of this subclause, when computing the annual leave due under this clause, no deduction shall be made from such leave in respect of the period that an employee is on annual leave and/or holidays: Provided that no deduction shall be made for any approved period an employee is absent from duty through sickness, with or without pay, unless the absence exceeds three calendar months, in which case deduction may be made for such excess only.

(b) Approved periods of absence from work caused through accident sustained in the course of employment shall be not considered breaks in continuity of service, but the first six months only of such period shall count as service for the purpose of computing annual leave.

(5) In the event of an employee being employed by an employer for a portion only of a year, he/she shall only be entitled to such leave on full pay as is proportionate to his/her length of service during that period with such employer.

(6) Any employee who may resign or be dismissed for any cause, other than for peculation or theft, shall be entitled to receive payment for any annual leave which may have been due up to the time of leaving the service: Provided always that if the employee has been dismissed for peculation or theft no claim for annual leave shall be recognised. Misconduct herein referred to shall not affect accumulated annual leave or payment thereof.

(7) When work is closed down for the purpose of allowing annual leave to be taken, employees with less than a full year's service shall only be entitled to payment during such period for the number of days leave due to them: Provided that nothing herein contained shall deprive the employer of his/her right to retain such employees at work during the close-down period as may be required.

(8) "Ordinary Wages" for the purposes of subclause (1) of this clause shall mean the rate of wage the employee has received for the greatest proportion of the calendar month prior to him/her taking the leave.

(9) The leave provided by this clause shall be taken in such periods as agreed between the employer and the employee provided that no period of leave shall be less than one week.

(10) The provisions of this clause shall not apply to casual employees.

10.—LONG SERVICE LEAVE

The Long Service Leave Standard Provisions published in Volume 77 of the Western Australian Industrial Gazette at pages 1-4 inclusive are hereby incorporated in and shall be deemed to be part of this Award.

11.—COMPASSIONATE LEAVE

(1) An employee shall, on the death within Australia of a wife, husband, father, mother, brother, sister, child or stepchild, be entitled, on notice, of leave up to and including the day of the funeral of such relation and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in two ordinary working days. Proof of such death to be furnished by the employee to the satisfaction of his/her employer.

(2) Payment in respect of compassionate leave is to be made only where the employee otherwise would have been on duty and shall not be granted in any case where the employee concerned would have been off duty in accordance with 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 words "wife" and "husband" shall include a person who lives with the employee as a de facto wife or husband.

12.—EXPENSES

(1) The employer shall reimburse an employee any expenses reasonably incurred by him/her in the service or interest of the employer, provided the employee is able to prove such expense by way of receipts.

(2) As well as to the other matters, this clause shall apply to injuries as to casualties or as to the conduct of employees and to proceedings for any alleged breach of any maritime or port or other regulation unless the Authority conducting the inquiry or proceedings find that the matter has been occasioned by the wilful default or serious misconduct of the employee.

13.—DISPUTES AVOIDANCE PROCEDURE

(1) The Unions and the Employer shall undertake all necessary steps to ensure that the following procedure herein applies in the event of a question, dispute or difficulty arising under this Award; the intention being that any or all disputes shall be promptly resolved by conciliation in good faith.

(2) Matters Likely to Become Industrial Disputes

The employer and the relevant union shall respectively notify each other as soon as possible of any industrial matter which in the opinion of the party notifying might give rise to an industrial dispute including consultation prior to the introduction of a new method of work or new technology.

(3) Disputes at Job Level

(a) In the event of a dispute arising at the job level, the employee and the General Manager shall confer immediately.

(b) If not resolved the employee's Union will be notified and will confer as soon as practical with the General Manager in an attempt to resolve the issue without delay.

(4) Final Reference

(a) Should the foregoing steps fail to resolve the issue within a reasonable time, the matter(s) in dispute shall be referred by either party to the Commission.

(b) The dispute settlement procedures shall not preclude the right of any party to refer a dispute to the Commission at any stage of this procedure if the procedures are not being observed or are otherwise inappropriate in the circumstances.

SCHEDULE 1

UNIONS PARTY TO THIS AWARD

(1) Merchant Service Guild of Australia, Western Australian Branch, Union of Workers.

(2) Australian Institute of Marine and Power Engineers, Western Australian Union of Workers.

SCHEDULE 2

RESPONDENTS

(1) Anthony & Sons t/a Oceanic Cruises.

(2) Boat Torque Cruises Pty Ltd.

(3) Rottnest Cruises Pty Ltd.

(4) Vyscot Pty Ltd t/a Captain Cook Cruises.

COAL INDUSTRY TRIBUNAL—Awards/Agreements—Application for—

WESFARMERS COAL/COAL MINERS' UNION—SHORT FIXED TERM EMPLOYEES AGREEMENT.

No. 4 of 1999.

COAL INDUSTRY TRIBUNAL OF WESTERN AUSTRALIA ACT 1992.

(SECTION 12)

Wesfarmers Coal Limited

and

The Coal Miners' Industrial Union of Workers of Western Australia, Collie.

No. 4 of 1999.

Memorandum Of Agreement.

WHEREAS a conference between Wesfarmers Coal Limited and The Coal Miners' Industrial Union of Workers of Western Australia, Collie was convened by me pursuant to section 12(1) of the Coal Industry Tribunal of Western Australia Act 1992 on 20th July 1999 for the purpose of preventing an industrial dispute regarding the terms of an enterprise agreement relating to the terms and conditions to apply to special short term work at the Premier Mine;

AND WHEREAS agreement has been reached between the parties in terms of the schedule annexed hereto and signed by me in accordance with section 12(3) of the Act is a memorandum of the matters upon which agreement has been reached and the terms and conditions agreed upon.

DATED at Perth this 20th day of July, 1999.

(Sgd.) G.L. FIELDING,
[L.S.] Chairman.
Coal Industry Tribunal Of Western Australia.

Schedule.

Wesfarmers Coal/Coal Miners' Union—Short Fixed Term Employees Agreement

1.0 SCOPE OF WORK

To heap up and remove topsoils and laterite from the "out of pit" East dump. It is intended that the topsoil will be placed on the dump at the southern end of Piva's paddock and the laterite on the existing laterite dump at the eastern edge of the East dump area.

2.0 CONDITIONS OF EMPLOYMENT

2.1 The short/fixed term employees will be employed under the current conditions of the Wesfarmers Coal Enterprise Agreement—Operations 1998. Except where the following conditions override the agreement.

2.2 The operators will be employed for a fixed period of six months.

2.3 If an extension of this period of time is required, consultation is to occur with the Miners' Union prior to the completion of the six month period.

2.4 Accumulated sick leave to be paid out at the end of the period.

2.5 Accumulated annual leave to be paid out at the end of the period.

2.6 A severance payment to be made on the basis of—

Period of Continuous Service	Severance Pay
0-3 months	Nil
3 mths – 6 mths	1 week's pay
6 mths – 9 mths	2 week's pay

No pro-rata long service leave will be paid.

2.7 The employee will be entitled to a thermos, one set of boots and either two sets of work clothes or one set of work clothes and one jacket.

2.8 If an urgent personal need arises the employee can apply for part of their accrued annual leave. Their request will be taken into consideration and assessed on its merits by the Department Manager.

2.9 The employer shall pay or cause to be paid workers' compensation during the incapacity of the employee, within the meaning of the Workers' Compensation and Rehabilitation Act until such incapacity ceases, or until the expected termination date for the short/fixed term employee, whichever shall occur first.

2.10 The employee shall be employed as a Level 3 mine operator.

2.11 If for any reason the work cannot be performed in East dump area (including the positions being filled internally), employees will be utilised in the normal operational areas.

Signed on behalf of:	Signed on behalf of:
WESFARMERS COAL LIMITED	MINERS' UNION
A.J. Coles (signed)	G. Wood (Signed)
GENERAL MANAGER—OPERATIONS	
Date: 1/6/1999	Dated: 1/6/1999