Western Australian

Industrial Gazette

PUBLISHED BY AUTHORITY

Sub-Part 7 WEDNESDAY, 25 OCTOBER, 2000 Vol. 80—Part 2

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

CUMULATIVE CONTENTS AND DIGEST APPEAR AT THE END OF THIS PUBLICATION

INDUSTRIAL APPEAL COURT—Appeals against decision of Full Bench—

[2000] WASCA 233

JURISDICTION: WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT

CITATION: RE THE AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION OF WORKERS—WESTERN AUSTRALIAN BRANCH [2000] WASCA 233

CORAM: KENNEDY J (Presiding Judge)
SCOTT J
WHEELER J

HEARD: 1 MAY 2000

DELIVERED: 28 AUGUST 2000

FILE NO/S: IAC 2 of 2000

MATTER: An appeal against the decision of the Full Bench of the Western Australian Industrial Relations Commission

BETWEEN: RE THE AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION OF WORKERS—WESTERN AUSTRALIAN BRANCH
Appellant

Catchwords—

Industrial law (WA)—Industrial Relations Commission—Coverage of employee organisations—Application for exclusive right to represent industrial interests of employees in an enterprise—Request for secret ballot of employees of enterprise—Whether Industrial Relations Commission has the power to order a secret ballot of the employees of the enterprise

Legislation—

Industrial Relations Act 1979, s 26(1)(b), s 27, s 72A, s 93(8)

Result—

Appeal dismissed

Representation—

Counsel—

Appellant:	Mr R D Farrell
The Food Preservers' Union of Western Australia, Union of Workers:	Mr R L Le Miere QC & Mr J G M Fiocco
Inghams Enterprises Pty Ltd:	Mr D S Ellis

Solicitors—

Appellant:	Derek Schapper
The Food Preservers' Union of Western Australia, Union of Workers:	Fiocco Hopkins Nash
Inghams Enterprises Pty Ltd:	Freehill Hollingdale & Page

Case(s) referred to in judgment(s)—

re Construction, Forestry, Mining and Energy Union, unreported; Australian Industrial Relations Commission (Duncan DP); C No 22192 of 1993; 10 May 1996

re Construction, Forestry, Mining and Energy Union, unreported; Australian Industrial Relations Commission (O'Connor P); C No 22192 of 1993; 23 May 1995

Robe River Iron Associates v Federated Engine Drivers' and Firemens' Union of Workers of Western Australia (1986) 67 WAIG 315

Case(s) also cited—

Australian Workers' Union, West Australian Branch, Industrial Union of Workers v The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch (1999) 79 WAIG 3012

Re Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch (1997) 78 WAIG 1581

Eastern Goldfields Amalgamated Butchers' Industrial Union of Workers v Allen (1908) 7 WAAR 155

Re Hospital Salaried Officers Association of Western Australia (Union of Workers) (1996) 76 WAIG 1673

House v The King (1936) 55 CLR 499

R v Forbes; ex parte Bevan (1972) 127 CLR 1

1 **JUDGMENT OF THE COURT**: By a notice of application filed in the Western Australian Industrial Relations Commission on 5 January 2000 (FBM 1 of 2000), the appellant applied for the following orders

pursuant to the provisions of s 72A of the *Industrial Relations Act 1979* ("the Act")—

"1. The [appellant] shall have the right to represent under the *Industrial Relations Act 1979* the industrial interests of all those persons employed by Inghams Enterprises Pty Ltd at Osborne Park or such other location as the undertaking at Osborne Park may subsequently be carried out.

2. The Food Preservers' Union of Western Australia Union of Workers shall not have the right to represent under the *Industrial Relations Act 1979* the industrial interests of any of those persons employed by Inghams Enterprises Pty Ltd at Osborne Park or such other location as the undertaking at Osborne Park may subsequently be carried out.

3. In this order, Inghams Enterprises Pty Ltd includes its successors, assignees, transmittees or any purchaser of the whole or any part of its business."

2 The grounds for that application were said to be as follows—

"Inghams Enterprises Pty Ltd employs a number of persons at its chicken processing plant at Osborne Park including maintenance tradespersons and production workers. The maintenance tradespersons are covered by the [appellant]. The production workers wish to be represented in their industrial interests by the [appellant] and not by the Food Preservers' Union. The appellant seeks an exclusive representation order to give effect to the wishes of the employees and to facilitiate efficient and orderly representation of the employees."

3 By an undated interlocutory application, filed on 25 February 2000, the appellant sought the following orders—

"A. That—

1. A secret ballot ("the ballot") be conducted of those employees of Inghams Enterprises to whom application FBM1 of 2000 relates for the purpose of assisting the Commission determine the wishes of those employees as to industrial representation.

2. The [appellant] and interveners in proceeding FBM1 of 2000 shall confer as to the form, manner and date of conduct of the ballot and report back to the Full Bench by [insert date] (*sic*).

3. This application and application FBM1 of 2000 be adjourned to [insert date] (*sic*).

4. There be liberty to apply to the party and the interveners.

Alternatively

B. That—

1. The Registrar shall investigate the wishes of employees of Inghams Enterprises to whom application FBM1 of 2000 relates as to industrial representation and shall report thereon to the Full Bench.

2. The investigation shall be carried out by way of secret ballot of the employees.

3. Prior to commencing the ballot the Registrar shall confer with the [appellant] and interveners in proceeding FBM1 of 2000 as to the form, manner and date of conduct of the ballot."

4 The grounds upon which this application was brought were particularised as follows—

"Application FBM1 of 2000 is an application by the AMWU under s 72A for exclusive representation orders in respect of employees of Inghams Enterprises.

An important factor in the exercise of the Full Bench's discretion under s 72A is the wishes of the employees. Objective ascertainment of those wishes is best done by a secret ballot of the employees conducted by an independent person.

The orders sought will ensure, as far as possible, objective ascertainment of the wishes of employees and thereby facilitate the proper exercise of the Full Bench's discretion.

Further, the conduct of the ballot may altogether obviate the need for any further proceedings in application FBM1 of 2000."

5 The Full Bench, in a unanimous decision, dismissed the appellant's application, holding that it had no power under either s 27(1) or s 93(8) of the Act to make the orders sought. The appellant has appealed against that decision.

6 Section 72A(2) of the Act enables an organization of employees to apply to the Full Bench of the Commission for an order that the organization has the right, to the exclusion of another organization or organizations, to represent, under the Act, the industrial interests of a particular class or group of employees employed in an enterprise who are eligible for membership of the organization. The term "enterprise" is defined, *inter alia*, as a business that is carried on by a single employer. By s 72A(5), the Full Bench is prohibited from making an order under s 72A(2) without giving persons who, in its opinion, have a sufficient interest in the matter an opportunity of being heard.

7 There is an express reference in s 56 of the Act to secret ballots. This requires the rules of organizations to provide for secret ballots in relation to any election for office within those organizations. And see also s 55(4)(e), s 57, s 62(3) and s 69. In addition, s 97E empowers the Commission to order a pre-strike secret ballot where a strike is contemplated or believed to be contemplated by members of an organization of employees in order to ascertain whether a majority of those members endorse or do not endorse participation in a strike. Detailed provisions are laid down in Pt VIB of the Act as to the holding of the ballot. See also s 32. There are no other relevant provisions to be found in the Act regarding secret ballots.

8 The appellant relies upon three provisions in the Act, namely, s 26(1)(b), s 27(1)(v) and s 93(8), as conferring upon the Full Bench the power to make the orders sought.

9 Section 26(1) prescribes the manner in which the Commission is to exercise its jurisdiction under the Act. Paragraph (a) requires it to act according to equity, good conscience and the substantial merits of the case, without regard to technicalities or legal forms. Paragraph (b) provides that the Commission shall not be bound by any rules of evidence. It is in this context that it is provided that the Commission may inform itself on any matter in such a way as it thinks just. This is not an unusual provision—see, for example, the former s 656 of the *Criminal Code*, now replaced by s 15 of the *Sentencing Act 1995*. Section 26(3), which requires the Commission, when proposing or intending to take into account any matter or information that was not raised before it on the hearing of the matter, to afford the parties concerned the opportunity of being heard in relation to that matter or information. Section 26(1)(b) enables the Commission to refer to whatever materials it thinks fit, notwithstanding that, under the ordinary rules of evidence, it would be inadmissible. It does not enable the Commission to require an employer to submit to a secret ballot of its employees and to provide details of those employees to enable the ballot to be conducted. It is also to be noted that the employer in this case is not even a party to the present proceedings, it merely having been given the right to be heard.

10 Section 27(1)(v) of the Act provides as follows—

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

(a) at any stage of the proceedings dismiss the matter or any part thereof or refrain from further hearing or determining the matter or part if it is satisfied—

(i) that the matter or part thereof is trivial;

(ii) that further proceedings are not necessary or desirable in the public interest;

(iii) that the person who referred the matter to the Commission does not have a sufficient interest in the matter; or

(iv) that for any other reason the matter or part should be dismissed or the hearing thereof discontinued, as the case may be;

(b) take evidence on oath or affirmation;

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

(d) proceed to hear and determine the matter or any part thereof in the absence of any party thereto who has been duly summoned to appear or duly served with notice of the proceedings;

(e) sit at any time and place;

(f) adjourn to any time and place;

[(g) deleted]

(h) direct any person, whether a witness or intending witness or not, to leave the place wherein the proceedings are being conducted;

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

(j) direct parties to be struck out or persons to be joined;

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

(l) allow the amendment of any proceedings on such terms as it thinks fit;

(m) correct, amend, or waive any error, defect, or irregularity whether in substance or in form;

(n) extend any prescribed time or any time fixed by an order of the Commission;

(o) make such orders as may be just with respect to any interlocutory proceedings to be taken before the hearing of any matter, the costs of those proceedings, the issues to be submitted to the Commission, the persons to be served with notice of proceedings, delivery of particulars of the claims of all parties, admissions, discovery, inspection, or production of documents, inspection or production of property, examination of witnesses, and the place and mode of hearing;

(p) enter upon any manufactory, building, workshop, factory, mine, mine-working, ship or vessel, shed, place, or premises of any kind whatsoever, wherein or in respect of which any industry is or is reputed to be carried on, or any work is being or has been done or commenced, or any matter or thing is taking or has taken place, which is the subject of a matter before the Commission or is related thereto;

(q) inspect and view any work, material machinery, appliance, article, book, record, document, matter, or thing whatsoever being in any manufactory, building, workshop, factory, mine, mine-working, ship or vessel, shed, place or premises of a kind referred to in paragraph (p);

(r) question any person who may be in or upon any such manufactory, building, workshop, factory, mine, mine-working, ship or vessel, shed, place or premises in respect or in relation to any such matter or thing;

(s) consolidate or divide proceedings relating to the same industry and all or any matters before the Commission;

(t) with the consent of the Chief Commissioner refer the matter or any part thereof to the Commission in Court Session for hearing and determination by the Commission in Court Session;

(u) with the consent of the President refer to the Full Bench for hearing and determination by the Full Bench any question of law, including any question of interpretation of the rules of an organization, arising in the matter; and

(v) generally give all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of the matter.

(1a) Except as otherwise provided in this Act, the Commission shall, in relation to any matter before it, conduct its proceedings in public unless the Commission, at any stage of the proceedings, is of the opinion that the objects of the Act will be better served by conducting the proceedings in private.

(2) The powers contained in subsection (1)(p), (q) and (r) may, if the Commission so directs in any case, be exercised by an officer of the Commission or by an expert to whom any matter has been referred by the Commission."

11 There is no express power in this section enabling the Commission itself to conduct a secret ballot or to delegate that task to anyone else—cf s 27(1)(p), (q) and (r) and s 27(2).

12 Section 27(1)(v) was considered by this Court in ***Robe River Iron Associates v Federated Engine Drivers' and Firemens' Union of Workers of Western Australia*** (1986) 67 WAIG 315. That case arose out of a manning dispute with respect to mechanical shovels. The Commission in Court Session had made an interim order to preserve the existing manning level. The order was made, not within conciliation proceedings, but while arbitration proceedings were pending. It was apparent that the Commission had relied upon s 27(1)(v) as the source of its power. At 317, Brinsden J said—

> "Under section 27(1)(v) the only things that may be done are giving of directions and doing all such things as are necessary or expedient "for the expeditious and just hearing and determination of the matter". All the other items of power provided by section 27 with possibly two or three exceptions are particular matters of procedure relevant to the hearing and determination of the matter. Three of the items are concerned with entry upon a manufactory or similar type of building, inspection of work and machinery and other items in any such manufactory or building, and questioning any person who may be in or upon any such manufactory or building, all of which items might be regarded as items giving the Commission power to better inform itself in respect of the subject matter of a dispute. The interim order is one which directly deals with an industrial procedure in the industry in respect of which the parties are engaged. The respondent contends that section 27(1)(v) supports such an order but for that to be so then the subsection must be given a very wide interpretation beyond merely a dragnet clause

to cover any other form of direction or order or action of a procedural nature not covered specifically by the foregoing items. The *Commonwealth Conciliation and Arbitration Act 1904 and Amendments* [since replaced by the *Industrial Relations Act 1988*] has a similar provision to s 27 in s 41 and it contains in s 41(1)(o) an identical provision to s 27(1)(v). That subsection in the Commonwealth Act, when it was s 40(1)(p), was considered in the case of *Gas Employees (Victoria) Award and Ors* (1948) 61 CAR 2000 when it was held that it amounted to a machinery provision only. As the Court held, a section like section 40 or 41 is a section which enables the Court to deal with matters which have been properly brought before it. They do not confer substantive jurisdiction but merely legislate for the method by which the Court may exercise the jurisdiction already conferred upon it by other sections. I see no significant difference between the Commonwealth Act and the Act to justify us in giving to s 27(1)(v) any wider construction other than as a machinery provision."

13 His Honour then went on to indicate that he was unable to accept that the interim order had any relevance either directly or indirectly to furthering "the expeditious and just hearing and determination" of the matter. At 319 in the report, Kennedy J arrived at the same conclusion, while Olney J agreed with the reasons delivered by Brinsden J and Kennedy J.

14 In our opinion, par (v) is concerned only with directions in connection with the conduct of the proceedings and relates to procedural matters only. It does not authorise the Commission to make an order of the nature now sought. A secret ballot is not relevantly a mode of proceeding.

15 We were referred by the appellant to two decisions of the Australian Industrial Relations Commission in support of its argument under s 27(1)(v). The first was a decision of President O'Connor in ***Re Construction, Forestry, Mining and Energy Union***, unreported; Australian Industrial Relations Commission (O'Connor P); C No 22192 of 1993; 23 May 1995. This case concerned an application for a ballot to be held of certain employees with respect to a demarcation dispute relating to the extent of representation of the industrial interests of those employees. Reliance was placed upon s 111(1)(t) and s 135(1) of the *Industrial Relations Act 1988 (Cth)*. Subject to the Act, s 111(1)(t) empowers the Commission, in relation to an industrial dispute, to "generally give all such directions, and do all such things, as are necessary or expedient for the speedy and just hearing and determination of the industrial dispute". Section 135(1), which has no counterpart in the Western Australian Act, provides—

"135.(1) Where—

(a) an organisation is concerned in an industrial dispute with which the Commission or another tribunal acting under a law of the Commonwealth is empowered to deal (whether or not proceedings in relation to the dispute are before the Commission or other tribunal); and

(b) the Commission considers that the prevention or settlement of the industrial dispute might be helped by finding out the attitudes of the members, or the members of a section or class of the members, of the organisation or a branch of the organisation in relation to a matter;

the Commission may order that a vote of the members be taken by secret ballot (with or without provision for absent voting), in accordance with directions given by the Commission, for the purpose of finding out their attitudes to the matter."

16 Without providing any reasons, O'Connor P ruled that s 111(1)(t) was a general power which enabled the Commission to give all such directions, and to do all such things, as were necessary or expedient for the speedy and just hearing and determination of the industrial dispute. She merely said—

"I am satisfied that the Commission has power under section 111(1)(t) of the Act to order the conduct of such a ballot, and am therefore of the view that it is not necessary to determine whether power also exists under section 135."

17 The second decision was delivered in the same dispute, following O'Connor P having found that the Commission had the power to order that a ballot be held. In ***Re Construction, Forestry, Mining and Energy Union***, unreported; Australian Industrial Relations Commission (Duncan DP); C No 22192 of 1993; 10 May 1996, Duncan DP decided that the power should be exercised in that case. Duncan DP was not required to consider whether the power existed. In the circumstances, neither decision is of any persuasive value in this matter.

18 The third provision relied upon by the appellant, s 93(8), provides—

"(8) The Commission may at any time of its own motion direct the Registrar or any other officer of the Commission to make such investigations and reports in relation to any matter within the jurisdiction of the Commission as it deems necessary."

This section comes under the general heading of the appointment and duties of officers. It is not a provision, in our opinion, which would enable the Commission to direct the Registrar or another officer to gather evidence for the benefit of a party to the proceedings in order to assist it in its application. In our view, the holding of a secret ballot is not relevantly an "investigation". Nor is it a "report", although the application is couched in that language. Section 93(8), in our opinion, is directed to matters such as those referred in s 93(9), that is to say, the initiation of proceedings for breaches of duty by finance officials of organisations, the enforcing of awards and orders of the Commission and the taking of proceedings for offences.

19 In our opinion, none of the provisions relied upon by the appellant confers upon the Commission the power to make the orders sought by it. Accordingly, we would dismiss this appeal. We would add that we can detect no error in law in the decision of the Full Bench that, if it had the power to make the order sought, it would decline to exercise it.

2000 WAIRC 00527

WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT

PARTIES	RE: THE AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION OF WORKERS—WESTERN AUSTRALIAN BRANCH
CORAM	JUSTICE KENNEDY (PRESIDING JUDGE) JUSTICE SCOTT JUSTICE WHEELER
DELIVERED	MONDAY, 28 AUGUST 2000
FILE NO/S	IAC 2/2000
Result	Appeal Dismissed
Representation	
	Mr RD Farrell, Appellant
	Mr RL LeMiere QC and Mr JGM Fiocco, The Food Preservers Union of Western Australia, Union of Workers
	Mr DS Ellis, Inghams Enterprises Pty Ltd

Order.

HAVING heard Mr RD Farrell (of Counsel) for the Appellant and Mr RL LeMiere QC and with him Mr JGM Fiocco (of

Counsel) for The Food Preservers Union of Western Australia, Union of Workers and Mr DS Ellis (of Counsel) for Inghams Enterprises Pty Ltd, THE COURT HEREBY ORDERS THAT—

The Appeal be dismissed.

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

INDUSTRIAL APPEAL COURT—

2000 WAIRC 00801

WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT

PARTIES	THE FOOD PRESERVERS' UNION OF WESTERN AUSTRALIA, UNION OF WORKERS APPLICANT *v.* THE AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION OF WORKERS — WESTERN AUSTRALIAN BRANCH FIRST RESPONDENT *v.* INGHAMS ENTERPRISES PTY LTD SECOND RESPONDENT
CORAM	JUSTICE ANDERSON
DELIVERED	THURSDAY, 28 SEPTEMBER 2000
FILE NO/S	IAC 7 OF 2000
CITATION NO.	2000 WAIRC 00801

Result	Application for Stay of FBM 1 of 2000, dated 7 September 2000, refused
Representation	Mr I Viner (of Queens Counsel) and with him Mr MD Cuerdon (of Counsel), Applicant Mr R Farrell (of Counsel) and with him Mr DH Schapper (of Counsel), First Respondent Mr S Ellis (of Counsel), Second Respondent

Order.

HAVING heard Mr I Viner (of Queens Counsel) and with him Mr MD Cuerdon (of Counsel) for the Applicant and Mr R Farrell (of Counsel) and with him Mr DH Schapper (of Counsel) for the First Respondent and Mr S Ellis (of Counsel) for the Second Respondent, THE COURT HEREBY ORDERS THAT—

The Application be refused

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

FULL BENCH— Appeals against decision of Commission—

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Maxwell Raymond Healy
(Appellant)

and

The King and I Pty Ltd
(Respondent).

No FBA 2 of 2000.

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

26 June 2000.

Order.

This matter having come on for hearing before the Full Bench on the 23rd day of June 2000, and having heard Mr R R Cywicki (of Counsel), by leave, on behalf of the appellant and Mr A D Lucev (of Counsel), by leave, and with him Mr D C Heldsinger (of Counsel), by leave, on behalf of the respondent, it is this day, the 26th day of June 2000, ordered and directed as follows—

(1) THAT leave be and is hereby granted to the appellant to amend the grounds of appeal in accordance with the "Minute of Proposed Supplementary Grounds of Appeal" by inserting paragraphs 13, 14, 15 and 16 after the existing ground 12 of the grounds of the appeal at page 6 of the Appeal Book.

(2) THAT the appeal be and is hereby adjourned to be listed for hearing and determination on the 22nd day of August 2000.

By the Full Bench

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

2000 WAIRC 00868

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES	MAXWELL RAYMOND HEALY, APPELLANT *v.* THE KING AND I PTY LTD, RESPONDENT
CORAM	FULL BENCH HON PRESIDENT P J SHARKEY CHIEF COMMISSIONER W S COLEMAN COMMISSIONER J H SMITH
DELIVERED	FRIDAY, 13 OCTOBER 2000
FILE NO/S	FBA 2/2000

Decision	Appeal dismissed.
Appearances	
Appellant	Mr R R Cywicki (of Counsel), by leave
Respondent	Mr A D Lucev (of Counsel), by leave, and with him Mr D C Heldsinger (of Counsel), by leave

Reasons for Decision.

INTRODUCTION

THE PRESIDENT—

1 This is an appeal by the appellant, Maxwell Raymond Healy, against the whole of the decision of the

Commission, constituted by Commissioner C B Parks, given on 31 January 2000, in matter No 2157 of 1998, and contained in an order dated 31 January 2000, perfected by deposit in the office of the Registrar on the same date (see page 21 of the appeal book (hereinafter referred to as "AB")), whereby the Commissioner dismissed an application by the appellant made pursuant to s.29(1)(b)(ii) of the *Industrial Relations Act* 1979 (as amended) (hereinafter referred to as "the Act").

2 The appeal is properly brought pursuant to s.49 of the Act.

3 The appellant alleged that he had not been allowed by his former employer, the respondent company, a benefit to which he was entitled under his contract of service and he sought to recover the alleged benefits from the respondent by way of an order of the Commission.

GROUNDS OF APPEAL

4 It is against that decision that the appellant now appeals on the following grounds, as amended—

"1. The Learned Commissioner erred in law in drawing the conclusion that the appellant's contention as to the meaning of the words "gross office commission" in clause 2.5 of the "Workplace Agreement" ("the Agreement") had the consequence in clause 2.6 of obligating the respondent to provide advertising reckoned on a percentage of the gross commission aggregated from all "offices", having regard to the following—

(a) the fact that at the date the Agreement was made on or about 9 May 1996 the respondent only had one "office", at Toodyay; and

(b) the word "office" used by the parties in the Agreement was plainly intended by them to be synonymous with the respondent as there was in fact only one "office" at the date of the Agreement; and

(c) at the date the Agreement was made in on 9 May 1996 and at all other material times the respondent was the "office" by reason that only one person or entity can be granted a Triennial Certificate under the Real Estate Agents Act, 1978 to operate a real estate agency, irrespective of the number of registered branch "offices" that agency operates from time to time; and

(d) the Learned Commissioner's conclusion that the terms and conditions of the Agreement had not been varied by the parties to incorporate the terms of the Office Procedures Manual; and

(e) there was no evidence before the Learned Commissioner that the parties had varied the terms of the Agreement since 9 May 1996 by further agreement or otherwise, notwithstanding that the respondent had opened other registered branch "offices"; and

(f) at the time clause 2.6 of the Agreement was made the reference in that clause to 7% of "Gross Office Commission" was plainly intended by the parties to mean 7% of the gross commission received by the respondent on each sale.

2. By reason of the errors referred to in Ground 1 the Learned Commissioner erred further in failing to draw the conclusion that the appellant's contention referred to in Ground 1 obligated the respondent to provide advertising reckoned on a percentage of the gross commission received by the respondent from each sale, irrespective of the number of registered branch offices it had when the sale was made or between which registered branch offices it decided to allocate or apportion the costs of advertising or other costs incurred in making that sale.

3. The Learned Commissioner erred in law by failing to consider the meaning of the words "gross office commission" in clause 2.5 of the Agreement having regard to what the parties intended those words to mean in the context of their agreement, including the following facts—

(a) the fact that at the date the Agreement was made on or about 9 May 1996 the respondent only had one "office", at Toodyay; and

(b) the word "office" used by the parties in the Agreement was plainly intended by them to be synonymous with the respondent as there was in fact only one "office" at the date of the Agreement; and

(c) at the date the Agreement was made in on 9 May 1996 and at all other material times the respondent was the "office" by reason that only one person or entity can be granted a Triennial Certificate under the Real Estate Agents Act, 1978 to operate a real estate agency, irrespective of the number of registered branch offices that agency operates; and

(d) the Learned Commissioner's conclusion that that the terms and conditions of the Agreement had not been varied by the parties to incorporate the terms of the Office Procedures Manual; and

(e) there was no evidence before the Learned Commissioner that the parties had varied the terms of the Agreement since 9 May 1996 by further agreement or otherwise, notwithstanding that the respondent had opened other registered branch "offices".

4. By reason of the errors referred to in Ground 3 the Learned Commissioner erred further by failing to draw the conclusion that the word "office" in the context of the Agreement was synonymous with the respondent and the words "gross office commission" in the Agreement meant the gross commission received by the respondent from sales of properties from listings or sales made by the appellant.

5. The Learned Commissioner erred by failing to draw the conclusion that pursuant to clause 2.5.2(b) of the Agreement the appellant was entitled to 50% of the gross commission received by the respondent for sales made which resulted from listings acquired by the appellant canvassing specified areas.

6. The Learned Commissioner erred by failing to draw the conclusion that pursuant to clause 2.5.2(b) of the Agreement the appellant was entitled to 50% of the gross commission received by the respondent irrespective of whether the appellant sold the property himself or whether another person sold the property by arrangement with the appellant.

7. The Learned Commissioner erred further by failing to draw the conclusion that the appellant could, and did, enter into arrangements with other sales representatives employed by the respondent whereby he would agree to share his 50% of the gross commission with them if they were the effective cause of the sale being made.

8. The Learned Commissioner erred by failing to draw the conclusion that in the case of the sale of 280 Forrest Hills Parade, Bindoon ("Forrest Hills"), the appellant entered into an agreement with Mr J G Douglas to share his 50% of the gross commission on the sale with Mr Douglas if Mr Douglas was the effective cause of the sale.

9. The Learned Commissioner erred in failing to draw the following conclusions from the facts as to the sale of Forrest Hills—

(a) the appellant disputed that Mr Douglas was the effective cause of the sale of Forrest Hills; and

(b) the respondent had not paid the appellant 50% of the gross office commission on the sale, being $2,697.50, which was due and owing to the appellant by reason of him listing the property in accordance with clause 2.5.2(b) of the Agreement; and

(c) the respondent wrongfully retained an additional 9% of the gross office commission on the sale for itself (being $485.55), giving it 59% of the gross office commission; and

(d) the respondent had paid 16% of the gross office commission (being $863.20) to Mr Douglas; and

(e) there was no evidence the appellant had actually or impliedly authorised the respondent to deduct the sum of $1,358.75 from the appellant's 50% of the gross office commission or to pay Mr Douglas any share of the appellant's 50% share of the gross office commission; and

(f) the sum of $1,358.75 was still owed by the respondent to the appellant for the Forrest Hills sale.

10. The Learned Commissioner erred by failing to draw the conclusion that in the case of the sale of 201 Greenhead Road, Bullsbrook ("Greenhead"), the appellant entered into an agreement with Mr B J Dale to share his 50% of the gross commission on the sale with Mr Dale if Mr Dale was the effective cause of the sale.

11. The Learned Commissioner erred in failing to draw the following conclusions from the facts as to the sale of Greenhead—

(a) the appellant disputed Mr Dale was the effective cause of the sale of Greenhead; and

(b) the respondent had not paid the appellant 50% of the gross office commission on the sale, being, $2,708.75, which was due and owing to the appellant by reason of him listing the property in accordance with clause 2.5.2(b) of the Agreement; and

(c) the respondent wrongfully retained an additional 9% of the gross office commission on the sale for itself (being $487.57), giving it 59% of the gross office commission; and

(d) the respondent had paid 16% of the gross office commission (being $866.80) to Mr Dale; and

(e) there was no evidence the appellant had actually or impliedly authorised the respondent to deduct the sum of $1,354.37 from the appellant's 50% of the gross office commission or to pay Mr Dale any share of the appellant's 50% share of the gross office commission; and

(f) the sum of $1,354.37 was still owed by the respondent to the appellant for the Greenhead sale.

12. The Learned Commissioner erred by failing to draw the following conclusions from the facts in the case of the sale of Rocky Gully Properties, Rocky Gully ("Rocky Gully)—

(a) Colin King and his wife Eileen King were the directors and shareholders of the respondent at all material times; and

(b) the appellant obtained and listed Rocky Gully in accordance with clause 2.5.2(b) of the Agreement; and

(c) the appellant had discussions with Colin King in his capacity as his employer concerning the marketing and selling of Rocky Gully because it was a large sale, being $14,000,000.00; and

(d) Colin King was involved in the sale of Rocky Gully; and

(e) the Appellant was not aware of the arrangements Colin King had with the respondent as to what payment, if any, Colin King would get from the 50% gross office commission the respondent would be paid from the sale of Rocky Gully; and

(f) there was no evidence of any agreement made between Colin King and the appellant for Colin King to receive any part of the appellant's 50% of the gross office commission; and

(g) the Agreement does not refer to "inter office conjunctional sales" where the commission earned on a sale would be divided between different registered branch offices operated by the respondent; and

(h) there is no actual or implied term in the Agreement which permits the respondent to divide the gross office commission between its various registered branch offices; and

(i) the respondent did not pay the appellant 50% of the gross office commission on the sale of Rocky Gully, being $141,187.49, which was due and owing to the appellant by reason of him listing the property in accordance with clause 2.5.2(b) of the Agreement; and

(j) the respondent wrongfully allocated 50% of the gross office commission to its registered branch office at Midland and 50% to its registered branch office at York, thereby seeking to split the gross office commission; and

(k) the respondent wrongfully paid Colin King 12.5% of the gross office commission for supposedly "listing" Rocky Gully with its Midland office and a further 12.5% for supposedly selling Rocky Gully, being a total of $70,593.74, giving Colin King, and his wife as the directors and shareholders of the respondent 75% of the gross office commission, being $211,781.23; and

(l) there was no evidence the appellant had actually or impliedly authorised the respondent to deduct the sum of $70,593.75 from the appellant's 50% of the gross office commission or to pay Mr King or to retain any share of the appellant's 50% share of the gross office commission; and

(m) the sum of $70,593.75 is still owed by the respondent to the appellant for the Rocky Gully sale.

13. The Learned Commissioner erred in law in failing to define and analyse the operation of "a conjunctional sale".

14. Had the Learned Commissioner analysed and defined the said term the Learned Commissioner would have found that the "valley property", the "Bindoon property" and the "Bullsbrook property" were not the subject of conjunctional sales.

15. The Learned Commissioner erred in law in holding that in conjunctional sales the commission received by the respondent from the vendor was divided evenly between each of the respondent's two offices as such finding was against the weight of evidence.

16. The Learned Commissioner erred in law in failing to have any regard to evidence that the Respondent in its books of account to the Franchisor (sic) had credited the entire gross commission of the "valley property" to the York branch of its office."

BACKGROUND

5 The appellant, by his application, claimed that he, a real estate salesperson, or representative, was entitled to commissions arising from listing for sale and/or the sale of several named properties, which claims were amended by the consent of the respondent at the hearing. There was a quantity of documentary evidence and there was oral evidence, for the respondent, from the appellant, Mr Maxwell Raymond Healy, Mr James Graham Douglas, Mr Brian John Dale, Mr John Eugene Butler, Mr Colin Maxwell King and Mrs Elaine Helen King, former employees of the respondent, and, for the appellant, Mr Carlos David Scheer, the Acting Licensing Officer in the Ministry of Fair Trading's Real Estate Branch, and Ms Jennifer Anne Stageman, a real estate agent, formerly a real estate salesperson, employed by the respondent. Mrs King was also called by the appellant at first instance.

6 By the amended claims, it was alleged that there was a balance of commission due and payable to the appellant which he had not received from the respondent in relation to the sale of three properties. It was common ground that he had been paid some commission in an amount which the respondent contended was sufficient to satisfy the appellant's entitlement.

7 Those properties were and the balance of commission claimed was as follows—

1. Spring Valley and Red Valley, Rocky Tully Property (the "Valleys")—$70,593.74
2. 280 Forrest Hills Parade, Bindoon (the "Bindoon property")—$1,365.60
3. 201 Greenhead Road, Bullsbrook (the "Bullsbrook property")—$1,365.60

8 At all material times, the respondent company carried on the business of a real estate and business agent. The directors of the respondent were a husband and wife, Mr Colin King and Mrs Elaine King.

9 Mr Scheer informed the Commissioner that all fees and payments must go to "The King and I Pty Ltd", trading as "L J Hooker Rural WA". There was no evidence that they did not. The name under which the business was carried on was "L J Hooker Rural WA". At all material times, the respondent company was the holder of a Triennial Certificate issued to it under the *Real Estate and Business Agents Act* 1978 (as amended) (hereinafter referred to as "the Real Estate Act") in respect of the respondent's Midland Branch office and its registered branch offices, named respectively as York, Toodyay, and Northam with the Branch Managers named thereon (exhibit 2 (see pages 260-261(AB))). The appellant was, at all material times, an employee salesperson or representative. It is quite clear that, for the purposes of the Real Estate Act, the business was one known as "L J Hooker Rural WA".

10 Sales representatives, too, are registered as working for The King and I Pty Ltd, Mr Scheer said, there being no specification of the branch office in which each works. It is quite clear, and it would be open to find, that that does not prevent the employer designating the branch office from which each works, as the respondent did.

11 On 9 May 1996, the appellant entered into an employment contract in writing with the respondent, described as a workplace agreement, and to which I will refer hereinafter. He worked in all, as a sales representative for the respondent, for about six years, the two separate periods being separated by a period of about nine months' absence.

12 The appellant was engaged in the real estate industry for about twenty years. He was, at least originally, employed as a representative working "outside the office", for the respondent.

13 There was no dispute that the appellant acquired the listing for sale in relation to the three properties for which the additional commissions were claimed at first instance and which I have listed above. Whether he sold them all or any of them was another matter.

14 The appellant listed but did not sell the Valleys property or the Bindoon property, but did sell the Bullsbrook property. His contention was that, if he listed or listed and sold, he was entitled to 50% commission.

15 Following upon the sale of each of the three properties (see page 100(AB)), the appellant was paid a commission of 25% of the commission received by the respondent from the vendors of these properties.

16 The appellant claimed that a term of his contract of employment was that, upon the sale of a property listed by him through canvassing outside the office to which he was attached, he became entitled to receive a commission of 50% of the commission paid to the respondent by the vendor of such a property after the sale thereof and its settlement. His evidence was that, taken to its logical conclusion, if he sold a property, he would get 50% of the gross commission paid to the office, "the office" being a term for the head office and all of the branch offices, on his contention, the total amount of commission and the gross commission payable to the office out of which he worked.

17 If another representative listed a property, that would mean that he/she would get what he/she was entitled to under his/her contract. This might also mean that, once in six years, the employer would get nothing from the transaction, he said.

18 There was no dispute before the Commission at first instance that each of the three properties was acquired for listing and listed by the appellant.

19 He therefore claimed that he was entitled to the payment of a further 25% commission, on top of the 25% commission already paid from the commission received by the respondent. Significantly, the appellant conceded in discussion with the Commissioner that whatever amount the office which he worked for received was the gross office commission and his percentage was 50% of that.

20 It was not in issue that the appellant was entitled to commission at the rate of 50% of the "gross office commission" received in relation to the Valleys property. What constituted "gross office commission", for the purposes of the claim, was very much in issue. The appellant opined, in evidence, that gross office commission means the gross amount of commission which comes into the office. By the term, "office", he accounted the main office and the branch office as one office, for that purpose.

21 The evidence for the appellant was that these in-office conjunctional sales, which were said to be conjunctional as much as sales involving two separate agencies were said to be conjunctional, resulted in commission being split three ways. The listing person receiving 60% of 40%, the selling person received 40% of 40% and the balance went to the employer.

22 At and about the material times, the respondent traded under the name of "L J Hooker" Rural Ltd from separately franchised offices located at Midland, Northam, Toodyay and York. The Northam office was closed in 1997, and the other three offices have been sold since. The respondent company contended that each office was a separate operation to the other offices and, therefore, when on the occasion two of the offices were involved in the sale of a property, that sale was considered to be a "conjunctional" sale. The fresh evidence admitted by the Full Bench was an admission by the appellant in other proceedings in this Commission that such a "conjunctional" sale was possible.

23 The appellant worked out of the Midland office, having first commenced his employment at the Toodyay office, as the employment agreement recognises. Mr King, a director of the respondent, worked out of the York office. Both offices, Toodyay and York were, however, involved in the overall process of the listing and sale of the Valleys property. The respondent considered that to be a conjunctional sale between the two offices because the Midland and York offices were involved. Thus, if that assertion was correct, the commission received by the

respondent from the vendor was rightly divided evenly and 50% apportioned to each of the two offices, York and Midland. That is, in fact, what occurred.

24 What, therefore, occurred was that, in relation to the Valleys property sale, 50% of the commission was apportioned to the Midland office and the appellant was in turn paid a commission of 50% of that, the net result being that he was paid 25% of the commission paid to the respondent, being, as the respondent claimed, 50% of the gross office commission.

25 The appellant contended that the "gross office commission" was the full commission paid to the respondent at its head office, the Midland office, because each other office operated by the respondent was not an "office" in its own right, but a branch office. This, he asserted, was clear from the fact that the respondent was a single entity that operated each office which, in accordance with the Real Estate Act, held the necessary triennial certificate (exhibit 2 (see pages 260-261(AB))) authorising the respondent to carry on the business of a real estate and business agent from the prescribed Midland office and, by endorsement, to carry on that business at the offices in Northam, Toodyay and York.

26 Mr King gave evidence that he had been in the real estate industry for 28 years, that he knew the appellant well, and that he was totally surprised by these claims. His evidence was that conjunctional sales between his company's officers were discouraged; that the appellant would get 50% of gross office commission paid to Midland would go to him and which was not denied in evidence, that the appellant "never collected 50% from our company just for listing a property" (see page 120(AB)).

27 The evidence for the respondent was that each of the offices which had been operated by the respondent were the subject of a separate franchise agreement with "L J Hooker" and that each operated independent of the other to the extent that each serviced an allocated area and that conjunctional sales involving two or more different offices of the respondent (i.e. sales representatives) were not encouraged (see the evidence of Mr King and Mrs King).

28 Essentially, sales persons from a given office had no involvement in the area of another office, except by arrangement, i.e. a conjunctional sale. Each office operated separately and as a "separate profit centre" (see the evidence of Mr and Mrs King). That evidence was not disputed and the Commissioner was entitled to find that those facts were the facts.

29 Mrs King gave evidence that an in-office conjunctional sale occurs when two sales people in the one office sell a property. One lists and one sells. Mr Douglas described the Bindoon property sale as such a sale. The commission is split between the two salespersons. If there were a conjunctional sale between two offices (meaning two offices of the respondent), then there is a lister or seller in each office. Because the total gross office commission is the amount of the commission paid to the office (meaning the whole organisation), then if there is a conjunctional sale involved, then the amount paid into the trading account of the office, after the conjunctional dealing is paid, is what is paid to the agents (see pages 148-149(AB)).

30 Mrs King made it clear that, for the purpose of calculating gross office commission, each office is a separate office. Gross office commission, she said, is what is paid into the bank after the payment of conjunctional or referral fees to "other agents". She gave evidence that a conjunctional sale can occur between an outside agent such as "Ray White Dalgety's" and "The King and I", and between their own York and Midland offices, for example, for the respondent's purposes. She made it clear that, before commission is payable, the agent must have effected an inspection of the property with the purchaser, completed an offer and acceptance and that settlement of the contract had to have been completed. All of the commissions payable were calculated on the gross amount paid to the relevant office as commission, each office being a separate office for those purposes. She also described each office as a separate profit centre meaning, as I understood it, that each office earned its own fees, paid its own outgoings and derived its own separately calculated profit. Mrs King's evidence was not shaken in cross-examination.

31 Mr Butler corroborated Mrs King's evidence, as a former manager and now proprietor of the Toodyay office as to the independent nature of the offices, as to the nature of a conjunctional sale, as to the entitlement on a conjunctional sale of representatives to 25% of each of the office commission. He also corroborated the practice that a representative who lists a property but does not carry out a physical inspection is not entitled to commission.

32 I now turn to the relevant transactions.

Sale of the Rocky Gully Property

"The Valleys" (Red Valley and Spring Valley)

33 The appellant listed this property for sale, but Mr King sold it. The sale, as the appellant admitted in evidence, was marked as a conjunctional sale with the Midland office. The split in commission was clearly 50% to the office as such, and 25% each to Mr King and the appellant. The appellant contended that the split should have been 50% to himself and 50% to the office. The rationale for this view was his failure to see Mr King as a fellow employee and salesperson and not his employer.

34 Mr King, it is trite to say, is not and was not the respondent employer. The appellant repeated his contention that the head office and the three branches were all one office. Therefore, his contention was that he was entitled to 50% of the total amount, not 50% of the amount of commission received gross (i.e. before distribution) in the Midland office. Mrs King said in evidence that the appellant listed this property, but did not sell it. Had he sold it, he would have got 50% of the commission. He only listed the property and so he received 50% of the 50%. Two offices and two sales people were involved in this sale. If the appellant were to receive, as he claimed, 50% for listing and 50% for selling, that is 100% of all commission received to the exclusion of the respondent employer, then no employer agent would be in business. That is, it would seem to me, an unimaginable proposition.

Lot 280 Forrest Hills Parade, Bindoon

35 The appellant received 25% of the gross commission at Midland. He had an agreement with Mr Douglas, another of the respondent's sales representatives, to sell the property, which he, the appellant, had listed for sale and share commission 50/50 (see page 86(AB). He was unable to complete the sale because he went to do a real estate course in Sydney. Mr Douglas did not do the inspection. That was the evidence. The appellant did not do the inspection. This was an out of office listing in Bindoon. Mr Douglas, it was not in issue, prepared the offer to purchase and Mr Douglas "signed it up", because the appellant was in Sydney.

36 Mrs Healy, the appellant's wife, was not a licensed real estate representative. According to Mr Douglas, she did not do the inspection, but made a key available to the purchasers to do their own inspection. The appellant contended that Mr Douglas did not take the people through the property, so that he was not the seller of the property. The appellant was paid 25%, and now claims a further 25%.

37 Mr Douglas gave evidence that he sold this property, and there was settlement effected in December 1998. He said that, as the listing agent, the appellant was entitled to 25% of the commission and, as the selling agent, he was entitled to 16%. The remainder would go to the respondent. This he described as fairly standard in the real estate industry. Mr Douglas described himself, too, as the conjunctional agent in the transaction. There was no complaint, he said, when the appellant returned from Sydney, that he had been denied an amount of money due to him.

38 The appellant freely admitted that he did not take the buyer through the property and that Mrs Healy was responsible for that occurring, by giving them the key. Mr Douglas believed that he was entitled to a commission

(see page 135(AB)) because he introduced the buyer to the property, and arranged the "paperwork", including the "paperwork" for the settlement.

The Bullsbrook Property—201 Greenhead Road, Bullbrook

39 The appellant was the listing representative, but he asserted in evidence that Mr Dale was not the selling representative. Indeed, he asserted that Mr Dale was never on the property and that he, the appellant, "did the whole lot" (see page 95(AB)). Further, he said that Mr Dale did not introduce the purchaser and there was no agreement to split commission. The appellant said that, although he and Mr Dale initially agreed to split the commission 50/50, Mr Dale did not comply with the agreement.

40 Mr Dale, who is Mrs King's brother, gave evidence that he referred the vendors to the appellant. The appellant, he said, agreed to show the purchasers through the property and divide the commission 50/50 with Mr Dale. The appellant was paid 25%, being 50% of 50% and Mr Dale was paid 16%. Mr Dale confirmed that, in order to obtain commission, one must list and sell. He agreed that the appellant did the physical inspection with the purchaser, listed the property, wrote the contract and had it accepted, but asserted that he, Mr Dale, (see page 214(AB)) presented the property for settlement.

The Office Procedures Manual

41 There was tendered in the proceedings an "Office Procedures Manual" (exhibit 3) (hereinafter referred to as "the manual"). The respondent said that the terms of the manual applied to the employees in each office, including sales persons. In addition, the manual prescribed the commission structure and level payable to the sales person or persons and the office or offices involved in the sale of any property.

42 The respondent contended that the terms of the manual applied to the appellant, by reason of the written agreement with him entitled "Workplace Agreement" (exhibit 1 (see pages 248-258(AB))) and that the terms thereof had previously been applied to the appellant and accepted by him.

43 The appellant denied having been appraised of the terms of the manual and denied that he had, prior to the presently disputed matters, paid and accepted commission calculated in accordance with the terms of the manual. Mr Butler's evidence was that the appellant had declined to subscribe to the terms of the manual because he had a pre-existing agreement with the respondent.

44 On the evidence, the appellant did not expressly consent to the terms of the manual but, on the contrary, and he expressly rejected it in relation to that which was covered by the workplace agreement. The Commissioner was not satisfied that there was evidence that he had, by his conduct, acquiesced in the terms of the office manual.

45 In my opinion, those findings were not challenged and, in any event, the evidence of Mr Butler was that the appellant had declined to subscribe to the manual.

The Employment Agreement

46 It was common ground that the workplace agreement entered into between the parties was not a workplace agreement, as that is defined in the Act or in the *Workplace Agreements Act* 1993 (as amended).

47 The workplace agreement entered upon by the parties on 9 May 1996 specified that remuneration would be paid on a commission only basis and, in relation thereto, prescribed—

"2.5.2 Percentage payable

a) In office listing sales will be paid at the rate of 38% of gross office commission for sales made.

b) Listings acquired by way of canvassing of specified areas will be paid at the rate of 50% of gross office commission for sales made.

2.5.3 Entitlement to commission—

a) Only physical inspection of the property with the purchaser, completion of 'offer & acceptance document and settlement of the sale will be valid entitlement for commission of 'in office listings'.

b) In accord with clause (a) above, conjunctional sales of 'in office listings' sold by another agent will not entitle the sales person to commission.

c) Conjunctional sales of other agents listings in the 'in office listings area' will entitle the sales person to 38% of the total office commission received.

d) Conjunctional sales of listings acquired by canvassing specified areas will entitle the sales person to commission at the rate of 50% of the gross office commission received."

48 Clause 2.8 of the Agreement reads as follows—

"2.8 Office Procedures

All office procedures are to be adhered to"

49 In addition, there were contained within the workplace agreement, Clauses 3. Office Procedures and 4. General Duties, which are formed of subclauses, titled according to subject matter with the respective titles set out hereunder—

"3.1 Rosters
3.2 Areas
3.3 Conjunctionals
3.4 Listings
3.5 Uniforms & Name Badges
3.6 Disputes
3.7 Teamwork & Loyalty
3.8 Phone calls
3.9 Handing out maps
3.10 Other sales staff's customers"

and

"4.1 Listings
4.2 Sales
4.3 Diary entries
4.4 Office tidiness
4.5 Letter drops & other listing campaigns
4.6 Maps & Handouts"

50 The Commissioner observed that the reference to office procedures in Clause 2.8 and to general duties in Clause 2.12 did not fulfil the purpose of importing into the agreement office procedures and general duties generally, but were commands to observe that which is prescribed in Clause 3 and 4 respectively. That finding was not challenged and it was open to the Commissioner to so find.

51 The workplace agreement, at Clauses 1(a), 2.1, 2.2, 2.3, 2.5, 2.6, 3.1.1, 3.3, 3.5 and 3.8, contains prescriptions in relation to the subject matter for which there are also prescriptions in the manual. The manual did not exist in May 1996, when the workplace agreement was entered into and, hence, it appears plain that the workplace agreement expressed a range of office procedures which the parties to the agreement expressly agreed would be observed. Further, they seem to relate to procedures in an individual office.

52 The Commissioner observed that the parties' agreement contained in the workplace agreement may not be unilaterally altered by the action of one party and, as between the parties, required that there be consent to the alteration, either express or implied. There is no evidence of express alteration.

53 The Commissioner then observed, correctly, that the workplace agreement was one made between two parties only, the appellant and the respondent, and the prescribed entitlements and obligations were theirs.

54 The term "gross office commission" was referred to in subclauses 2.5.2 and 2.5.3 of the agreement, as well as in

subclauses 2.1 and 2.6, which is reproduced at page 249 and 251(AB) and reads as follows—

"2.1 Targets

An office gross commission figure of $6,800-00 is expected for each calender(sic) month. Failure to reach this figure will result in discussion for review of employment."

and

"2.6 Advertising

Management will provide advertising at a maximum rate of 7% of Gross Office commission. Management is aiming for 0% advertising expenses, which will be attained by vendor paid advertising. (See below)."

55 The Commissioner observed that subclause 2.1 was of no assistance in determining the meaning of "office gross commission", but that subclause 2.6 obligated management to afford the appellant the benefit of advertising to the maximum rate specified as a percentage of the "gross office commission", if the term "gross office commission" had the meaning which the appellant contended it had.

56 If that were the case, he observed, subclause 2.6 "obligated" the respondent to provide advertising reckoned on a percentage of what would be gross commission, that is, the aggregated commission from all offices.

57 The Commissioner observed that that was not the intention of the subclause, which was directed at advertising. The respondent was obligated to provide, for the purpose of attracting business to the office where the appellant was attached, he held.

58 At the time of entering upon the agreement, the appellant was attached to the Toodyay office (the name identified on the front of the agreement, the name of an individual office) and, at that time, the words "gross office commission" meant the gross commission applicable to that office and now meant the gross commission applicable to the Midland office. It is to that level of gross commission that the respondent applied subclause 2.5.3.

59 The appellant contended that, although he had been attached to the Midland office, his workplace was not that office and did not have the same duties and obligations as the other sales persons who worked at that location. His role, as he described it, was that of an "outside representative". He said that he generally worked away from the office, and dealt with a geographical area allocated to him in which he canvassed for listings for properties for sale.

60 According to the appellant, it was for this reason that he and the respondent entered upon the "workplace agreement" and this afforded him a commission arrangement different to other sales persons who had been employed by the respondent. Notwithstanding that evidence, he admitted that he had transferred from the Toodyay to the Midland office, and signed an agreement which bound him to office procedures and office related obligations.

61 The Commissioner was satisfied that the appellant operated as he described. Ms Stageman and Mr Butler perceived the appellant to have operated in that manner, too, in their evidence. The commission structure, which the workplace agreement afforded the appellant, was, as the Commissioner found, different from that which applied to other sales persons, as evidenced by the manual. The Commissioner observed that it seemed apparent that, given the express reference to canvassing in a specified area, that the agreement was formulated to cover the manner in which the appellant operated.

62 The Commissioner correctly observed that that fact did not, however, assist in the determination of the matter; the whole foundation of the argument by the appellant was upon what constituted the "gross office commission".

63 The Commissioner found that the gross commission was that received by the office to which the appellant was attached and that therefore his claim failed. The Commissioner also found that the arguments by the appellant did not bring into contention the conjunctional sale concept and the particular level of the "gross office commission" apportioned to the Midland office.

64 The Commissioner also found that the terms of the workplace agreement did not entitle the appellant to the calculation of commission upon the basis he claimed and his application was therefore dismissed.

NOTICE OF INTENTION TO AFFIRM THE DECISION AND SEEK TO ADMIT FRESH EVIDENCE

65 The respondent purported to file, on 19 June 2000, a Notice of Intention to seek to have the decision affirmed on grounds other than those determined by the Commission at first instance and to seek to admit fresh evidence on appeal.

66 The Notice of Intention, formal parts omitted, reads as follows—

"1. The Respondent gives notice that it will seek to have the decision of the Commission affirmed on the following grounds not relied upon by the Commission in the decision under appeal—

(a) That it was an express term of the contract of employment entered into by the Appellant that, in order to be entitled to the commission payable, the Appellant must have physically inspected the property with the purchaser.

Particulars

The Appellant did not physically inspect the following properties with the purchaser—

(i) Spring Valley and Red Valley ("the Valleys Property"); and

(ii) Lot 280, Forrest Hills Parade, Bindoon ("the Bindoon Property").

(b) That it was a term of the contract of employment implied by custom and practice in the real estate industry that—

(i) For a sales person/representative to receive the total rate and/or quantum of commission payable that sales person/representative must have both listed and sold the property concerned; and

(ii) That if the sales person/representative did only one of list or sell the property concerned then the total rate and/or quantum of commission payable is shared (in what is known as a conjunctional sale) with the other sales person(s)/representative(s) concerned who listed or sold, as the case may be, the property concerned.

Particulars

In relation to the Valleys Property the Appellant did not sell that property.

In relation to the Bindoon Property the Appellant did not sell that property."

67 The basis upon which the respondent seeks to admit fresh evidence on the hearing of the appeal is as follows—

"**Fresh Evidence**

2. The Respondent seeks to admit fresh evidence on the hearing of the appeal, namely, the evidence of the Appellant in proceedings in the Commission in matter number 1195 of 1999 ("the 1195 Proceedings") between the same parties as are parties to this appeal.

Particulars

The Appellant's evidence as to what constitutes a conjunctional sale at pages 18 to 20 of the transcript of the 1195 Proceedings.

Grounds

The evidence in the 1195 Proceedings is fresh evidence and, therefore, ought to be admitted because—

(a) It was not available at the time of the hearing (July and August 1999) which is the subject of this appeal as it only became available on 13 April 2000 during the hearing of the 1195 Proceedings;

(b) It could not have been discovered by reasonable diligence given that it was evidence given in proceedings heard at a later point in time, namely on 13 April 2000;

(c) If the Appellant had given the evidence that he gave in the 1195 Proceedings at first instance in the matter it may have had a bearing on the decision in that it would have given the Commission further grounds to dismiss the Appellant's claim, inter alia, on the grounds set out in paragraph 1(b)(ii) above;

(d) The evidence is credible and ought to be adduced and considered in relation to this appeal; and

(e) The evidence is relevant to appeal ground 12(g) and (h)."

68 The admission of that fresh evidence was not objected to and, since the fresh evidence complied with the requirements laid down in *FCU v George Moss Limited* [1990] 70 WAIG 3040 (FB) and subsequently affirmed by the Full Bench in *Blakeman ATF The Blakeman Family Trust t/a McBride's Collectables and Giftware v Gudgin* [2000] 80 WAIG 457, that evidence was admitted by the Full Bench.

69 The evidence was the evidence of the appellant, given in this Commissionon 13 April 2000 in proceedings which took place after the proceedings at first instance (see exhibit 1 in this appeal), that it is possible to have conjunctional sales between sales representatives within a particular office or a particular agency, thus confirming the evidence of Mrs King and Mr Butler in that respect.

ISSUES AND CONCLUSIONS

70 The rights and obligations of the parties in these proceedings had their source in the workplace agreement (exhibit 1). There was no reliance on any implied term. There was a great deal of evidence of what occurred in the industry in relation to remuneration and of the practice of the respondent. There was some reliance on custom and usage.

71 Before it is necessary to determine whether any of the extensive evidence was necessary or admissible, I propose to construe the written agreement. I should add, too, that there is considerable authority for the proposition that, as a general rule, the subsequent conduct of the parties cannot be used for the purpose of construing the terms of a written contract, ex post facto (see Stephen Charles "Interpretation of Ambiguous Contracts by Reference to Subsequent Conduct" (1991) 4 JCL 16) (see *Inglis v John Battery & Co* (1878) 3 App Cas 552 at 572; and *Maynard v Goode* (1926) 37 CLR 529 at 538; but see also *Farmer v Honan* [1919] 26 CLR 183 at 197 and *Watcham v Attorney General of the East Africe Protectorate* [1919] AC 533).

72 However, since employment contracts are more fluid and tend to evolve over a period of time, the admissibility of subsequent conduct after the entry into a written agreement of employment, in order to solve a question of ambiguity, ought to be more readily permitted. Further, performance is very often the only evidence of a variation in a contract of employment.

73 The agreement is required to be read as a whole, and the interpretation of any words and phrases which are required to be interpreted must be effected in the context of the agreement as a whole.

74 The agreement is expressed to be between "The King and I Pty Ltd", as employer, and Mr Healy, as employee. However, the agreement is also expressly identified as relating to the respondent as trading as "L J Hooker Toodyay". That would be consistent with the respondent having a franchise in respect of each branch office and trading pursuant to the franchise at each such office as a separate office in administrative and commercial reality, even if they were all part of the one business for which the respondent employer holds a licence (which was the uncontradicted evidence of Mrs King and Mr Butler also).

75 Further, the agreement should be construed so as to ascertain the intention of the parties. The words should be accorded their ordinary and natural meaning, provided that, to do so, does not lead to ambiguity or absurdity or tender them inconsonant with the meaning of the instrument, taken as a whole.

76 In this case, applying those principles, it is clear that there is reference throughout the workplace agreement to the word "office" in the context of an office target, office meetings (see Clauses 2.1 and 2.2) and office procedures. The office procedures, it was not suggested, refer to a roster outside the office to which they pertain nor, in my opinion, as a matter of common sense, would they. There is reference to the principal of the office who must, as a matter of law, be "the manager" (see Clause 3.6), and there is reference to customers making contact with the "office" (see Clause 3.10). Further, there is reference to the office diary which could only be the diary of each "office" (see Clause 4.3). Similarly, there is office tidiness referred to (see Clause 4.4).

77 At no time throughout is there reference to "office", in the plural, even though at all material times, there was more than one office, a fact recognised by the Triennial Certificate and all of the evidence.

78 The most important condition of the agreement, for the purposes of the proceedings at first instance and of this appeal, is Clause 2.5 which prescribes the entitlement of a salesperson or representative to remuneration. Whilst the clause prescribes that commission will be on a commission only basis, on a fair reading, it quite unambiguously makes the following clear as well—

(a) That, in office listing sales, the rate of commission paid will be 38% of gross office commission.

(b) That will be paid for sales made.

(c) That listings acquired by way of canvassing (which clearly means that one goes out and solicits the listings, as distinct from those coming in to the office) in a specified area, will entitle a payment of commission at the rate of 50% of the gross office commission, again for sales made. Even in that clause where quantum of commission payable is prescribed, there is an unequivocal reference to the need for sales to be "made" before one is entitled to commission. (I will turn later to the question of what is meant by "gross office commission" in Clause 2.5.2.)

(d) Clause 2.5.3 clearly prescribes what must be done and/or what conditions must be complied with to entitle the appellant to commission.

(e) Those conditions and/or requirements are as follows—

(i) The sales representative, the appellant, is not entitled to commission for "in office listings", unless there is a physical inspection of the property (clearly by the sales representative) with the purchaser, followed by the completion (which could only mean the execution of the offer and acceptance) by or on behalf of the purchaser(s) and vendor(s), followed by the settlement of the sale (which, of course, can only mean the execution of a transfer and the handing over of an executive transfer and the certificate of title, usually unencumbered, in exchange for the payment to the vendor(s) of the purchase price).

If those conditions are not complied with, upon a fair reading, then the appellant, by

his own agreement in evidence, was not entitled to a commission for "in office listings".

(ii) Conjunctional sales of "in office listings", sold by another agent (not defined), but plainly an agent apart from the employer, would not entitle the appellant to commission.

(iii) Then, Clause 2.5.3(c) prescribes that conjunctional sales of other agents' listings in the "in office listings" area will entitle the salesperson to 38% of the total office commission received. (It is to be noted that neither the term "gross commission" nor the term "total commission" is defined.)

Clause 2.5.3(d) prescribes that conjunctional sales of listings, acquired by canvassing, will entitle the salesperson to commission at the rate of 50% of the gross office commission received, not the total commission received. (I should also add that there is no definition of "conjunctional sales".) That clearly means that, if the appellant canvassed a particular area and acquired a listing as a result, and the sales of the listing was by conjunction, then he would be entitled, if the property were sold, of course, to 50% of the gross office commission received.

It is quite clear that "gross office commission", in the context of the workplace agreement (exhibit 1), means the commission which comes "gross", that is without deduction, to the office where the employee works. The employee, by the agreement, is entitled to commission from "in office listings", if there is a sale or if there is a listing acquired by and completed by a sale, or if there is a conjunctional sale of an "in office listing" sold by an outside agent. (I should add that the fact that a commission was paid into the York office when it emanated from elsewhere for the purpose of assisting that office to win an award, save and except that it is evidence of the separateness in operation of an office, is quite insignificant.)

79 In any event, the uncontradicted evidence was that, notwithstanding that there was a main office and three branch offices conducted on the one business, they were to some extent separate administrative units and separate "profit centres". That was part of the extensive evidence which confirms such an interpretation.

80 Whilst there is some uncertainty about the clause, I do not read it as conferring an entitlement to commission on a representative who does not inspect the property with the purchaser and does not sell the property.

81 The clause still leaves uncertainty as to the meaning of a "conjunctional sale" and there is some ambiguity about the entitlement to commission.

82 Since I am of the opinion that there was ambiguity as to what gross office commission meant, insofar as there was extensive extrinsic evidence and a concession by the appellant. Further, evidence of performance is admissible and of assistance, given the ambiguity.

83 First, there was unshaken evidence from Mr Dale, Mr Douglas and Mr Butler, as well as Mr and Mrs King, that the representatives are not entitled to commission unless they list and sell. They do not get the commission merely for listing. I should say that it would lead to absurdity to permit that to occur and, in any event, for the reasons which I have advanced above, I do not think that the clause, confers a right to commission for listing alone. That is not what the clause, read at best, permits.

84 Second, a conjunctional sale is not confined to a sale where there is a separate outside listing agent. If the appellant (or any representative) listed a property for sale, he would be the listing representative and, if another representative or agent procured the buyer, he would be the selling agent or representative. (That is what occurred with the Rocky Gully property.)

85 As the appellant conceded (see pages 172-175(AB)), if he listed a property from his canvassing and sold that property, he would be entitled to receive 50% of what the office receives. He specifically conceded that what the office received was what he worked for—

"Commissioner—

In such a circumstance again, where you canvassed, you got the listing and you sold it, what level of commission is the gross office commission, in your mind?

Mr Healy—

"Well, the level the office receives, whatever amount the office I work for received is the gross office commission and my percentage is 50% of that."

(See page 173(AB).)

86 He admitted, too, that he cannot get 100% of the gross office commission, although he submitted that the gross office commission is 100% of the commission paid by the vendor. This admission was contrary to his contention otherwise. He then conceded what is obvious, namely that a gross office commission received by his office because of a conjunctional sale, would not be 100% of the total commission.

87 There was also, if it needed to be resolved, the appellant's own evidence, admitted as fresh evidence, corroborating the evidence given by all other witnesses except Ms Stageman who was not asked, that a conjunctional sale could occur between salespersons and/or agents in one office (or in this case (as I understood the evidence) one set of connected offices) as well as between agents conducting separate businesses.

88 The usual situation, on the evidence, was that one representative listed and one sold, where there was a conjunctional sale. The Rocky Gully property sale was an example of this. The commission was then required to be, and was, split between offices and representatives, or in the same office, between the office and the representatives. There is nothing in the workplace agreement which prevents that. (The Full Bench was taken to no provision in the Real Estate Act which prevents such a course.)

89 The evidence given was quite unequivocal. There also was the unshaken evidence of Mr King, Mrs King, Mr Douglas and Mr Dale to that effect.

90 It was quite clear that the agreement meant and was accepted to mean that "gross office commission" meant the commission received in any one office due to the work of the agent or agents in that office. It was quite clear, having regard to the extensive evidence and evidence of performances, that that is what it meant and that was the agreement that was performed by the parties in practice.

91 If all other preconditions were fulfilled, the office was entitled to 50% of that gross commission which was gross before it was distributed in that office. 50% of the gross commission was then payable to the respondent, whose office or branch office it was. That these were separate offices for administrative purposes and for the purpose of operating in particular areas was indubitably the case. This did not detract from, nor does it appear contrary to, the Real Estate Act. Certainly, for the purposes of the appellant's contract and the calculation of and provisions for entitlement of commission to him, the offices were separate.

92 Thus, 50% of gross office commission was the gross office commission in each of the offices conducted by the respondent before it was disbursed to the sales representatives and the employer. It would be patently absurd to interpret the agreement (and the extensive evidence supports this) as conferring a right to commission on a representative who listed, when the property was not sold by him/her or the offices.

FINALLY

93 It was an express term of his contract of employment that, in order to be entitled to commission, the appellant had to have physically inspected the property, as he agreed in evidence (and see also the decision of Beech C in *Healy v The King and I Pty Ltd* [2000] 80 WAIG 1952). He did not physically inspect the Valleys property, or there is no evidence of it, and he bore the onus of proof. There was evidence that he did not physically inspect the Bindoon property.

94 Further, there was evidence of a custom and practice in the industry and evidence that the agreement required, expressly or impliedly, that for a sales representative to receive the total amount of commission payable on a sale, he/she had to both list and sell the property. Otherwise, and the agreement recognises this, there is a conjunctional sale within the office and branches with other agents or representatives or with other sales representatives.

95 The fresh evidence, and the evidence of all of the witnesses, except the appellant, to the same effect, that a conjunctional sale is where two representatives, either within the same agency, or the same office of any agency, or different sales offices within an agency, or in different agencies, deal jointly with the sale of the same property. It is quite clear that gross office commission means the gross commission received by any of the offices of the respondent.

96 In fact, the appellant did not sell the Valleys property or the Bindoon property. In the case of the Bindoon property, no physical inspections were carried out with the purchaser or by anyone. The appellant's wife merely made the key to the house available to the interested persons. In the case of the Bullsbrook property, the appellant did sell it, as the Commissioner found, on the evidence.

97 Put shortly, it was open to the Commissioner to find as he did. It was particularly open to him to find that the terms of the workplace agreement did not support the appellant's opinion of his entitlements under it and to find that the appellant had not established that he was not paid the correct commission in respect of the three subject sales.

98 Further, it was open to find, on the evidence, including the appellant's own concessions, that he had not done what the agreement, or custom and usage, confirmed by reference to extensive evidence established. It would also be quite absurd (on Mrs King's and Mr Butler's evidence) to construe the workplace agreement so as to hold that the agreement conferred on a sales representative the entitlement, in certain cases, to 100% of the commission paid to her/his employer on a sale. Indeed, to find that that is what the agreement prescribed was not open, on a fair reading of the "workplace agreement".

99 I have considered carefully all of the evidence and all of the submissions. For all of those reasons, it has not been established that the Commissioner erred in his decision at first instance on the grounds of appeal. I would dismiss the appeal.

CHIEF COMMISSIONER W S COLEMAN—

100 I have read the reasons for decision of His Honour the President. I agree with those reasons and have nothing to add.

COMMISSIONER J H SMITH—

101 I have had the benefit of reading in draft the reasons to be published by the President. For the reasons His Honour gives, I agree the Appeal should be dismissed and I have nothing further to add.

THE PRESIDENT:

102 For those reasons, the appeal is dismissed.

Order accordingly.

2000 WAIRC 00869

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	MAXWELL RAYMOND HEALY, APPLICANT
	v.
	THE KING AND I PTY LTD, RESPONDENT
CORAM	FULL BENCH
	HIS HONOUR THE PRESIDENT P J SHARKEY
	CHIEF COMMISSIONER W S COLEMAN
	COMMISSIONER J H SMITH
DELIVERED	FRIDAY, 13 OCTOBER 2000
FILE NO/S	FBA 2 OF 2000
CITATION NO.	2000 WAIRC 00869

Decision	Appeal dismissed.
Appearances	
Appellant	Mr R R Cywicki (of Counsel), by leave
Respondent	Mr A D Lucev (of Counsel), by leave, and with him
	Mr D C Heldsinger (of Counsel), by leave

Order.

This matter having come on for hearing before the Full Bench on the 223rd day of June 2000 and the 22nd day of August 2000, and having heard Mr R R Cywicki (of Counsel), by leave, on behalf of the appellant and Mr A D Lucev (of Counsel), by leave, and with him Mr D C Heldsinger (of Counsel), by leave, on behalf of the respondent, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 13th day of October 2000, it is this day, the 13th day of October 2000, ordered that appeal No FBA 2 of 2000 be and is hereby dismissed.

By the Full Bench

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

2000 WAIRC 00817

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

APPELLANT	RICHARD MALCOLM
RESPONDENT	MOBIL EXPLORATION & PRODUCING AUSTRALIA PTY LTD
CORAM	FULL BENCH
	HON PRESIDENT P J SHARKEY
	SENIOR COMMISSIONER G L FIELDING
	COMMISSIONER S J KENNER
DELIVERED	WEDNESDAY, 11 OCTOBER 2000
FILE NO/S	FBA 36/2000

Decision	Appeal dismissed.
Appearances	
Appellant	Mr A L Drake-Brockman (of Counsel), by leave, and with him Mr R C Carthew (of Counsel), by leave
Respondent	Mr R L Le Miere (of Queens Counsel), by leave, and with him Mr G W Smith

Reasons for Decision.

THE PRESIDENT—

1 This is an appeal by the abovenamed employee against the decision of the Commission, constituted by a single

Commissioner, contained in an order made on 28 June 2000, whereby the Commission dismissed an application by the appellant that he was unfairly dismissed, for want of jurisdiction, and also dismissed a claim for contractual benefits.

GROUNDS OF APPEAL

2 The appeal is made on the following grounds—

"1. The Learned Commissioner erred at law in finding there was no dismissal of the appellant by the respondent, and therefore no jurisdiction for the matter to be brought before the Commission and determined pursuant to sections 29(l)(b)(i) and 23A of the Act.

PARTICULARS—

(a) The Learned Commissioner's interpretation of the law as to dismissal in circumstances of demotion was incorrect.

(b) The Learned Commissioner has failed to distinguish, or alternatively failed to identify the importance of the distinction, between the position of the appellant and the position of all other employees who were being made redundant.

(c) The Learned Commissioner failed to give any or adequate weight to the unchallenged evidence that—

(i) the appellant was given a choice between demotion and redundancy, and was only made aware of this "choice" on 8 February 1999.

(ii) from 8-15 February 1999, the respondent was well aware that the appellant wanted more time to consider his position.

(iii) the appellant after having time to consider his position, immediately commenced seeking employment elsewhere on 18 February 1999, and informed the respondent upon his return to the respondent's workplace on 22 February 1999 that he did not see a future with the respondent, his heart was not in it, and that he intended to leave the respondent at the first opportunity.

(iv) the appellant was unaware, and was not warned by the respondent of the respondent's intention to deny him access to the respondent's redundancy package should he fail to decide to accept the redundancy by 15 February 2000 (sic)

2. In finding that the appellant was not dismissed for the purposes of the Act the Learned Commissioner failed to take into account relevant matters in—

(a) failing to consider—

(i) that the appellant not being provided with the job profile for his demoted position before being forced to choose between redundancy and demotion.

(ii) that the job profile actually revealed that the position was anywhere between a "Level 17-19" position, not a "Level 19" position as represented.

(iii) that the respondent did not provide the appellant with the job profile until after his examination-in-chief had been presented by the appellant.

(iv) that there was clear evidence of the appellant's sensitivity to the grading of his position.

(b) failing to consider the effect of the evidence of Mr Dan Patterson Haworth ("Haworth"), the Chairman and Managing Director of the respondent at the relevant time,—

(i) in respect of his personal views as to the performance of the appellant in 1997-8

(ii) as to his failure to inform the appellant as to these views prior to 15 February 1999.

3. In finding that the appellant was not dismissed for the purposes of the Act, the Learned Commissioner has taken into account irrelevant considerations in finding that—

(i) the content of the appellant's "resignation letter" was determinative as to whether the appellant was dismissed.

(ii) the appellant's retrenchment "did not come as a surprise to him" as he had "known about the potential for a retrenchment and was preparing himself for it from January 1999.

(iii) the "experience" and "sophistication" of the appellant was determinative as to whether or not the appellant was dismissed.

(iv) the (disputed) demand for the appellant's skills was relevant to the question as to whether the appellant had been dismissed.

(v) the (disputed) finding of the Commissioner that "what (the appellant) did affected everybody".

4. The Learned Commissioner erred at law in finding there was no repudiation by the respondent of the appellant's contract of employment.

PARTICULARS

(a) The Learned Commissioner failed to provide any reasons as to why he found that the appellants'(sic) contract of employment had not been repudiated.

(b) The Learned Commissioner failed to traverse the principles of repudiation in making his finding.

(c) In circumstances of unchallenged evidence that the appellant was given a choice between redundancy or demotion, the only finding available is that the respondent's conduct constituted a repudiatory breach of the appellant's contract of employment.

5. In finding that the appellant was not dismissed for the purposes of the Act, the Learned Commissioner has failed to consider the respondent's submissions that—

(a) the appellant was entitled to reasonable notice of demotion.

(b) the actions of the respondent constituted unconscionable conduct.

(c) in the circumstances, the appellant was estopped from refusing the appellant access to the redundancy payment.

(d) in the circumstances, the respondent breached its implied duty of trust and confidence in respect of the appellant.

6. The Learned Commissioner has made findings that cannot be reasonably supported by the evidence in finding that—

(a) what the appellant did (in the redundancy process) "affected everybody"; and

(b) the respondent

"gave... (the appellant) as much latitude (as to the time to make his choice between redundancy and demotion) as it was able to in the circumstances"; and

"did everything that can reasonably be expected of an employer in circumstances where a restructure takes place,

and

(c) *"... (the appellant's)... skills, even in a downturn, were in demand in the industry. There is no indication at all that... (the appellant)... had difficulty in obtaining... (his new) ... position. ... (His new employer)... was basically prepared to pay him what he wanted.*

PARTICULARS

In respect of (a)—

(a) The respondent has claimed, repeatedly, in its submissions and via the evidence of it's witnesses, that the appellants decision had a "cascading effect" on all other employees and employee appointments/redundancies within the respondent's organization. The Learned Commissioner has agreed with this claim.

(b) No evidence was led substantiating that the appellant's decision had an effect on any other employee or employee appointment/redundancy, but for the employee who was the alternative selection for the applicant's demoted position.

(c) The Learned Commissioner has failed to take into account the uncontroverted evidence that the appellant's duties in the demoted position were not to have started until 1 April 1999, more than 6 weeks after 15 February 1999. This is not indicative of circumstances where the respondent could not afford to be flexible.

(d) The Learned Commissioner has failed to consider as to whether it was known, or would have been sufficiently easy for the respondent to establish, whether the alternative employee referred to at (b) herein (who, after initially being made redundant, took the position immediately upon the appellant leaving) was prepared to take the demoted position first offered by the respondent to the appellant if the appellant refused that position.

In respect of (b)

(a) The evidence clearly provides that there was more time available to the respondent to allow the appellant more time decide between redundancy and demotion.

(b) It is clear on the evidence that Mr K.J. Fitzpatrick, the former "Country Migration Team Member" for the respondent failed to even forward the appellant's request for more time to his superiors.

(c) The evidence clearly provides that at no time was the appellant provided with a copy of the job description of the demoted position that had been allocated to him, despite evidence that it was usual practice for this to occur.

(d) The evidence clearly provides that Haworth for the respondent had a negative view of the appellant's performance in 1997 and 1998, and failed to inform the appellant of this prior to 15 February 1999.

(e) The appellant was unaware, and was not warned by the respondent of the respondent's intention to deny him access to the respondent's redundancy package should he fail to decide to accept the redundancy by 15 February 2000 (sic)

(f) The Learned Commissioner has referred to the appellant having access to "many peers including... Linda Dawson", the Human Resources Manager for the respondent at the relevant time. The Learned Commissioner ignores the uncontroverted evidence that Dawson, as the Human Resources Manager, did not bother to visit the appellant in the crucial period between 8-15 February 1999.

In respect of (c)

(a) The Learned Commissioner ignores uncontroverted evidence that the appellant—

(i) had no alternative position available to him at the crucial time between 8-15 February 1999, or at any time prior to that time; and

(ii) had no idea as to his chances of success in respect of the position he had applied for between 8-15 February 1999.

(b) The Learned Commissioner cannot reasonably draw an inference from the appellant's success in obtaining an alternative position that the appellant's skills were "in demand" in the industry, when there is no other evidence to support this.

(c) There is no basis for the Learned Commissioner's comment that the applicant's alternative employer was "basically prepared to pay (the appellant) what he wanted".

7. The Learned Commissioner erred at law and his discretion miscarried in refusing to allow the appellant to cross-examine witnesses for the respondent as to the respondent's conduct in respect of employees of the respondent placed in a similar situation to that of the appellant subsequent to the appellant's termination.

PARTICULARS

(a) The Learned Commissioner is not constrained by the rules of evidence in respect of what is brought before the Commission by parties to Commission proceedings.

(b) As a matter of law, the appellant should have been provided with every reasonable opportunity to present his case.

(c) The subject matter of the cross-examination was directly relevant to issues before the Learned Commissioner.

8. Any other such grounds as are deemed by the Full Bench as appropriate to be considered."

ORDERS SOUGHT (see page 6 of the appeal book (hereinafter referred to as "AB").

BACKGROUND

3 On 28 May 1999, the appellant, Mr Richard Malcolm, applied to the Commission for orders pursuant to s.29 of the *Industrial Relations Act* 1979 (as amended) (hereinafter referred to as "the Act") on the grounds that he had been unfairly dismissed from his employment with the respondent (hereinafter referred to as "Mobil") and, further, that he had been denied payment of contractual benefits which he said that he was entitled to, arising from the cessation of employment on or about 9 April 1999.

4 The appellant's claim was that he had been unfairly dismissed because Mobil had unilaterally altered the contract of employment of the appellant. In that process, he alleged, he was subject to undue pressure and duress in arriving at a decision to accept a position at a reduced status. (Duress has a meaning at law which I will refer to later in these reasons.) He alleged further that he was not given sufficient information to allow him to make an informed career choice, as a result of which, he was denied access to a redundancy package and was downgraded in status.

5 He alleged, further, that what occurred constituted unconscionable conduct and meant that the appellant was constructively dismissed through the use of an unfair procedure which made the termination harsh, oppressive and unfair.

6 The appellant was, at the time of hearing, 47 years of age, and held a Bachelor of Science degree, majoring in geology. He had joined a company called "Ampolex" as a Senior Petroleum Geologist. He returned to Perth in 1996, when there was a reorganisation of Ampolex. At about this time, Mobil took over the operations of Ampolex and the appellant became Team Leader for Northern and Eastern Australia and was assigned to oversee work in Papua New Guinea. He managed the team, which consisted of a petroleum engineer, several geologists, geophysicists, draughtspersons, accountants and technical assistants, who all reported to him.

7 When Mobil took over Ampolex, it brought its own system of salary grades. The appellant occupied a senior role at Grade 20 in the scheme of job classification. This

defined a senior management position with substantial salary, benefits and stock options, as well as bonuses.

8 He had, when these events occurred, been an employee of Mobil for about twelve years. The appellant was also introduced to Mobil's performance review process. The appellant described the performance assessments "highly effective" and "fully productive", placing the latter assessment higher than the former.

9 In late 1998 and early 1999, there was a "restructure" within Mobil, formally announced by Mr Dan Patterson Haworth, the then Chairman and Managing Director of Mobil, on 16 December 1998. The staff were informed that, as the result of the oil price decline, there was going to be significant retrenchments, particularly in the appellant's work area where there would be reductions in funding. This would affect exploration activities and programmes. It was common ground before the Full Bench that there were many retrenchments as a result, that this arose from a development in the industry, and exploration and activities and programmes were much reduced. It was also clear that these were genuine retrenchments. The appellant had some involvement in the process leading to the proposed reduction in employee numbers and exploration activities. He certainly knew what was to occur.

10 There were employees concerned by this information, and understandably. The appellant was concerned about his future from December 1998 to January 1999. After that, he thought that his chances of survival were reasonably good. By early January, however, he was concerned as to his future and had engaged a firm called "Resource Recruitment" to find him other employment in the industry. He also, upon his own initiative, underwent "outplacement counselling" provided by Mobil. His main dealings in this matter were with Mr Haworth and with Mr Kenneth John Fitzpatrick, a Country Migration Team member at Mobil, and its Production Manager.

11 Mobil's business decisions and performance were managed by Mr Haworth, together with a committee of senior management executives, known as the "Leadership Council" and they, in the end, reached the decision which was announced.

12 On 2 and 3 February 1999, the appellant made telephone calls to his employment agent.

13 In February 1999, the appellant had had an interview, his first, with a company known as "OMV", another exploration company, and had discussions with persons on behalf of that company. This was in relation to the question of his employment by OMV. He was giving consideration to these matters.

14 On or about 3 February 1999, Mr Fitzpatrick and the appellant met. Mr Fitzpatrick told the appellant that there would be a senior position for him at Mobil. The appellant gave evidence that he did not assume that he would be in the same position as he held before, but did not understand that he would be demoted. The appellant did inform Mr Fitzpatrick at that time that he had put forward his name for a position as Exploration Manager in another company and was shortlisted. He was, therefore, put on notice more definitely as to what was occurring.

15 On 4 February 1999, the appellant sent his curriculum vitae to his recruitment agent.

16 On 8 February 1999, the appellant was offered a position at Level 19, a lower grade with Mobil. Because this was a lower grade than his existing position, he understood that he had the option of being paid, as an alternative, a redundancy payment, if he elected not to accept the offer of that position. However, it was open to find that he was offered two clear alternatives. I should add that there was a provision in the appellant's written contract of employment for redundancy and a redundancy payment.

17 It was Mr Fitzpatrick's evidence, which was not in dispute, that the appellant would, although reclassified at Level 19, have a role which was basically the same as his old one, but he would not be team leader. Further, the appellant's salary would remain unreduced at the same level. He would also have the same degree of autonomy. This was explained by Mr Fitzpatrick on 11 February 1999. His evidence was that the appellant was disappointed because he thought that such a "demotion" was a black mark against his name.

18 Whilst he was still looking for new employment and considering his position, he was told by Mr Fitzpatrick that he would have to make his mind up whether he would take the new position at Level 19 or become redundant by 11 February 1999.

19 On Friday, 12 February 1999, Mr Fitzpatrick told the appellant that he needed a response from him because Mobil needed to complete its retrenchment arrangements. The appellant was also informed that his failure to respond was holding up the process because, depending on his answer, there was a cascade effect through the organisation. The appellant was told, too, that his answer was required by close of business that day or on Saturday, 13 February 1999. The restructuring was due to take place on 15 February 1999. That was not sufficient time for the appellant to make his decision. The appellant told Mr Fitzpatrick that the OMV position had not yet been decided. He was, it is quite clear, struggling with his decision. A few hours before the close of business, therefore, he told Mr Fitzpatrick that he would take Mobil's position, that is, the Level 19 position, even though he had difficulty deciding.

20 In evidence, the appellant described the decision as one made under "duress" and not a level headed decision. He said that he felt pressured. He spoke to Mr Fitzpatrick over that weekend. Mr Fitzpatrick asked him whether he wanted to change his mind. The appellant replied that he did not, merely that he wanted more time to consider his options.

21 On 15 February 1999, the appellant travelled to Cairns on Mobil business. Before he left, he signed a document accepting the offer. However, he said in evidence that he still needed more time to consider his position.

22 On 19 February 1999, whilst he was in Cairns, he rang his recruiting agent at Resource Recruitment and instructed that gentleman that he wished again to put his name forward for the OMV position. The appellant had withdrawn his name as a candidate for that position when, on the previous Friday, 12 February, he had accepted Mobil's offer of the Level 19 position.

23 Through his agent, Mr Andrew Charles, he arranged and attended a second interview with OMV on Saturday, 20 February 1999, when he returned to Perth.

24 On 22 February 1999, the appellant approached Mr Haworth and told him that he had now had sufficient time to consider his position and did not see him having a future at Mobil. He informed Mr Haworth that his heart was not in the job any more. He did not express that he was aggrieved by his new position nor is there any evidence that he complained about it as a demotion. He asked Mr Haworth if he might be paid a retrenchment payment. Later in the day, Mr Haworth responded, saying that he would not be paid a retrenchment payment.

25 On 3 March 1999, OMV made an offer of employment to the appellant. Between 3 and 12 March 1999, the appellant had further discussions with persons employed at Mobil. It seems to be common ground that the new position at Level 19 was to come into existence on 1 April 1999.

26 On 5 March 1999, the appellant accepted OMV's offer of employment at a substantially larger salary than his current salary at Mobil. It was after that acceptance that Mr Fitzpatrick told him that his assessment was not "highly efficient", but "fully productive", a lower rating. The appellant made a number of telephone calls that day to Resource Recruitment. He said that he felt humiliated by this downgrading. He gave evidence that he had no real option but to leave.

27 On 12 March 1999, a further written offer of employment was made to him by OMV. On that day, he accepted the offer. On that day, too, he resigned in writing from his position at Mobil in the terms reproduced at pages 316-317 of the appeal book (hereinafter referred to as "AB")). His resignation, according to the letter, was to take effect

on 10 May 1999. It is necessary for a proper understanding of this case to reproduce that letter, which I do hereunder—

"

8 Tyrell St
Nedlands
WA 6009
12 March 1999

Mr Ken Fitzpatrick
Production Manager
MEPA
250 St George's Tce
Perth 6000

Dear Ken,

Re: Termination of Employment

As a consequence of the MEPA reorganisation that will result in a reduction in my responsibilities, diminished prospects for future advancement and reduced salary grade, I have decided to leave AMPA.

Unfortunately, the four days provided to me to accept the position of PNG JV Representative was insufficient for me to fully address and consider all the implications for my future, and as a result, my decision was premature. I believe I indicated this to you at the moment of signing my acceptance on 15 February when I stated that I needed more time, but I appreciated the timetable had been set and I had no option to defer my decision.

I now deeply regret accepting the position from both MEPA's and my perspective. For this I apologize. I indicated as much to you and to Mr Dan Haworth just seven days later on my return from JV meetings in Cairns, as I wanted you both to be fully informed of my position and to allow you to prepare for my departure in the near term. I understand that as a consequence of accepting the position you offered, I have regrettably forfeited the redundancy package based on 11.5 years of service, that would otherwise have been provided to me.

I therefore now formally give notice of my termination of employment effective 10 May 1999.

I wish to emphasize that the full implications of the new position on my career had not been fully appreciated by the time of acceptance and that once I had time to consider all aspects of the new role, I made my position clear to you. I would not be considering leaving MEPA had the position offered to me been challenging and as rewarding as the role I currently enjoy.

In view of the above circumstances, I request your approval of the following proposals—

1) Consideration be given to providing leave (long service) from Monday 12 April 1999 to Monday 10 May 1999 inclusive (21 days). This would allow me to assist in facilitating a smooth transition over the next four weeks (to 9 April 1999) prior to taking leave (I propose my last day in the office to be Friday 9 April 1999). It would also allow me to qualify for Ampolex options maturing on 10 May 1999.
2) Consideration be given to making application to the Board Compensation Committee on my behalf to waive the three-year service requirement for maturing of options provided to me under the Mobil Incentive Compensation Plan.
3) Consideration be given to waiving the superannuation three-year vesting period for transfer from my Ampolex benefit to the Mobil standard benefit of the MEPA Superannuation Plan.

I trust that my contribution to MEPA through the management of the PNG assets has added value to the affiliate and that a replacement for me in the new role will not present a difficulty.

I wish to thank you for your support over the past three years and wish you and MEPA every success with the new company structure and the forthcoming Exxon—Mobil merger.

Yours faithfully,

Richard Malcolm"

28 The second paragraph is significant as evidence of his appreciation that the timetable for retrenchment was set. He also apologised for accepting Mobil's position and asserted that he had informed Mr Haworth and Mr Fitzpatrick that he regretted his decision after his return from Cairns, in order to fully inform them of his position and, significantly "to allow you to prepare for my departure in the near term" (my emphasis).

29 Significantly, too, he acknowledged that, as a consequence of accepting the position which Mobil offered, "I have regrettably forfeited the redundancy package based on 11.5 years of service that would otherwise have been provided to me". The fifth paragraph of the letter is in similar vein. He then makes three proposals.

30 Significantly, too, the appellant sent an e-mail (see page 272(AB)) to Mr Fitzpatrick on 22 March 1999 referring to his resignation and which, formal parts omitted, reads as follows—

> "Ken, for my own peace of mind and clarity of my position, it would be appreciated if I could have a written response to my resignation letter including acceptance of my resignation and date of departure."

31 The response by letter from "Mr Ken Fitzpatrick, Producing Manager" of 24 March 1999 confirms Mobil's version of these events and confirms "mov[ing] your resignation forward to 9 April 1999". Three of the appellant's proposals in his letter of resignation are then answered (see pages 273-274(AB)).

32 It should be noted that the appellant formally gave notice of resignation from Mobil on 12 March 1999 and left his employment on 9 April 1999. The new job at Level 19 was to commence on 1 April 1999, eight days before his resignation became effective. It was open to the Commissioner to find that those were the facts.

THE COMMISSIONER'S FINDINGS

33 The Commissioner, having seen and heard the witnesses, found that, on the balance of probabilities, the evidence of Mobil's witnesses was more likely to be accurate than that of the appellant, and he went on to say that, where the evidence differed, he accepted that of Mobil's witnesses.

34 The Commissioner quite rightly identified that the question to be answered, in the face of a contention that the appellant's resignation was "submitted under duress" and he was placed in a position where he had no option to submit to it, was who really terminated the contract.

35 The Commissioner quite rightly identified the letter of resignation, reproduced above, as throwing a great deal of light on what occurred. As the Commissioner observed, the letter was written at a time when the appellant was well into providing for his future with another company, something which had been on his mind since January when he calculated a retrenchment payout.

36 The Commissioner found that, as a senior executive, the appellant well knew that there would be retrenchments which he had indeed been involved in planning. He had taken advantage of "outplacement" provided by Mobil and was involved in negotiations with OMV.

37 The Commissioner concluded that, about the time he accepted the position with Mobil, he withdrew from his discussions with OMV. The Commissioner drew the inference from these actions that the appellant was a person fully informed about the likelihood of retrenchment and that it was likely that his job might be involved.

38 The Commissioner found that the appellant was an experienced, sophisticated executive who knew of his employer's plans and whose skills, even in a downturn, were in demand in the industry. He was, as the Commissioner found, able to go to OMV at a higher rate of salary than that offered by Mobil in the Level 19 position. The Commissioner rightly referred to the appellant's apology for accepting the position at Mobil and then leaving, because he did so apologise in his letter of resignation.

39 The Commissioner (see page 31(AB)) went on to draw a number of inferences and make a number of findings—

(a) The reason for his leaving was that he did not like the new job.

(b) He was not going to get the same enjoyment and stimulation out of it as he had in the past.

(c) The downgrading was of very little significance in the matter and the appellant was less concerned about it than was his Counsel.

(d) The appellant knew that he had forfeited the redundancy package and sought to recover that ground by "asking for some consideration in that respect".

(e) His letter of resignation raised proposals, one of which was agreed and others not. It was open to find that he knew that he was seeking these payments by way of greed and not right.

40 The Commissioner went on to find that no part of the agreement was repudiated and there was no duress, merely because he was given four days to make his decision, given that he knew about the potential for retrenchment and was preparing himself for it from January 1999.

41 The Commissioner found that his retrenchment did not come as a surprise to him and that, when the time came to make his decision, he was not placed under so much duress that he entered into the "arrangement" unthinkingly, so that it would be legitimate for him to say that he was forced to do what he did by the action of his employer.

42 Over this period, too, the Commissioner found, Mobil was trying to come to grips with its restructure. The appellant was a key man in that redundancy process and what he did affected everybody. Mobil had to balance its obligations to the rest of the employees against giving this senior official more time to make his decision. It gave him as much latitude as it was able to, in the circumstances.

43 The Commissioner found that there was no dismissal and he had no jurisdiction to hear and determine the application.

ISSUES AND CONCLUSIONS

44 The decision appealed against in this appeal was not a discretionary decision, as that is defined in *Norbis v Norbis* (1986) 161 CLR 513.

45 The Commissioner made, as it was necessary to do, findings of fact and then decide whether there was a dismissal of the appellant and, therefore, whether there was jurisdiction to hear and determine the application.

46 The facts in this matter do not seem to have been in any significant dispute. A great deal is clear. Mobil, in December 1998, had, because of conditions in the industry in which it was involved, decided to limit the extent of its operations and to reduce the number of its employees substantially.

47 The appellant, as a senior executive of twelve years' standing, knew that this was to occur and, indeed, was involved in some of the planning. He had, during January 1999, somewhat prudently, given consideration to the fact that he might find himself retrenched and gave thought to the option of finding himself other employment.

48 He was, as the Commissioner found, a senior, sophisticated person, well aware of his employer's decision and the results which might emanate from it. He was concerned that he was going to be retrenched and sought "outplacement" counselling, which was provided for him by Mobil in January 1999. His taking steps to place his name with an employment agent to find alternative employment for him was ample evidence of this.

49 On 3 February 1999, it was made clear to the appellant that he would be offered a senior position without loss of salary or that he would be made redundant and would be paid a redundancy payment. His contract so provided.

50 On 2 and 3 February 1999, he made telephone calls to his employment agent. He told Mr Fitzpatrick that he was shortlisted for an Exploration Manager's job and that the decision would be made within the next few weeks. Indeed, on 4 February 1999, the appellant sent his curriculum vitae to the agency.

51 Whilst he did not receive a job description form, the new position was adequately described to him, on the evidence. The evidence was, too, that he sought no further information about the position, even when Mr Fitzpatrick telephoned him in order to be available to answer any queries. It is significant that that day, 10 February 1999 (Wednesday), the appellant had his first interview with OMV. His new position was explained to him by Mr Fitzpatrick on Thursday, 11 February 1999. The basis was that the new job would be similar to his old position, that he would not have a team, that there would be no change in salary, that he would continue to report to Mr Fitzpatrick and that he had the same degree of autonomy as in his Team Leader role.

52 The appellant was still pursuing the OMV position. On 12 February 1999, the appellant told Mr Fitzpatrick that the OMV position had not been decided. The appellant was told by Mr Fitzpatrick that a response to the offer of a new position was required by Monday, 15 February, when the restructure was to take place.

53 There then occurred the events outlined above, including the withdrawal of the appellant's application to OMV for a position. On 12 February 1999, he advised Mr Fitzpatrick that he would accept the Mobil position, even though he had difficulty deciding. He signed his acceptance of the position on Monday, 15 February 1999 and ceased to occupy the position of PNG Team Leader as and from that date.

54 On 18 February 1999, however, there occurred his intention to put his name forward again to Resource Recruitment, followed by his second interview with OMV on 20 February 1999. Then there was his conversation with Mr Haworth where he foreshadowed his resignation and was told that no redundancy package would be paid to him. This was on 22 February 1999.

55 On 5 March 1999, he accepted OMV's offer. It was after that that he was told about the downgrading of his rating and he made a number of telephone calls to Resource Recruitment that day. This was on Friday, 12 March 1999. By his letter of resignation of 12 March 1999, he formally gave notice of his resignation, effective as at 10 May 1999.

56 By e-mail to Mr Fitzpatrick of 22 March 1999, the appellant asked for a written response to the letter, including "acceptance of my resignation and date of departure". The reply of 24 March 1999 from Mr Fitzpatrick notifies, inter alia, the acceptance of the resignation effective as at 9 April 1999.

57 In my opinion, the Commissioner was entitled to find that those were the facts. They were not in dispute. Further, I can discover no other relevant facts or material which might have been properly considered.

58 It was open to find as follows—

59 That the appellant was a sophisticated, experienced executive with knowledge of the large number of retrenchments and of the reorganisation to occur. As a result, on the evidence, he was concerned about his position when the reorganisation and redundancy plans were announced on 16 December 1998.

60 That, as a result of his concern for his position and his knowledge of matters, he underwent "outplacement counselling" in January 1999. He therefore had plenty of notice of events which might occur and used that notice.

61 That he correctly and prudently attempted to provide for himself, by seeking other employment through an employment agent, Resource Recruitment, in the industry as an exploration manager. He was pursuing that course before 8 February 1999, as he informed Mr Fitzpatrick.

62 The appellant was given notice that his position was to be made redundant which was no surprise to him, on 8 February 1999 and offered two clear choices: redundancy with a redundancy payment (which was provided for in his written contract of service), or a Level 19 position without reduction in salary as described above. He was given a few days to make the decision which it was

submitted was undue pressure on him and evidence of a dismissal. As I have observed above, it was open to find that the new position was explained to him to his satisfaction before he accepted it.

63 Of course, the dismissal did not occur. The appellant was not made redundant. He was not made redundant because, notwithstanding some misgivings because he had the further prospect of employment with OMV, he accepted the other position offered to him on 15 February 1999. It is then clear, as he advised Mr Fitzpatrick, that he was having second thoughts. It was open to find that he was having second thoughts, because he was very interested in the OMV position which carried a higher remuneration. As a result of those second thoughts and following the renewal of his application to them, he resigned his position.

64 That the appellant was still in employment was conceded by Mr Drake-Brockman, on behalf of the appellant, in his reply to Mr Le Miere's submissions for the respondent on this appeal. That was further evidenced by the appellant's resignation from employment and his request to his employer to acknowledge his letter, accept his resignation and agree to a date when the contract was to end. There is no evidence that he was under any untoward pressure to do anything. The requests to him to make a decision before 15 February 1999 were requests directed to the need for the retrenchment process in which his decision was a central factor moving ahead. The only thing causing pressure was the need for his deciding to remain or to apply for a position which he later accepted and which carried a higher salary.

65 When he accepted the Level 19 position, the appellant did so in lieu of becoming redundant whilst maintaining his application for the position at OMV. He remained as an employee and carried out duties as an employee, pending the commencement of his new position on 1 April 1999. In fact, he remained in employment until that position came into being.

66 What occurred on 15 February 1999 was that the appellant accepted employment offered to him by Mobil in a new position which was to come into existence on 1 April 1999. That was the substance of a new contract of employment which was entered into. The old position was relinquished by him by agreement in the face of its proposed abolition. There was no legal limbo. He remained in his old position or was employed unattached to an existing position until he took up his new position.

67 The appellant then resigned as an employee in whatever position he was in before he took up the new position but effective by the acceptance of his employer, after the new position came into existence on 1 April 1999, which in the end was an agreed date when the employment ended. None of this occurred under pressure. The resignation notice of 12 March 1999 was given after the appellant had accepted a position at higher pay with OMV and whilst he was still an employee of Mobil. He was not in legal limbo. He was an employee who resigned at a date agreed between his employer and himself, namely 9 April 1999.

68 It was clearly open to find that that was the reason for his resignation and for his revocation of his acceptance of the offer of a new position as an alternative to redundancy. There was no repudiation by the employer of any contract of employment. All that occurred, occurred by agreement of the parties throughout.

69 The evidence of the change in his performance assessment was quite irrelevant to the reasons for the appellant's actions and the question being decided by the Commissioner.

70 Further, the question of informed consent does not arise, nor is there any such doctrine.

71 It is necessary to say something about duress. Duress has a particular meaning at law. The term is well defined, if I may say so with respect, in *Pao On v Lan Yin* [1979] 3 All ER 65 at 78 (PC) per Lord Seaman—

> "Duress, whatever form it takes, is a coercion of will ... In determining whether there was a coercion of will such that there was no time consent, it is material to enquire whether the person alleged to have been coerced did or did not protest; whether at the time he was allegedly coerced into making the contract, he did or did not have an alternative course open to him such as adequate legal remedy; whether he was independently advised; and whether after entering the contract he took steps to avoid it. All these matters ... relevant in determining whether he acted voluntarily or not."

72 In this case, there was no duress but a decision freely made by the appellant and not coerced to accept one of two alternatives: redundancy or a position not substantially different from his previous position and paid at the same rate. He chose the latter. He then, under no coercion at all, changed his mind and resigned to take a higher paid position elsewhere. There was no coercion. That resignation was accepted and the contract was terminated by agreement on 9 April 1999. If it were not terminated by agreement, it was unilaterally terminated by the appellant.

73 Further, there was no element of unconscionability, within the meaning of *Commonwealth Bank of Australia v Amadio* (1983) 153 CLR 447 at 474, for those reasons, and because there was no question of any attempt to enforce or retain a benefit in a dealing with a person under a special disability. The appellant was, and it was open to find, acting on his own behalf as a sophisticated and experienced executive. He was not subject to unfair pressure and, indeed, all that he elected to do was at his voluntary election.

74 It was open to the Commissioner to find that the appellant well knew what he was doing and why he was doing it. The question of dismissal, constructive or otherwise does not arise. In any event, the pressure alleged to have been put on the appellant, taken to its logical conclusion, was pressure to accept an agreement or a redundancy payment. I would add that it was open to find that he was not subjected to exceptionable pressure. He had known what was going on. He was the lynch pin in the process. As the Commissioner observed, the employer correctly had its restructuring programme (and the welfare of other employees) to consider, apart from the welfare of the appellant.

75 The appellant also well knew that, once he accepted the new position, he was not going to be paid a redundancy payment as well, hence his request for such a payment, once he had changed his mind and resigned. As the Commissioner observed, his letter of 12 March 1999 sets out the intentions and state of mind of the appellant.

76 A dismissal, whether constructive or not, occurs by the act of the employer (see *Metropolitan (Perth) Passenger Transport Trust v Gersdorf* 61 WAIG 611 (IAC), *Attorney-General v WA Prison Officers' Union* 75 WAIG 3166 (IAC) per Kennedy J; see also *Robowash Pty Ltd v Hart* 78 WAIG 2325 at 2328-2329 (FB). The termination of the contract of employment in this case was not brought about by the act of the employer, but by the resignation of the appellant employee, which was accepted by the employer. The Commissioner was correct in so finding. The appellant was neither "tripped nor pushed". Within the meaning of s.29(1)(b)(i) of the Act, there was no dismissal.

77 It is not necessary, therefore, to decide whether the referral was in time, there being no dismissal and no jurisdiction. The question of when a referral for unfair dismissal is in time remains, as far as I am concerned, an open question.

78 For all of those reasons, the Commissioner did not err, the appeal is not made out. I would dismiss the appeal.

SENIOR COMMISSIONER G L FIELDING—

79 I agree with the President that the appeal should be dismissed. I can shortly state my reasons.

80 The Notice of Application which led to the proceedings from which this appeal is derived alleges, as is an accepted fact, that the Appellant's employment with the Respondent ended on 9 April 1999. However, the proceedings before the Commission at first instance and on appeal proceeded

on the basis that the Appellant complained of and sought relief in respect of a dismissal which occurred on or about 8 February 1999. On that day, he was informed by the Respondent that his position as Team Leader PNG/NZ Asset Team was to be abolished. He was then offered employment in a new position at a lower classification or, alternatively, dismissal from employment accompanied by a redundancy payment.

81 Although the Appellant accepted employment in the new position, he argues, in the circumstances, that his consent was not real consent. Counsel for the Appellant contends that that was "Hobson's choice": he either accepted demotion or he would be dismissed completely from his employment with the Respondent.

82 The Appellant argues that, in effect, he was unilaterally demoted in his employment and that consistent with the decided authorities (namely, *Belo Fisheries v Froggett* (1983) 63 WAIG 239; *Advertiser Newspapers Pty Ltd v Industrial Relations Commission of South Australia and Another* (1999) 90 IR 211; and *Robowash Pty Ltd v Hart* (1997) 78 WAIG 2325) he should be taken to have been dismissed for the purposes of the relief available under s 29(1)(b) of the *Industrial Relations Act* 1979.

83 It is undoubtedly the case that a person who is unilaterally demoted but who otherwise continues to be employed by the same employer may nonetheless seek relief in respect of the demotion, it being considered a dismissal from employment in the former position. That much is clear from the decided authorities to which counsel for the Appellant referred and to which could be added *Woolworths (SA) Pty Ltd v Russian* (1996) 66 IR 13 and *Boo Hwa Chan v Christmas Island Administration* [1999] 47 AILR 4-246. However, for the demotion to be considered a dismissal, it must be a unilateral demotion. The employee concerned must not accept, in a real sense, the demotion. Where the employee is offered continued employment on the basis of a new, albeit different, position which offer the employee accepts, there will not be a demotion and the employee will not have a remedy under the legislative provisions in question. As Bleby J pointed out in *Advertiser Newspapers v Industrial Relations Commission of South Australia and Another* (*supra*) at 220, this "is not because there has been no termination of employment but because there has been no termination by the employer. The action may have been initiated by the employer, but it has resulted in an agreement to terminate."

84 Whether or not there has been a dismissal in a particular case is essentially a question of fact: (see: *Clark v Pittwater RSL Club Ltd* (1988) 84 IR 309.) Specifically, whether or not there has been an agreement to terminate, rather than a dismissal through unilateral demotion, is a question of fact. (see: *Advertiser Newspapers v Industrial Relations Commission of South Australia and Another* (*supra*) at 219). Indeed, that much the Appellant concedes. In the present case the learned Commissioner did not accept that there was a unilateral demotion. Having had the opportunity to observe the Appellant give evidence, he formed the opinion that "little of that passionate upset which one gathered from submissions of Counsel" regarding the Appellant's "dismay and concern about his downgrading and the effects that had on him" fell from the Appellant. Instead, he concluded that with the passage of time the Appellant "just did not like the new job" and that "after having watched the [Appellant] give his evidence that he was far less concerned about the downgrading than his Counsel appeared to be".

85 The learned Commissioner rejected any suggestion that the consent given by the Appellant to being employed in the new position was other than real consent. He found that the Appellant was a senior executive of the Respondent. Indeed, he found him to be "an experienced, sophisticated executive" who was "highly educated" and was well aware of the downsizing of the Respondent and knew that there would be retrenchments, as he had been involved in their planning. The learned Commissioner found that he had taken advantage of the outplacement facilities provided by the Respondent and was in negotiations with another potential employer, OMV Australia Pty Ltd, at the time he was offered the new position of which he now complains. As a consequence, the learned Commissioner found that the Appellant "knew about the potential for a retrenchment and was preparing himself for it from January 1999". Moreover, he concluded that it could not be said that "ultimately his retrenchment came as a surprise to him or that when the day came to make his decision, that he was placed under so much duress that he entered into the arrangement unthinkingly so that it would be legitimate later for him to say that he was forced to do what he did by the actions of his employer."

86 All these findings were open to the learned Commissioner on the evidence. It is clear that the learned Commissioner did not regard the Appellant as a highly credible witness. He regarded him as having a "propensity to be selective" in what he wanted to tell the Commission. Contrary to the submission of counsel for the Appellant, the learned Commissioner did not accept the evidence of the Appellant as being the most credible where it conflicted with the evidence of those who testified on behalf of the Respondent. By no means can it be said that the learned Commissioner misused the distinct advantage he had of hearing and observing the witnesses, particularly the Appellant, or that he acted on evidence which was inconsistent with the facts incontrovertibly established by the evidence. Nor can it be said on the evidence that his conclusion was glaringly improbable or that there was "too fragile a base" to support his assessment: (see: *State Rail Authority of New South Wales v Earthline Constructions Pty Ltd (in liq) and Others* (1999) 160 ALR 588.)

87 The findings made by the learned Commissioner inextricably lead to the conclusion that the Appellant was not dismissed from his employment by the Respondent. At best, there was an agreement to terminate his employment which, as the court in *Advertiser Newspapers Pty Ltd v Industrial Relations Commission of South Australia and Another* (*supra*) held, does not constitute a dismissal for the purposes of legislation such as that now in question. The Appellant was not unilaterally demoted but offered the opportunity to take a new, albeit lower-classified, position as an alternative to being dismissed on the ground of redundancy with a redundancy payment. The Appellant was not obliged to accept the new offer of employment. The Respondent did not insist, expressly or impliedly, that he accept employment in the new position. Indeed, he was offered employment in the new position only on the basis that it was to occur by agreement. He could have taken the other option and let the Respondent dismiss him on the ground of redundancy. Instead, the Appellant appears to have decided that it would be more advantageous for him to remain in the employ of the Respondent in a different role. He even went so far as to withdraw his application for alternative employment with OMV Australia Pty Ltd. The choice, as the learned Commissioner justifiably found, was a real one. He was, as the learned Commissioner found, given time to consider his position. Indeed, he twice accepted the offer verbally and once in writing. He was given an opportunity before accepting employment in the new position to retract his verbal acceptance of that offer, but instead he confirmed his previous acceptance of the offer.

88 In my view, the circumstances in this case are materially different from those considered by the courts in the decided authorities upon which the Appellant placed much reliance. In *Belo Fisheries v Froggett*, *Advertiser Newspapers Pty Ltd v Industrial Relations Commission of South Australia and Another* (*supra*) and *Robowash Pty Ltd v Hart* (*supra*), the employees concerned did not consent to their demotion or, in the case of Mr Froggett, forgo the non-payment of wages, which is in stark contrast to the conduct of the Appellant. Furthermore, the employees in the two last-mentioned cases were not given an opportunity to accept or reject the demotion; the demotion was simply dictated to them by their employer. Similarly, the position now under review is quite different from that considered in *Marriott v Oxford and District*

Co-operative Society Ltd (No 2) [1970] 1 QB 186. This is not a case of the Appellant simply staying on for a period "after stating an intention to leave" as a consequence of significant changes in his job, but, as counsel for the Respondent argued, a situation in which the Appellant expressly agreed to stay on rather than be dismissed and take a redundancy payment.

89 In my view, the learned Commissioner was justified in holding, as he did, that the Appellant had not been dismissed from his employment within the meaning of the relevant legislative provisions.

90 Even if the Appellant had been dismissed from his employment on the occasion in question, the Commission would have been justified in dismissing the application for want of jurisdiction. The Notice of Application seeking the relief now in question was not lodged until 7 May 1999; that is, approximately three months after the date on which the Appellant complains that he was dismissed. The provisions of s 29(2) of the *Industrial Relations Act* 1979 stipulate that "A referral by an employee under subsection (1)(b)(i) cannot be made more than 28 days after the day on which the employee's employment terminated." Having regard to the purpose and object of that provision, it should be interpreted as speaking from the day on which the dismissal of which the employee complains occurred, rather than the date on which he finally left the employment of the employer against whom the relief is sought.

91 I do not understand the Appellant as contending that the day on which he ultimately ceased to be in the employ of the Respondent (namely, 9 April 1999) constituted the dismissal of which the Appellant complains and seeks relief. If my understanding is incorrect, I feel bound to indicate that the termination of the Appellant's employment on that occasion ought to be considered not as a dismissal but as a true resignation by the Appellant. Not only does his letter of resignation make that plain, but he appears to have regarded it as such, for he followed it up with a request to the Respondent to confirm that it had "accepted my resignation". It is perhaps not without significance in this context that his resignation came approximately nine days after he had accepted employment with OMV Australia Pty Ltd.

92 In my view, for the foregoing reasons, the Appellant has made out none of his grounds of appeal.

COMMISSIONER S J KENNER—

93 I have had the benefit of reading in draft the reasons for decision of the President, with which I am in general agreement. I add the following observations of my own.

94 The decision of the Commission from which the present appeal is brought, involved a finding of fact that the appellant was not dismissed for the purposes of s 29 of the *Industrial Relations Act* 1979 ("the Act") to enliven the Commission's jurisdiction. A finding of fact by the Commission as to whether an employee has been dismissed or not, is a finding of jurisdictional fact necessary to the Commission exercising jurisdiction under the Act to deal with the merits of an unfair dismissal application, as to whether such a dismissal was harsh, oppressive or unfair.

95 The appellant, through his counsel Mr Drake-Brockman, submitted that he was forced to choose between a demotion from his position as Team Leader PNG/NZ Asset Team, which position was being abolished as a result of the respondent's re-organisation, to the position of PNG JV Representative, or a redundancy, in circumstances where he was placed under duress. It was also contended that the conduct of the respondent, in offering the appellant the position of its PNG JV Representative, committed a repudiatory breach of the appellant's contract of employment. Furthermore, Mr Drake-Brockman submitted that the respondent engaged in unconscionable conduct in putting the appellant in the position that it did, having regard to the relative bargaining position of the parties at the material times.

96 Mr Le Miere, senior counsel for the respondent, whilst addressing the extensive grounds of appeal advanced by the appellant, primarily submitted that the appellant was not dismissed in order to attract the Commission's jurisdiction at first instance, either when accepting the new position, or when he subsequently tendered his resignation from that position.

97 From all of the evidence before the Commission at first instance, I am not persuaded that the appellant was forced to resign from his employment by his letter dated 12 March 1999 (see AB 270) or alternatively, that he was "dismissed" on the acceptance by him of the position with the respondent as its PNG JV Representative, on 19 February 1999.

98 There was ample evidence upon which it was open for the Commissioner at first instance to find that the appellant was well aware of the impending restructuring of the respondent's business and indeed, as a senior member of management, took part in some of the planning for this process. Furthermore, on the evidence it was also open for the Commissioner to find that the appellant was aware that in accepting the new position, he had forfeited the redundancy package initially on offer from the respondent. In particular, this is reflected in the appellant's letter of resignation (AB 270) and subsequently, in an internal e-mail to another employee (AB 276).

99 Whilst Mr Drake-Brockman submitted that the appellant had been the subject of a forced demotion, and in this regard referred to and relied upon a decision of the Full Bench in *Robowash Pty Ltd v Michael Hart* (1998) 78 WAIG 2325, in my opinion, the circumstances in *Robowash* were quite different from those before the Commission at first instance. In that case, the employee concerned was the subject of a forced demotion in that as a result of a re-organisation of the employer's business, the employee, who then occupied the position of Production Supervisor, was to be demoted to a tradesperson position on the shop floor. There was no alternative offer of a redundancy, such that the employee had a choice between one of two options. In these circumstances, there is no doubt that a forced demotion can constitute a dismissal for the purposes of the Act.

100 In the matter at first instance, the appellant was offered the choice between two alternatives, that choice being acceptance of a redundancy package or the acceptance of an alternative position with the respondent. The appellant, after giving consideration to his position, and indeed on the evidence, canvassing alternatives outside of the respondent, including a senior position with an organization known as OMV which he ultimately accepted, elected to accept the new position with the respondent. Whilst there was evidence that the appellant was "struggling" with his decision, in my view from the evidence, the nature of this "struggle" had more to do with the decision whether or not to accept the position with OMV, rather than with any duress or unreasonable pressure from the respondent.

101 In my opinion, the termination of the appellant's employment in the former position and his engagement in the new position with the respondent, resulted in the termination of one contract of employment and the formation of a new contract of employment by agreement between the parties to it, and was not a dismissal as a result of a repudiatory breach of contract by the respondent: *Advertiser Newspapers Pty Ltd v Industrial Relations Commission of South Australia and Anor* (1999) 90 IR 211. The question therefore as to whether any "dismissal" as a consequence of the acceptance by the appellant of the new position, being within time for the purposes of s 29(2) of the Act, does not arise on this occasion.

102 Whether one focuses on the event of the formal acceptance of the new position by the appellant on 19 February 1999, or his subsequent resignation from that new position on 12 March 1999, neither in my view, on the evidence, disclosed a dismissal for the purposes of the Act.

103 Finally, it was submitted by the appellant that the conduct of the respondent, as a consequence of these material events, constituted unconscionable conduct by it in its dealings with the appellant. In this regard, the appellant made reference to *Commonwealth Bank of Australia v*

Amadio (1983) 153 CLR 447. In this case the High Court set aside securities given in relation to a mortgage, which securities were procured from the parents of a customer of the appellant. It was held that given the special disadvantage suffered by the parents of the borrower, that the guarantees procured in favour of their son should be set aside as they constituted an operative misrepresentation in equity. In my view, the circumstances of and confronting Mr and Mrs Amadio in that case were very different to the circumstances of and confronting the appellant in the matter before this Full Bench. Both Mr and Mrs Amadio were elderly migrants in respect of whom English was not their first language. In this position of disability, the court held that the appellant bank owed a specific duty to the mortgagors to disclose particular features of the security transaction disadvantageous to them. By contrast, the uncontested evidence at first instance in this matter was that the appellant was a senior executive of the respondent and possessed a tertiary qualification. Moreover, the evidence also was that the appellant was quite aware of the impending changes to the respondent's organisation and as I have noted above, to an extent, took part in the planning process for some of these changes. It was open on the evidence for the Commissioner to conclude as he did, that the appellant was not placed in any particular position of disadvantage or duress or otherwise misled as to the decisions that he took.

104 I would therefore dismiss the appeal.

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

Order accordingly.

2000 WAIRC 00818

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	RICHARD MALCOLM APPELLANT *v.* MOBIL EXPLORATION & PRODUCING AUSTRALIA PTY LTD RESPONDENT
CORAM	FULL BENCH HIS HONOUR THE PRESIDENT P J SHARKEY SENIOR COMMISSIONER G L FIELDING COMMISSIONER S J KENNER
DELIVERED	WEDNESDAY, 11 OCTOBER 2000
FILE NO/S	FBA 36 OF 2000
CITATION NO.	2000 WAIRC 00818

Decision	Appeal dismissed.
Appearances	
Appellant	Mr A L Drake-Brockman (of Counsel), by leave, and with him Mr R C Carthew (of Counsel), by leave
Respondent	Mr R L Le Miere (of Queens Counsel), by leave, and with him Mr G W Smith

Order.

This matter having come on for hearing before the Full Bench on the 13th day of September 2000, and having heard Mr A L Drake-Brockman (of Counsel), by leave, and with him Mr R H Carthew (of Counsel), by leave, on behalf of the appellant and Mr R L Le Miere (of Queens Counsel), by leave, and with him Mr G W Smith (of Counsel), by leave, on behalf of the respondent, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 11th day of October 2000 wherein it was found that the appeal should be dismissed, it is this day, the 11th day of October 2000, ordered that appeal No FBA 36 of 2000 be and is hereby dismissed.

By the Full Bench.

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

2000 WAIRC 00802

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	PETER HAROLD SUMMERFIELD APPELLANT *v.* SHIRE OF KATANNING RESPONDENT
CORAM	FULL BENCH HIS HONOUR THE PRESIDENT P J SHARKEY SENIOR COMMISSIONER G L FIELDING COMMISSIONER S WOOD
DELIVERED	THURSDAY, 5 OCTOBER 2000
FILE NO/S	FBA 5 OF 1999
CITATION NO.	2000 WAIRC 00802

Decision	Appeal upheld and decision at first instance quashed.
Appearances	
Appellant	Mr D Howlett (of Counsel), by leave
Respondent	Ms P J McMahon (of Counsel), by leave

Reasons for Decision.

(Given extemporaneously and subsequently edited by the President)

THE PRESIDENT:

1 These are the unanimous reasons for decision of the Full Bench.

2 We would observe that, having regard to the existence and applicability of the same award and the same clauses of that award, the *Municipal Employees (Western Australia) Award* 1982 (Cth), in both *City of Mandurah v Hull* 80 WAIG 4319 (IAC) and this case, we are of the view that material matters of fact and law are indistinguishable from what existed and applied in *City of Mandurah v Hull* (IAC)(op cit). We regard ourselves as bound by the ratio in that case and are therefore of the view that the submissions on behalf of the appellant, which coincide with all but one of the submissions for the respondent, direct us to make the orders which we have made, the Commission at first instance having erred in ordering as it did.

3 In our opinion, since the proper order is that the order made at first instance to dismiss is quashed, that will mean that the order at first instance no longer exists. Thus, the matter should then be able to proceed as if the order appealed against were never made.

4 For those reasons, we ordered that the appeal should be upheld and the decision made at first instance on 3 June 1999 in application No 694 of 1998 be quashed.

2000 WAIRC 00780

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	PETER HAROLD SUMMERFIELD
	APPELLANT
	v.
	SHIRE OF KATANNING
	RESPONDENT
CORAM	FULL BENCH
	HIS HONOUR THE PRESIDENT P J SHARKEY
	SENIOR COMMISSIONER G L FIELDING
	COMMISSIONER S WOOD
DELIVERED	TUESDAY, 3 OCTOBER 2000
FILE NO/S	FBA 5 OF 1999
CITATION NO.	2000 WAIRC 00780

Decision	Appeal upheld and decision at first instance quashed.
Appearances	
Appellant	Mr D Howlett (of Counsel), by leave
Respondent	Ms P J McMahon (of Counsel), by leave

Order.

This matter having come on for hearing before the Full Bench on the 3rd day of October 2000, and having heard Mr D Howlett (of Counsel), by leave, on behalf of the appellant and Ms P J McMahon (of Counsel), by leave, on behalf of the respondent, and the Full Bench having determined the matter and reasons for decision therefor having been delivered, and the parties herein having waived the requirements of s.35 of the *Industrial Relations Act* 1979 (as amended), it is this day, the 3rd day of October 2000, ordered as follows—

(1) THAT the appellant be and is hereby granted leave to amend the grounds of appeal in the Notice of Appeal filed herein by deleting the existing grounds of appeal and substituting therefore new grounds of appeal as they appear in the "Amended Notice of Appeal to Full Bench" filed herein.

(2) THAT appeal No FBA 5 of 1999 be and is hereby upheld.

(3) THAT the decision of the Commission made on the 3rd day of June 1999 in matter No 694 of 1998 be and is hereby quashed.

By the Full Bench,

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

FULL BENCH—
Appeals against decision of Industrial Magistrate—

2000 WAIRC 00749

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

APPELLANT	TRANSPORT WORKERS' UNION OF AUSTRALIA, INDUSTRIAL UNION OF WORKERS, WESTERN AUSTRALIAN BRANCH
RESPONDENT	HOLM PTY LTD
CORAM	FULL BENCH
	HON PRESIDENT P J SHARKEY
	CHIEF COMMISSIONER W S COLEMAN
	SENIOR COMMISSIONER G L FIELDING
DELIVERED	FRIDAY, 29 SEPTEMBER 2000
FILE NO/S	FBA 25/2000

Decision	Appeal dismissed.
Appearances	
Appellant	Mr G W Ferguson and with him Mr R K Raven
Respondent	Mr O C Moon, as agent

Reasons for Decision.

INTRODUCTION

THE PRESIDENT:

1 This is an appeal against the whole of the decision of the Industrial Magistrate's Court at Perth given on 17 April 2000 in complaint No CP 137 of 1999, whereby a complaint by the appellant, alleging 123 breaches of an award, was dismissed. The appeal is brought under s.84 of the *Industrial Relations Act* 1979 (as amended) (hereinafter referred to as "the Act").

GROUNDS OF APPEAL

2 The appeal is brought upon the following grounds—

"1. The Industrial Magistrate erred in law and/or the exercise of his discretion in dismissing the complaint, CP 137 of 1999 on the ground that Exhibit E (a trip record) was not compiled contemporaneously with the work done, when the existence of a contemporaneous record is not an essential requirement for a finding that the times worked as alleged be proven.

2. The Industrial Magistrate erred in law and/or in the exercise of his discretion in deeming Exhibit E to be evidence tendered in order to support of the truth of its' contents, and in giving weight to evidence relating to the history of Exhibit E, when—

(a) both the Complainant and the Defendant agreed that Exhibit E was not evidence that tended to prove the truth of the assertions contained within it; and

(b) Exhibit E was tendered only as a summary of the times worked as alleged by the Complainant.

The Industrial Magistrate should not therefore have held that Exhibit E was evidence tendered in order to support of the truth of its' contents, and should have disregarded evidence given on that basis.

3. The Industrial Magistrate erred in law and/or in the exercise of his discretion in finding that the Complainant had not proven that the member of the Complainant had worked the times alleged in Exhibits E and H, because

(a) The starting and finishing times, dates, and duration of each of the eight interstate journey undertaken by the member had not been challenged or contradicted;

(b) the evidence given by the member that he was under continuous pressure to work to successive deadlines within those journeys had not been contradicted;

(c) the member's recollection of the details of the duties undertaken within each journey had not been challenged or contradicted;

(d) the evidence given by the member had been corroborated by the telephone records tendered as Exhibit J; and

(e) clause 9(3)(b) of the Award provides that long-distance drivers work "continuous shifts (except for meal breaks)..."

4. The Industrial Magistrate erred in law in holding that every hour must be proven, when the Industrial Magistrate should have held—

(a) that it was sufficient that the evidence was of sufficient credibility to allow a finding on the balance of probabilities that the member of the Complainant worked the times alleged in Exhibits E and H,

(b) or, in the alternative to (a), that a judicial estimate was permissible, and

(c) that the Defendant should bear some or all the burden of evidence so as not to be allowed to escape liability through its' failure to keep time and wage records as required by the Award,

5. Consequently, the Appellant seeks orders that—

(1) the appeal be upheld;

(2) the decision of the Industrial Magistrate be quashed;

(3) the Full Bench find that that the times worked as alleged in Exhibits E and H be found to be proven on balance of probabilities;

(4) the matter be referred back to the Industrial Magistrate's Court for further hearing and determination according to law and the findings and orders of the Full Bench."

BACKGROUND

3 The appellant organisation of employees (hereinafter referred to as "the TWU") alleged, by a complaint, that between 31 March 1998 and 6 April 1998 at Perth, the respondent, the defendant at first instance, (hereinafter referred to as "Holm Pty Ltd"), being a party bound by Award No 10 of 1961, the *Transport Workers (General) Award* (hereinafter referred to as "the award"), committed a breach thereof in that Holm Pty Ltd paid its employee, Mr Alexander James Sandy de Jager, less than the amount due for ordinary time in breach of Clause 9 of the award. It is alleged that the amount due was $450.68.

4 In addition, the Schedule to the complaint alleges 130 further matters of breach, claiming underpayments to a total amount of $40,000.00, and the TWU sought the recovery of costs, interest and penalties.

5 Those alleged matters of breach cover the period 31 March 1998 to 21 July 1998, and allege breaches of Clauses 9, 10, 11(1), 12, 12(4)(a)(iii), 15(1) and 15(5) of the award. In the end, after a number of amendments were permitted, there were 123 complaints of breach of the subject award before the Industrial Magistrate's Court.

6 Having heard the matter, which was defended by Holm Pty Ltd, His Worship dismissed all complaints, an order which he endorsed on the complaint on 17 April 2000.

REASONS FOR DECISION OF THE INDUSTRIAL MAGISTRATE'S COURT AT PERTH

7 The reasons for decision, unfortunately, do not appear in the appeal book. The date of decision was 17 April 2000. They were given extemporaneously and appear in the transcript at first instance (hereinafter referred to as "TFI") at pages 138-144.

8 At page 144(TFI) of 17 April 2000, His Worship observed that he will make a note on the complaint that all the complaints are dismissed, which he did.

9 The reasons for decision of His Worship appear to commence at page 139(TFI) of 17 April 2000. Summarised, they are as follows—

1. His Worship had difficulty accepting the evidence of Mr de Jager and his wife, Mrs April May de Jager.
2. The onus was upon the TWU to establish times and, without accurate times, His Worship was unable to calculate the hours worked and make orders in relation to those matters.
3. The onus of proof was upon the TWU.
4. The evidence of Mr de Jager and his wife was that, after each trip, he would write details of that trip onto notepaper and, because his writing was not good, he would give it to his wife to transcribe into an exercise book (exhibit E) which was produced.
5. His Worship had grave concerns about the evidence that the notes were made in the manner described and at the time claimed.
6. Mr de Jager undertook eight interstate trips for Holm Pty Ltd, as His Worship found, the first being on 6 April 1998 and the last being completed on 29 July 1998, a period of nearly four months.
7. His Worship had concerns regarding the authenticity of the notes because the book was almost in pristine condition. It was presented as being a record starting from the front and finishing on trip 8 and, that being the case, His Worship said that one would assume that the pages were completed consecutively.
8. The first page of the book described Cockburn Transport as Holm Pty Ltd. His Worship was surprised that Mrs de Jager, when she started the book would have known that "Cockburn Transport" was the trading name of Holm Pty Ltd, but it was put in there.
9. The second page of the book just had notes and referred to future trips and a summary of those trips. His Worship queried why those notes should appear in the book. These, he said, are not the sort of notes which would be made this early in a record of employment and are matters that would have arisen during the period of employment.
10. Each trip was then recorded on the next eight pages, one page for each trip. The layout for each trip was the same and records dates, start and finish times for each part of the journey and was followed by the hours slept with a summary of the total hours slept during the entire trip. No other relevant information was recorded, for example, loading times or of any other incident except the hours worked and the time slept.
11. All the notation of times was done to the nearest whole hour and the sleep periods were in whole hours, although there were some periods where half an hour was involved.
12. The record was very neat and it would appear that the same blue pen had been used. It just added to a suspicion that, over a four month period, the same pen would be used on every occasion.
13. The last trip involved an accident where sleep or lack of it was a factor and which resulted in a workers' compensation claim.
14. His Worship found it difficult to accept that the record for each trip recorded nothing more than those details which were now relevant to this case and the workers' compensation claim.
15. His Worship then referred to Mr de Jager's notes. He observed that his suspicions in relation to those notes were aroused firstly when it was claimed they were rough notes made at

the end of each trip, so that his wife could record the trip in an exercise book. His Worship observed that the notes were not illegible and were quite clear, being in neat writing with times and dates. There could be no error made because they were illegible, they were written on a notepad and, when they were introduced into evidence, each of the pages was stuck together by the gum binding the pages, which suggested to His Worship that they were all torn off the pad together. The pages started to come apart in court.

16. His Worship found it difficult to believe that, on eight occasions, the notes were taken out, written on, handed to Mrs de Jager and then put aside to be used another time. The ink again appeared to be the same on every page and His Worship observed that he could be forgiven for suspecting that they were just prepared at the one sitting. His Worship observed that it was not credible evidence that they were made after each trip and used in the manner claimed.

17. The other suspicion was that the notes were tendered as part of exhibit E as being kept with that book, but they were not discovered with the other documents and only came to light during the hearing.

18. The case depended on the accuracy and validity of the records of each trip and His Worship was unable to find, on the balance of probabilities, that the notes were genuine. On the evidence before him, it was open to find that the records produced were not created contemporaneously with each trip, but created for the purpose either of the hearing or the workers' compensation hearing.

19. His Worship observed that the starting point of any claim of this type must be reliable evidence and believable evidence as a basis of the claim. He did not find the evidence put forward as a basis of the claim to be "acceptable" evidence, a term which he seems to have used synonymously for "credible". It was, therefore, conceded to be the key point by Mr Raven, on behalf of the TWU, and His Worship went on to find (see page 143(TFI)) that it would be pointless hearing evidence as to calculations and that he was really left without any alternative but to find the charges not proven and dismiss those which were outstanding.

ISSUES AND CONCLUSIONS

10 The decision reached by the Industrial Magistrate was reached in what seems to have been a no case to answer submission, although it was not so styled. No issue is taken with that on appeal, so that it is not necessary to make any finding. Certainly, there was no oral evidence from witnesses for Holm Pty Ltd, nor was it sought to be adduced. Some documentary evidence was adduced, but that is not necessarily an obstacle to a submission of no case to answer.

11 Brief submissions were heard on behalf of both parties before His Worship decided the complaint.

12 The learned Industrial Magistrate's decision seems to have been reached on the basis of his observation of the witnesses and his consideration of the important document, exhibit E.

No Discretionary Decision

13 The Industrial Magistrate was not required to make a discretionary decision. In *Coal and Allied Operations Pty Ltd v AIRC* [2000] HCA 47 (unreported) delivered 31 August 2000, the High Court of Australia (Gleeson CJ, Gaudron and Hayne JJ (at page 6)) discussed the nature of a discretionary decision—

> "Discretion" is a notion that "signifies a number of different legal concepts". In general terms, it refers to a decision making process in which "no one [consideration] and no combination of [considerations] is necessarily determinative of the result". Rather, the decision-maker is allowed some latitude as to the choice of the decision to be made. The latitude may be considerable as, for example, where the relevant considerations are confined only by the subject-matter and object of the legislation which confers the discretion. On the other hand, it may be quite narrow where, for example, the decision-maker is required to make a particular decision if he or she forms a particular opinion or value judgment."

14 Their Honours referred to *Norbis v Norbis* (1986) 161 CLR 513 at 518 per Mason and Deane JJ, *Jago v District Court of NSW* (1989) 168 CLR 23 at 75-76 per Gaudron J, *Russo v Russo* [1953] VLR 57 at 62 per Sholl J, *Water Conservation and Irrigation Commission (NSW) v Browning* (1947) 74 CLR 492 at 504-505 per Dixon J and *R v Australian Broadcasting Tribunal;, Ex parte 2HD Pty Ltd* (1979) 144 CLR 45 at 49.

15 This was a matter where the Industrial Magistrate had to be satisfied that the TWU had established all of the ingredients of its complaint, on the balance of probabilities. It was not a case, within the ratio in *Coal and Allied Operations Pty Ltd v AIRC* (HC)(op cit), where latitude as to the choice to be made was allowed. The decision appealed against was not a discretionary decision.

Findings of Fact on Appeal—Credibility

16 There is a principle which it is necessary that I advert to in these reasons. The principle is that, in proceedings, a finding of fact by a trial judge, based on the credibility of a witness, is not to be set aside because an appellate court thinks that the probabilities of the case are against, even strongly against, that finding. If the finding depends, to any substantial degree, on the credibility of the witness, the finding must stand unless it can be shown that the judge has failed to use or has palpably misused his or her advantage, or has acted on evidence which was inconsistent with facts incontrovertibly established by the evidence, or which was glaringly improbable (see *Devries and Another v Australian National Railways Commission and Another* [1992-1993] 177 CLR 472 and the explanation in *State Rail Authority of New South Wales v Earthline Constructions Pty Ltd (in liq)* (1999) 73 ALJR 306 (HC)).

Evidence

17 There was oral evidence at first instance called only by the TWU. The witnesses were Mr Alexander James Sandy de Jager and his wife, Mrs April May de Jager. Holm Pty Ltd adduced no oral evidence, but some documentary evidence was tendered on its behalf.

18 Mr de Jager was employed by Holm Pty Ltd as a truck driver until he was injured in a motor vehicle accident on 27 July 1998, since which time he has been on workers' compensation. He was employed on eight interstate trips, commencing on 6 April until 29 July 1998, when the last trip commenced. He did drive trucks on short trips for his employer, too. However, he was primarily employed as a long distance driver and he drove trucks for his employer during the relevant time on long interstate journeys across the continent to New South Wales and Queensland, amongst other destinations, in various types of vehicles. He normally drove alone although, on his last trip, he had a co-driver from Ceduna on.

19 Mr de Jager's duties were to load and unload the vehicle which was in his possession and to ensure that the goods arrived at their destination on time and in good order. Once he had loaded, the employer would tell him to get going. His other responsibility was to ensure that the vehicles and trailers which he was operating were in good order.

20 On the last journey, Trip 8 (when he drove with another driver) he was injured in a motor vehicle accident and had been, and remained, on workers' compensation as at the time of the hearing of the complaint at first instance.

21 During the time of his employment, on Mr de Jager's evidence, he was forced, because of jeopardy to his

employment, to complete the journey within the times stipulated by his employer. This forced him to drive without the required hours of rest and in breach of the requirement that he not drive for more than twelve hours in every twenty-four hour period. He did admit (see page 16(TFI)) that his employer did not advise him of the consequences if he did not arrive on time, but said that it was the industry; if you were late, you were in trouble. He said "You can the sack. You can get fined."

The Records

22 Because he was in breach of the requirements, as he alleged, he doctored his national driver's log book so that he would not be incriminated if the authorities stopped him and examined it on these journeys. What was written in the national driver's log book was, therefore, conceded to be false.

23 His clear evidence was that he was unable to find his national driver's log book where he recorded his journeys. (Indeed, it would seem that he was required to record them, although no statutory or regulatory requirement was referred to.) In any event, he said that he had to doctor it to "get away with (his) trips legally". The national log book entries were entries made during the trip. The notes which he made when he returned he made because the national log book did not contain correct entries. Indeed, it was "doctored" and contained false entries. Otherwise he would have had to record that he was driving outside the permissible hours for driving.

24 The purpose of the national drivers' log book, he said, was to try and cut drivers' fatigue. He gave evidence that a driver must have a five hour rest period and can only drive twelve hours in every twenty-four hour period. Although the entries made in the national log book, he willingly admitted, were false, the times which he recorded when he came home were accurate to the best of his knowledge.

25 Subsequently, the log book has disappeared and, according to his evidence, he surmised that his wife must have left it in the truck when his wife took his belongings out after his accident. His wife's evidence was that she did not know where the book was. In any event, as His Worship correctly found, the log book has disappeared.

26 What he did do was to write down details of his trip, namely the "times that I was driving and sleeping" on each trip, in the form of notes (see exhibit E) soon after his return from each trip; because his writing or recording was not tidy, his wife transcribed those notes, in neater form, as a record into exhibit E, an exercise book. Those notes are on folded sheets of paper which His Worship observed were gummed together at the hearing before him (a fact not sought to be denied) and were placed inside the back cover of the exercise book, which was also exhibit E. Mr de Jager's evidence was that his notes constituted an accurate record, to the best of his knowledge. He rounded off the hours to the nearest half hour at the beginning and end of each day's journey and each journey.

27 Mrs de Jager corroborated her husband's version of the compilation of exhibit E (see page 83(TFI)) and referred to the joint bank account and pay cheques (see page 88(TFI)). She also gave evidence that he went on workers' compensation on 6 August 1998. She also said that she wrote in exhibit E everything which she thought might be useful. She ascertained information from his notes and by oral information given to her by Mr de Jager.

28 At the time of the hearing, Mr de Jager was or had been receiving psychiatric treatment. He had made a claim for damages in respect of injury suffered in the motor vehicle accident referred to above.

29 Certainly, exhibit G, the trip diary prepared by Mrs de Jager was, on her evidence (see page 84(TFI)), prepared to enable Mr de Jager's solicitors to calculate a past and future loss of wages claim.

30 Mr de Jager's evidence was that he was not paid an amount which was due to him, as evidenced by the spreadsheet, exhibit H, which was in turn derived from and based on exhibit E. There is no doubt, since exhibit E was compiled at the end of the trip at the earliest, that neither in the loose sheets or the exercise book pages consecutively completed by Mrs de Jager, did it represent a contemporary record. The contemporary record was, on the evidence, the national driver's log book. Mr de Jager's evidence as to the compilation of the record, exhibit E, was confirmed by his wife in evidence. She gave evidence that she derived the times from Mr de Jager's notes and inserted other information.

Exhibit E

31 Exhibit E is a document which I now describe. The trip record, exhibit E, is reproduced in copy form in these proceedings (see pages 6-13 of the appeal book), but I have examined the original which is an exercise book, inscribed on the outside front cover thus—

> "Name Sandy de Jager
>
> Subject Log
>
> Year 1998"

There follows inside a note, written in what appears to be the same blue biro, setting out—

> "Sandy de Jager for Cockburn Transport (Holm Propriety Ltd)"

noting that he commenced employment on 6 April 1998. That is the first page.

32 The next page contains notes of four complaints or observations about his employer. Those related to deductions of $40—$100 per trip for telephone use, that he was paid by cheques made out for cash with no payslips, that no superannuation was paid and that he was hired as a single driver, not to drive "2-up". Mr de Jager telephoned his employer every day, he said, when he was out on the road.

33 There are, in all, nine handwritten consecutive pages, commencing with the first page of the book, completed. The rest are blank. Two pages have notes on the back of the page. The same blue biro seems to have been used throughout. Some notes are highlighted in yellow. No other page on the book is written on.

34 In the back of the book, inside the back cover, held together by a green glide-on clip, are five A4 lined pages which seem to have been torn from a pad. They are details of Trips 1, 3, 5, 7 and 8. These were identified in evidence as having been written by Mr de Jager, inferentially seriatim, when he returned from each trip.

35 This book, it was not contradicted in evidence, was a book containing entries for trips 1 to 8, as I have mentioned, written by Mrs de Jager.

36 Mr de Jager had written out a rough copy which are the pages glide-on clipped to the inside of the exercise book (exhibit E) when he returned home from a trip. I have referred to this material, also, earlier in these reasons. Mrs de Jager had written this record in a more neat form in the exercise book. Mr de Jager's rough notes do not refer to each trip. He was the author of the material, however. His wife transcribed that material into the front of the exercise book on consecutive pages. She had clearly done so, and it was not in issue that she had.

37 Mr de Jager did not receive any payslips, he said in evidence, and the employer paid by cheques to cash. Every time when he returned home, he was required to argue with his employer that the amount paid was not enough. He said that he was never provided with a plan for his journeys with meal breaks and rests, for example, scheduled. He telephoned his employer every day or every second day.

38 He was never instructed, at any time, to rest by his employer. He was only instructed that he had to be at a destination. With overwidth loads, too, it is not permitted to travel in daylight hours. Thus, he drove without the prescribed rest in order to reach his destinations on time.

39 The TWU calculations contained in the spreadsheet, exhibit H, and which formed a record of the claim, were taken from the "log book" transcribed by Mrs de Jager. Mr de Jager gave evidence that the information of hours worked provided to the TWU were the correct hours. He gave evidence that he has been suffering post-traumatic

stress since his accident. He was unable to say when his wife compiled the notes in exhibit E, but gave evidence that this occurred before the date of the complaint which was 26 July 1999.

40 Mr de Jager admitted that none of the records were made contemporaneously. He also gave evidence that the times stated in exhibit E were accurate to the best of his knowledge.

The Trips

41 It was admitted by Mr de Jager that he had made the first trip (Trip 1) from Perth to Melbourne and back when he had had 19 hours sleep in seven days. He admitted that he had quite possibly entered the details on paper (exhibit E) on the day when he returned home, or on that evening before he went to sleep. He was not sure if this occurred on the same day or by telephone (see page 12(TFI)).

42 Trip 2 was a journey from Perth to Sydney and return. (Mr de Jager's wife and five year old daughter accompanied him.) Those times were entered, to Mr de Jager's knowledge, at the time of the events, he said. To his knowledge, he said that these hours were "correct with the sleep times and everything else" (see page 13(TFI)). He then said that these records were not made contemporaneously, although he recalled Trip 2 as involving an overwidth load with delivery actually occurring before Sydney. In evidence, he conceded that the sleep time claimed was not accurate (see page 49(TFI)). It should have recorded "slept 10 hours", not nine. There was an admitted error in calculation.

43 Trip 3 involved taking an overwidth load from Perth to the Century Mine in North Queensland. The times which he recorded were as accurate as he could recall. Between 21 and 30 April 1998, there was a police escort and there were regular breaks from driving, as Mr de Jager admitted in cross-examination. He was only permitted to drive daylight hours then, but afterwards, he drove unloaded to Sydney and there was, therefore, a different record of off duty and sleep time.

44 Mr de Jager gave evidence that, as a rule, the driving time from Sydney to Perth (or vice versa) was 45 to 48 hours. He was unable to explain why, on the face of it, he had recorded a lesser speed for the unladen part of the journey as distinct from loaded (see page 55(TFI)). He was unable to state the true speed because he said that he had not taken much notice.

45 He gave evidence that, at no time, did his employer supply him with a meal nor was he provided with money for a meal allowance. This was the same, he said, in relation to every trip. The only time he purchased meals was when he stopped for a shower or to refuel. Further, he said, he was never reimbursed for the purchase of food.

46 He admitted to breaking the law on Trips 2 and 3, in order to arrive at places on time. His evidence was that he was instructed to be there on time, whatever it took. He did say, too, that the times indicated in exhibit E included loading and unloading times.

47 As to Trip 4, this included a period of driving for 37 hours without a break, then a two hour break and a further driving period of 17 hours. He conceded that the speed could have been 71 kilometres per hour, on average. His reduced sleeping time, he reiterated, was brought about by his need to be on time (see page 63(TFI)).

48 On Trip 5, once again a Perth Sydney Perth trip, he drove for 38 hours straight with a four hour break and then for another 16 hours.

49 As to Trip 6, there was a miscalculation of hours in relation to the entry of 12 June 1998. He was cross-examined about telephone calls made from Goondiwindi, Bingera and Moree when he was having a rest break of 11 hours, a distance of under 100 kilometres. He explained that he had telephoned, and because it was too noisy, then moved on, then telephoned again (see pages 65-67(TFI)). The telephone calls were made over about an hour and a quarter. He alleged, too, that he worked 92 hours. There was also an unconvincingly explained difficulty about the stage from Toowoomba to Goondiwindi without a break on that trip (see page 68(TFI)). He was required to be home and he decided to work those hours to get home.

50 As to Trip 7, Mr de Jager agreed that the claimed average speed would be 53 kilometres per hour, that the rest time for the trip was 55 hours in total. He did not disagree with the proposition that that average speed might afford him 179 hours rest. He attributed a delay to an accident near Port Augusta in South Australia. There were changeovers and other factors included in those hours. On one date, he had erroneous entries where 8 hours sleeping was recorded instead of 7 and on another, 10 hours instead of 8 (see page 71(TFI)).

51 As to Trip 8, which was the trip on which he was injured in an accident, there were two drivers but only from Ceduna across and then back (see page 71(TFI)). There was a sleeping cabin on the truck and he and the other driver took turns to have a break. He said, in cross-examination, that he was a long distance truck driver and, therefore, only recorded long distance journeys.

52 Further, he gave evidence that the times recorded in exhibits E and H were accurate and accurate to the hour. That is, there could be a one hour discrepancy between the finish of one time and the start of another time. Again, he gave evidence that the times were true to the best of his knowledge. He agreed that rounding off the times to the hour could have an effect on the total times being claimed, which it plainly could.

53 He gave evidence that he did not keep a record of local work, only of long distance trips. His bank statements showed that he was paid and he thought that his employment would be in jeopardy if he did not make the times set by his employer. He was cross-examined as to his average speed on journeys, on the basis of calculations made on behalf of Holm Pty Ltd, but not proven as to their accuracy, but said that he had no idea of his average speed (see pages 37-42(TFI)).

54 Exhibit J, which is the Telstra bill for the relevant period for the mobile telephone provided by Holm Pty Ltd, corroborates Mr de Jager's locaton when he made telephone calls, which is identifiable by the origin of calls shown on the bill.

55 At page 132 (TFI), Mr Raven, the agent for the applicant at first instance, conceded inconsistencies in evidence.

56 There is a matter with which I wish to deal before I turn to the grounds of appeal.

No Case To Answer

57 The following principles apply to submissions of no case to answer.

58 A judge has a discretion to refuse to hear a submission of no case to answer unless that election is made by the party making it not to call evidence, or he or she may make submissions and then indicate that he or she will require an election before ruling on it, or he or she may hear it without requiring any election. However, the general rule is that an election is required and it is not departed from unless adherence to it will serve the ends of justice or convenience.

59 It is usually made at the conclusion of the opponent's evidence and before calling any evidence or even after some part of the moving party's evidence has been led (see *Protean (Holdings) Pty Ltd (Receivers and Managers Appointed) and Others v American Home Assurance Co* [1985] VR 187 at 237; *Rasomen v Shell Co of Australia Ltd* (1997) 75 FCR 216 at 225; 144 ALR 497 at 505 (FCFCA).

60 The submission may be made on two bases—

(a) That, accepting all of the evidence at face value, no case has been established in law.

(b) That, although there is some evidence, in all of the circumstances, the court should not act upon it (see *The Union Bank of Australia Ltd v Puddy* [1949] VLR 242 at 244; *Jones v Dunkel and Another* [1958-1959] 101 CLR 298 at 331).

61 Since some documentary evidence seems to have been tendered for Holm Pty Ltd, it may well be that those principles would not have been applicable. I am not

required to make any finding because this issue was not raised as a ground of appeal.

GROUNDS OF APPEAL

Ground 1

62 I make it clear that, in dismissing the complaint, the Industrial Magistrate was not exercising a discretion on the authority referred to above. He found that the onus of proof required that the TWU establish the hours worked and found that the TWU did not discharge the onus of proof.

63 I agree that the trip record was not established, on the balance of probabilities, as having been compiled contemporaneously with the work done. Indeed, that was admitted. I agree that the existence of a contemporaneous record is not an essential requirement for a finding that the times worked, as alleged, have been proven.

64 In this case, there was evidence from Mr de Jager that the record contained what, to the best of his knowledge, occurred.

65 However, in that the records, exhibit E, were said to constitute a record of times worked and other particulars, they were tendered as evidence that they were a record and proof of the dates and hours on and during which work was performed.

66 The lack of contemporaneity might detract from the credibility because the elements of exhibit E were compiled for the purposes of accurate recording some time after the events which they recorded, albeit in some cases, only one or two days after the last day of the trip, but more than that, after the first and middle day of the trip.

Ground 2

67 I do not understand Ground 2.

68 It is clear that exhibit E was relied on as a record of times and hours worked and as a proof of those facts also. I do not understand why it is alleged in Ground 2 that the Industrial Magistrate should have disregarded that evidence. Indeed, he did discount it, but on the basis of its lack of contemporaneity, as well as its compilation by two witnesses whose evidence he did not find credible, Mr and Mrs de Jager.

Ground 3

69 I now turn to Ground 3 which is directed to the Industrial Magistrate's failure to find (wrongly characterised as the exercise of discretion) that the TWU had proven that Mr de Jager had worked the times alleged in exhibits E and H.

70 At the heart of His Worship's decision was a finding that the evidence of the two witnesses for the TWU was not credible. This lack of credibility of cause, of exhibit E, which was compiled from Mr de Jager's notes which were not contemporaneous, as well as oral information given by Mr de Jager to Mrs de Jager. Indeed, His Worship found that the notes were created for the purpose either of the hearing before him or the workers' compensation claim. Further, because of the evidence in cross-examination as to the telephone calls made, three times over a distance of over 100 kilometres between Goondiwindi, Bingera and Moree and the miscalculations as to rest times referred to above. It was open to the Industrial Magistrate not to accept the evidence of Mr and Mrs de Jager as to the hours worked and days worked and rest taken. (These were, no doubt, the inconsistencies which were not adequately explained in cross-examination. Those were also the inconsistencies which, it is probable, were conceded by the agent for the TWU (see page 132(TFI)).)

71 If His Worship was justified in finding that the evidence of Mr and Mrs de Jager was not credible, then he was justified in finding that the record created by Mrs de Jager was not to be relied upon and that the evidence of Mr de Jager, including the record or records created and/or adopted by him, were not to be relied upon. If he is entitled to do that, then he is entitled not to accept the evidence of the hours worked, the lack of rest or at least the times relating to such lack of rest, the failure to provide a meal allowance, and the accuracy of the claims for breach of the award.

72 It was therefore open to His Worship to find that Mr de Jager's evidence was not to be accepted, nor was his wife's, even though none of it was contradicted by evidence to the contrary because, either the content of the evidence or the demeanour of the witnesses, or both, was such as to justify His Worship not finding that the onus of proof, on the balance of probabilities, had been discharged.

73 If His Worship was right in so finding, then it was open to him to find that it had not been proven that—

(a) That the starting and finishing times, dates and duration of each of the eight interstate journeys undertaken by Mr de Jager had not been established.

(b) That he did not accept the evidence given by Mr de Jager that he was under continuous pressure to work to successive deadlines within those journeys.

(c) That he did not accept Mr de Jager's recollection of the details of duties undertaken within each journey.

(d) That he did not accept that the evidence given by Mr de Jager was corroborated by the record of telephone calls, exhibit J.

74 (It is not to the point that Clause 9(3)(b) of the award provides for continuous shifts when the alleged breach of that award is the matter in issue.)

Ground 4

75 Ground 4 builds on those grounds by contending that the evidence was of sufficient credibility and that, therefore, His Worship found that Mr de Jager worked the times alleged in exhibits E and H, or that a judicial estimate was possible. I do not agree that a judicial estimate was possible. It was for the TWU, in the absence of amendment, to prove what it alleged originally in the complaint.

76 No authority was submitted to support Ground 4(c), to support the proposition that Holm Pty Ltd should bear some or all of the burden of evidence "so as not to escape liability through its failure to keep time and wages records as required by the Award". There is no such onus on Holm Pty Ltd. The only principle which was cited which might have been applicable was that in *Jones v Dunkel and Another* (HC)(op cit), which is not a case relating to evidential or other onus, but to what inferences can be drawn to support a plaintiff's case where the defendant does not adduce evidence at all or does not adduce certain evidence.

77 As to the operation of *Jones v Dunkel and Another* (HC)(op cit) and the drawing of inferences, even though the evidence contains an admission that Mr de Jager was employed by and did work for Holm Pty Ltd, the principle in that case does not assist. I say that because that case deals with the question of whether a civil jury should have been told that any inference favourable to the plaintiff, for which there was ground in the evidence, might be more confidently drawn when a person, presumably able to put the full complexion on the facts relied upon as the ground for the inference has not been called as a witness by the defendant and the evidence provides no explanation for his absence.

78 However, as Windeyer CJ in *Jones v Dunkel and Another* (HC)(op cit) at page 321, citing and quoting from the dicta of Abbott CJ in *R v Burdett* (1820) 4 B & Ald 95 [106] ER 873, said—

> "No person is to be required to explain or contradict, until enough has been proved to warrant a reasonable and just conclusion against him, in the absence of explanation or contradiction; but when such proof has been given, and the nature of the case is such as to admit of explanation or contradiction, if the conclusion to which the proof tends be untrue, and the accused offers no explanation or contraction; can human reason do otherwise than adopt the conclusion to which the proof tends? The premises may lead more or less strongly to the conclusion, and care must be taken not to draw the conclusion

hastily; but in matters that regard the conduct of men, the certainty of mathematical demonstration cannot be required or expected."

79 In this case, however, there was a specific disbelief of the TWU's witnesses and a finding that their evidence could not constitute a case and the documentary evidence could not.

80 It is quite clear that, if His Worship correctly found that the complaint was not proven, that there was no sufficient proof to request Holm Pty Ltd to offer explanation or contradiction, the principle in *Jones v Dunkel and Another* (HC)(op cit) is and was not applicable.

81 By its complaint, the TWU (although the initiation of proceedings by a complaint may no longer be competent) was required to establish, since a number of other facts were admitted, that between the dates alleged (and a number of sets of dates were alleged) and by the dates of various specified weekly pay periods, Holm Pty Ltd paid Mr de Jager—

(a) Less than the amount due for time and a half, in breach of Clause 12 of the award.

(b) Less than the amount due for double time, in breach of Clause 12 of the award.

(c) Less than the amount due for early shift allowance, in breach of Clause 11(1) of the award.

(d) Less than the amount due for insufficient rest penalty, thus breaching clause 12(4) (a)(iii) of the award.

(e) Less than the amount due for meals penalty, in breach of Clause 15(5) of the award.

(f) Less than the amount due for meal allowance, in breach of Clause 15(1) of the award.

(g) Less than the amount due for weekend penalty, in breach of Clause 10 of the award.

(h) Less than the amount due for ordinary time, in breach of Clause 9 of the award.

82 The various alleged breaches referred to pay periods as follows, 31 March to 6 April 1998, 7 April to 13 April 1998, 14 April to 20 April 1998, 21 April to 27 April 1998, 28 April to 4 May 1998, 5 May to 11 May 1998, 12 May to 18 May 1998, 19 May to 25 May 1998, 26 May to 1 June 1998, 2 June to 8 June 1998, 9 June to 15 June 1998, 16 June to 22 June 1998, 23 June to 29 June 1998, 30 June to 6 July 1998, 7 July to 13 July 1998, 14 July to 20 July 1998, 21 July to 27 July 1998.

83 Trip 1 records a journey from 6 April to 10 April 1998 from Perth to Melbourne and return.

84 Trip 2 records a journey from 12 April to 20 April 1998, being from Perth to Sydney and return (recording the vehicle used as an overwidth vehicle).

85 Trip 3 is recorded as occurring from 21 April to 7 May 1998, being Perth, Katherine, Brisbane, Sydney, Perth.

86 Trip 4 is a journey from 15 May to 20 May 1998 inclusive, being Perth to Sydney and return.

87 Trip 5 is for the period 22 May to 29 May 1998 inclusive, being from Perth to Sydney and return.

88 Trip 6 is a journey from 5 June to 22 June 1998, being Perth, Brisbane, Mount Isa, Brisbane, Cobar, Brisbane, Sydney and Perth.

89 Trip 7 is a journey from 26 June to 13 July 1998, being Perth, WA Border, Brisbane, Cairns, Sydney, Perth.

90 Trip 8 was from 17 July to 29 July 1998.

91 Exhibit E lists hours worked and rests on each day (with other observations), as I have said. In some cases, the total number of days in which Mr de Jager was engaged in the journey are recorded. In all cases, the total net amount paid to him is recorded. The distances involved are not recorded, nor are times for loading and unloading, or meal breaks, if any, nor are mileages travelled. It does not record local trips, as distinct from interstate trips.

The Award

92 In relation to the award, what the TWU had to prove was as follows.

93 In relation to Clause 9 of the award, that Mr de Jager had worked 38 hours within a work cycle not exceeding seven consecutive days, 76 hours within a work cycle not exceeding fourteen consecutive days, 114 hours within a period not exceeding twenty-one consecutive days or 152 hours within a work cycle not exceeding twenty-eight consecutive days (see Clause 9(1)), given that the ordinary hours may be worked on all or any days of the week, Monday to Friday inclusive, between 6.00 am and 6.30 pm (see Clauses 9(2) and 9(3)(b)).

94 By Clause 9(5) of the award, it is provided that the ordinary hours of work shall not exceed 10 hours on any day. Thus, all that the TWU needed to prove was that he worked 38 hours, or part thereof, in each six day period and was not paid.

95 Clause 10 of the award prescribes that all ordinary time worked, in accordance with Clause 9(3)—Hours of this Award, on Saturdays shall be paid for at the rate of time and a half and time worked on Sundays shall be paid for at the rate of double time. What is required to be proven is that Mr de Jager worked on Saturdays and Sundays and the hours during which he worked.

96 Clause 11(1) of the award provides that employees employed on any shift where the ordinary hours of duty include hours between 7.00 pm and 7.00 am shall be paid extra at the rate of 15% for each shift worked. That clause does not apply to Saturdays and Sundays, obviously because Clause 10 applies to those days. The TWU, again, had to prove that Mr de Jager worked ordinary hours of duty between 7.00 pm and 7.00 am on any week day and the hours which he worked.

97 Clause 12 relates to overtime. All hours worked outside the ordinary hours of work prescribed for any day in Clause 9 or for any week, is to be paid at the rate of time and a half for the first two hours and double time for the hours worked after that. Penalty rates prescribed by Clauses 10 and 11 of the award shall not be regarded as part of the ordinary rate in calculating overtime. All overtime worked on Saturdays and Sundays after 12.00 noon are to be paid at the rate of double time. Ordinary hours are the hours fixed pursuant to Clauses 9 and 9A of the award, i.e. 38 hours per week. Again, the hours worked, which it is alleged, are to be paid at time and a half and double time must be proven, on the balance of probabilities.

98 Clause 12(4)(a)(iii) of the award requires that an employee who works overtime without ten consecutive hours off duty between work on consecutive days is to be paid overtime at double rates. Again, that requires proof that the employee worked two successive days involving overtime without ten consecutive hours off without being paid double rates.

99 I reproduce Clause 15 of the award which refers to meals and meal breaks hereunder—

"15.—MEALS

(1) A worker required to work overtime for two hours or more shall be supplied with a reasonable meal by the employer or paid $4.90 for a meal.

(2) If the amount of overtime required to be worked necessitates a second or subsequent meal, the employer shall provide such meals or pay an amount of $3.35 for each second or subsequent meal.

(3) No such payments need to be made to a worker living in the same locality as his place of work who can reasonably return home for such meals.

(4) Every worker shall be allowed each day a meal break of not less than thirty minutes nor more than one hour, to commence at any time between the end of the third and end of the fifth hour of the day's employment, except where an alternative arrangement is entered into as a result of discussions as provided for in Clause 9B.—Procedures for In-Plant Discussions of this award.

(5) When a worker is required by his employer for duty during any meal time whereby his meal time is postponed for more than one half hour, he shall be paid at overtime rates until he gets his meal."

100 I have already canvassed points relevant to these grounds in my observations and findings in relation to Ground 3

(supra). It is necessary to determine whether the Industrial Magistrate misused his advantage in seeing the witnesses. His Worship had "concerns" as to whether the notes, that is the record of times worked, duration of journeys, etc, were made in the manner described and at the time claimed. His Worship's concern about the record compiled by Mrs de Jager takes no account of her evidence that she made notes of things which she considered relevant, and she then recorded the journeys. Certainly, the record prepared by her is neat, but that is the reason why Mr de Jager asked her to prepare it from his notes, which are, in contradiction, rougher and contain deletions and corrections.

101 His Worship said that the same pen seems to have been used and it was unlikely that it had been used over a four month period. Further, His Worship observed, as it was open to him to do, that some relevant information such as loading times and meal times was not recorded, nor, as I have observed, was the kilometrage travelled or local journeys undertaken. That that information is not recorded is a factor persuasive of a conclusion that the record compiled was compiled to record particular restricted facts. (Mrs de Jager gave evidence that she used the same pen or similar pens to compile exhibit E.)

102 As to Mr de Jager's notes, His Worship observed that, although Mr de Jager claimed that they were rough notes made at the end of each trip, they were not illegible and were quite clear. They were written on a note pad and, when they were introduced into evidence, were stuck together as if they were ripped off the pad as one with gum binding the pages together. That, of course, is also consistent with pages being completed successively after each trip, although inconsistent with that proposition, they are recorded two trips to a page on the first three of the five pages.

103 His Worship also doubted that, on eight occasions, the notes were taken out, written on, handed to Mrs de Jager and then put aside to be used another time.

104 It was open to draw the inference that this was what did happen and that notes were not prepared at one sitting, even though the same ink or pen was used. Added to that, further or alternatively, but not essentially, of course, the notes were not discovered and were only produced at the hearing. Significantly, too, there was a requirement to compile a record to assist a personal injury claim, some time after the events. That was a fact and a relevant fact to the assessment of the purpose of compilation of the record.

105 Significant, too, were the obvious discrepancies which were put to Mr de Jager in cross-examination, which might be validly considered indicative of his credibility. Almost all of those inferences or findings were open.

106 Of course, it was open to His Worship to find that, because the notes were not genuine, he did not find the evidence of the witnesses credible and, therefore, that the notes were not a record on which he could rely. Indeed, that credibility was conceded and conceded correctly by Mr Raven at first instance to be the key point.

107 Exhibit J records no telephone calls for the month of April 1998 during which the first trip occurred, as did the second and third trips (in part). Then, telephone calls from 1 May 1998 from Goulburn, through New South Wales into South Australia and into Western Australia. However, the bill also purports to record telephone calls made on dates when Exhibit E records Mr de Jager as not being on a trip, or at least an interstate trip. I have also made observations to the telephone calls at Moree. Exhibit J cannot, in any event, prove hours worked or rests taken in the light of the other evidence to which I have referred.

108 For example, 9 to 14 May 1998 inclusive and 30, 31 May and 1 June 1998. They were made in Perth. The journey from 5 June to 22 June 1998 is evidenced by calls from Northam and other places of origin outside Western Australia, through to New South Wales and South Australia and back to Perth via Kalgoorlie and Kambalda. The journey, Trip 7, is similarly evidenced, as is Trip 8.

109 The origin of exhibit E was the subject of largely uncontradicted evidence and His Worship was entitled to find, as he did, that the original record was the National Driver Log Book. That log book, as he correctly found, had disappeared without explanation and contained false information. The log book contained false information because, on the evidence, if it had been correctly completed, it would have revealed to authorities that Mr de Jager was driving in excess of the permitted hours of driving per day and was not taking the required rests. If that evidence were accepted, it coincides with the substance of Mr de Jager's evidence to that effect. However, it is not probative of the particulars of the claim on the balance of probabilities, in the context of the totality of the evidence.

110 The TWU was required to prove its case, on the balance of probabilities, (and because the breach, if proven, makes Holm Pty Ltd liable to a penalty) to the degree of satisfaction prescribed in *Briginshaw v Briginshaw* (1938) 60 CLR 336 (and see *AMIEU v Mereling Station Pty Ltd* (1987) AILR 239).

111 The standard of proof in breach of award proceedings is not the criminal standard of beyond reasonable doubt, and this must be carefully borne in mind at all times. Whilst the ordinary standard of proof in civil matters applies, because of the penalty provisions, the rule of prudence, referred to by Latham CJ at page 347 in *Briginshaw v Briginshaw* (HC)(op cit), that the court should act with much care and caution before finding the breach proven applies.

112 The degree of satisfaction may depend on the nature of the issue. At pages 361-362, Dixon J, as he then was, said—

> "Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect inferences. Everyone must feel that, when for instance, the issue is on which of two dates an admitted occurrence took place, a satisfactory conclusion may be reached on materials of a kind that would not satisfy any sound and prudent judgment if the question was whether some act had been done involving grave moral delinquency."

113 There was, on the evidence, no comprehensive evidence of the work done, the hours done or the other breaches alleged, which was the subject of any or any significant credible independent recollection.

114 Exhibit G was compiled through Mrs de Jager and she tried to provide material for their solicitors to calculate a claim for economic loss in Mr de Jager's personal injury case. She also wrote a letter claiming wages dated 22 December 1998 and contained in exhibit G (see also the trip diary). Some of that material was taken from the travel diary, the exercise book. In some places, she put down the hours and in some places, she did not. In some cases, she recorded the information given to her and, in other cases, she would speak to her husband and get it from him.

115 It was open to find that there was no accurate comprehensive credible evidence of the hours worked and the times and dates between which work was done, whether loading or unloading, rest was to be taken or overtime or other extra payments were to occur as alleged, of Mr de Jager's employment.

116 There was no contemporaneous record in writing of the hours worked, times of commencement and finishing, meal breaks, overtime worked, etc. Such a record, in the absence of credible and/or detailed oral evidence of which

there was neither, as it was open to find, was particularly necessary to prove that the amounts actually paid did not properly remunerate Mr de Jager in accordance with the award. The only record was prepared after the events by Mr de Jager and then his wife completed a fuller record, using his records and oral information received from him.

117 It was open to His Worship, as a fair examination of exhibit E reveals, to find—

(a) That it was open to His Worship to have grave concerns about the notes which were made in the manner described, their authenticity, and at the time claimed.

(b) That it was open to find that the pages of the exercise book, exhibit E, were completed consecutively, that the notes, as distinct from the recorded times, should appear in the book, exhibit E, when the matters to which they referred would have arisen in because relevant information, apart from the dates, start and finish times and hours of rest, was a ground for querying the authenticity or reliability of the notes.

(c) That the neatness of the notes and the use of the same pen or ink could give rise to an inference that the records were completed all at one time. I have already mentioned that two trips are recorded on one page, on two occasions, without a real gap between the records on each page.

(d) It was open to His Worship to find, a fortiori, when he had observed the demeanour of Mr de Jager (and, in relation to the compilation of records by Mrs de Jager, Mrs de Jager), that that portion of exhibit E compiled by Mr de Jager was too neat and too clear and legible and were stuck together; the inference being that they were written on consecutive pages, then the pages were torn all together from a pad at the same time.

(e) His Worship found, for these reasons and the reasons repeated on paragraph 9 (16.) hereof, that the evidence was not credible, that the notes were not made after each trip. He found that they "were made at the one sitting". He was entitled to so find on those facts.

118 It was, therefore, open to him to find, on his accurate observation of the notes and his correct findings as to the circumstances surrounding their compilation, that they were not created as a contemporaneous record of each trip (there having been only one contemporaneous record, the log now lost).

119 Exhibit J, to some extent, corroborates the days of the journeys, but does not corroborate the times of work, the hours worked or the starting times and has flaws which I have already referred to.

120 Once the Industrial Magistrate did not accept the evidence of Mr and Mrs de Jager, if he accepted the evidence of the amounts paid, he could not accept exhibit E as credible evidence. It was open to find that exhibit E was composed using the same pen and on consecutive pages of an exercise book from notes and oral information and was subject to other questions as to credibility, as I have observed above. It was prepared against the background of a claim for personal injury, including a claim for, it would seem, past and future economic loss and the need for that to be calculated, as well as admittedly not evidence as to the contemporaneousness with the events which it purported to record. That refers to the exercise book and Mr de Jager's notes.

121 Given the evidence as to the preparation of all of the records and the advantage enjoyed by the Industrial Magistrate, he was entitled to, having seen the witnesses, reject exhibits E and G as accurate records of the hours and times worked and the monies to which Mr de Jager was entitled under the award.

122 It might have been open to the Industrial Magistrate, if he was impressed with the demeanour of the witnesses, to accept what they alleged. Even then, however, without credible evidence of the hours and times worked, since the record is somewhat sparse, it would difficult to find for the TWU on the balance of probabilities.

123 With the advantage of seeing the witnesses, too, it was plainly open to the learned Industrial Magistrate to draw an inference from the primary facts that the record was prepared later than was alleged for the purpose of the personal injury claim and/or this claim and was not, therefore, accurate or even true.

124 There is concession of inconsistency in the evidence, conceded by Mr Raven in addresses. I have already referred to that and its effect.

125 For those reasons, I am satisfied that the submissions have not established that His Worship misused his advantage in seeing the witnesses, which advantage was reinforced by the ability to scrutinise documentary evidence, in particular exhibit E, or that, in particular, it cannot be concluded that, in the light of other evidence, the Industrial Magistrate, "the primary judge had too fragile a base to find that the witnesses for the (complainant) were unreliable" (see *State Rail Authority of New South Wales v Earthline Constructions Pty Ltd (in liq)* (op cit) at 321 per Gaudron, Gummow, Hayne JJ, at page 331 per Kirby J and at page 344 per Callinan J).

126 It was open to the learned Industrial Magistrate to find that the onus of proof upon the TWU had not been discharged.

127 It is not necessary to consider Mr Moon's submissions as to s.78 of the *Evidence Act* 1906. For those reasons, I am satisfied that no ground of appeal was made out. For those reasons, it was open to His Worship to find as he did. For those reasons, I would dismiss the appeal.

CHIEF COMMISSIONER W S COLEMAN—

128 I have had the advantage of reading the drafts of reasons for decision prepared by the Hon President and the Senior Commissioner. I agree for the reasons set out therein that the appeal should be dismissed. The appellant, the complainant in the first instance failed to discharge the onus to the satisfaction of the learned Industrial Magistrate. In this regard the case was seriously undermined by the credibility of the witness supporting the complaint. There was nothing put to the Full Bench that the learned Industrial Magistrate had misused the advantage he had in assessing the witnesses and in considering the evidence before him.

SENIOR COMMISSIONER G L FIELDING—

129 I have had the advantage of reading in draft form the reasons prepared by the President in this matter. I agree that the appeal should be dismissed and can shortly state my reasons.

130 Where, as in the case under appeal, a Complaint is made alleging breach of an award the onus is on the complainant to establish on the balance of probabilities that the allegations contained in the Complaint are well founded. As was explained by the Industrial Appeal Court in *Como Investments Pty Ltd v Graham McCorry* (1991) 71 WAIG 2259, the complainant needs to establish on the balance of probabilities each and every element of the Complaint (see too: *Como Investments Pty Ltd v Graham McCorry* (1992) 72 WAIG 1282 at 1285). In this case that involved, amongst other things, the Appellant as the complainant establishing, at least on the balance of probabilities, that the employee, Mr de Jager, in respect of whom the Complaint was made, did indeed work the time alleged by the Appellant. It may be that because proper time and wages records were not kept by the Respondent the task of establishing precisely when Mr de Jager worked was rendered more difficult for the Appellant than might otherwise have been the case, but that does not relieve the Appellant of the burden of tendering sufficient credible evidence to make out its complaint on the balance of probabilities. Moreover, contrary to the submissions put on behalf of the agent for the Appellant, that cannot be taken as a licence for the Court to make a "judicial estimate" of the hours which Mr de Jager worked. The learned Industrial Magistrate correctly observed that "this is a matter of establishing times, and without accurate times I cannot calculate hours worked and make orders in relation to these matters."

131 The only evidence as to the time worked on the relevant days by Mr de Jager was that given by himself and his wife, and not surprisingly, given the effluxion of time. Mr de Jager did not have a detailed recollection of these details. To some extent but not entirely he relied upon notes allegedly made by him at the end of each interstate trip. Those trips variously extended between five (5) and eighteen (18) days. In the case of Mrs de Jager, she had little direct knowledge of the time worked by her husband. Instead she relied upon information allegedly given to her by her husband which she translated into a book. The veracity of the notes made by both Mr and Mrs de Jager were challenged by the Respondent during cross-examination.

132 For reasons which he explained at the close of the case for the Appellant, the learned Magistrate did not consider the testimony of either Mr or Mrs de Jager to be credible, particularly in relation to the records they each kept. He did not accept that they were "made the way the evidence suggests they were made". Moreover, the learned Industrial Magistrate had grave doubts about the veracity of the records and in particular indicated that he was unable to find, on the balance of probabilities, that the records were "genuine". Indeed, he concluded that the notes or records "were not created contemporaneously with each trip but created for the purpose of either this hearing or the workers compensation hearing."

133 All the grounds of appeal challenge in one way or another the assessment made by the learned Industrial Magistrate as to the credibility of these witnesses and the veracity of the records on which they largely relied.

134 The principles to be applied in considering an appeal based on a challenge to findings which in turn depend upon an assessment of credibility of witnesses are well settled. Ordinarily, the findings must stand unless the Appellant can show that the learned Industrial Magistrate has failed to use or has palpably misused his advantage of hearing and observing the witnesses give evidence, or has acted on evidence which was inconsistent with facts incontrovertibly established by the evidence or which was "glaringly improbable". (see: *Devries and Another v Australian National Railways Commission and Another* (1993) 177 CLR 472, 479; and see too: *Gromark Packaging v The Federated Miscellaneous Workers Union of Australia, WA Branch* (1992) 73 WAIG 220, 224).

135 The learned Industrial Magistrate explained in some detail why it was that he doubted the credibility of the witnesses and the veracity of the notes or records they made. He did so for reasons which by no means were irrational. I do not consider that it was not open to him to reach the conclusion he did. Indeed, the then agent for the complainant acknowledged, and in my view with some justification, that the queries raised by the learned Industrial Magistrate in this regard were "quite understandable". Amongst other things, the learned Industrial Magistrate noted that, despite the testimony of the witnesses that the notes and records were made at the end of each of the eight (8) trips over a period of approximately four (4) months, the record made by Mrs de Jager appeared to be in "pristine" condition. Furthermore, the record appeared to be made with the same pen and at the front of the record it contained references to matters which occurred throughout all the trips. He also observed that the notes made by Mr de Jager for each trip were "neat" and appeared to have been taken recently from the same note pad, and that those notes were not formally discovered until the hearing of the Complaint.

136 The learned Industrial Magistrate was, in effect, the jury. For reasons which were by no means perverse he concluded that the evidence adduced to support the Complaint was unreliable. There was not too fragile a base to support his assessment: (c.f. *State Rail Authority of New South Wales v Earthline Constructions Pty Ltd (in liq) and Others* (1999) 160 ALR 588, 607). This was a case not where there was credible evidence to contradict the notes or vice versa, but where the totality of the evidence adduced to support the Complaint was found, not without reason, to be too unreliable to be relied upon. In the circumstances it was inevitable that the allegations in the Complaint fell to be dismissed.

THE PRESIDENT—

137 For those reasons, the appeal is dismissed.

Order accordingly,

2000 WAIRC 00750

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	TRANSPORT WORKERS' UNION OF AUSTRALIA, INDUSTRIAL UNION OF WORKERS, WESTERN AUSTRALIAN BRANCH APPLICANT *v.* HOLM PTY LTD RESPONDENT
CORAM	FULL BENCH HIS HONOUR THE PRESIDENT P J SHARKEY CHIEF COMMISSIONER W S COLEMAN SENIOR COMMISSIONER G L FIELDING
DELIVERED	FRIDAY, 29 SEPTEMBER 2000
FILE NO/S	FBA 25 OF 2000
CITATION NO.	2000 WAIRC 00750

Decision	Appeal dismissed.
Appearances	
Appellant	Mr G W Ferguson and with him Mr R K Raven
Respondent	Mr O C Moon, as agent

Order.

This matter having come on for hearing before the Full Bench on the 4th day of August 2000, and having heard Mr G W Ferguson and with him Mr R K Raven, on behalf of the appellant and Mr O C Moon, as agent, on behalf of the respondent, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 29th day of September 2000 wherein it was found that the appeal should be dismissed, it is this day, the 29th day of September 2000, ordered that appeal No FBA 25 of 2000 be and is hereby dismissed.

By the Full Bench,

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

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

No FBM 1 of 2000.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY
COMMISSIONER S J KENNER
COMMISSIONER S WOOD.

16 March 2000.

Reasons for Decision.

INTRODUCTION

THE PRESIDENT: These are the unanimous reasons for decision of the Full Bench. Having been duly advertised in the Western Australian Industrial Gazette on 27 January 2000 (80 WAIG 20), this application by The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch (hereinafter referred to as "the AFMEPKIU") and made pursuant to s.72A of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act"), came on for hearing on 7 March 2000. The application was filed on 5 January 2000.

An application had been filed on behalf of the Food Preservers' Union of Western Australia, Union of Workers (hereinafter referred to as "the FPU") on 1 March 2000, applying to be heard, applying to abridge the time in which to file the application and seeking that the application be adjourned and relisted for a ten day hearing. The application by the FPU was supported by an affidavit sworn by its Secretary, Mr Joseph Warrington Bullock on 1 March 2000 (exhibit 1).

Both the AFMEPKIU and the FPU are organisations registered under the Act.

An application had been filed on 2 March 2000 on behalf of Inghams Enterprises Pty Ltd (hereinafter referred to as "Inghams") of 9 Baden Street, Osborne Park, the employer of the employees, the subject of the application. The employer also sought to be heard pursuant to s.72A(5) of the Act.

The AFMEPKIU had filed an application on 25 February 2000 seeking an order that a secret ballot be conducted of those employees of Inghams to whom application FBM 1 of 2000 relates for the purposes of assisting the Commission to determine the wishes of those employees as to industrial representation, together with some procedural orders.

Alternatively, the applicant sought an order that the Registrar investigate the wishes of employees of Inghams to whom the application relates as to industrial representation and to report thereon to the Full Bench that such investigations had been carried out by way of secret ballot of the employees. There was also an application to adjourn proceedings whilst the ballot was conducted.

RIGHT TO BE HEARD

Mr Schapper, Counsel for the AFMEPKIU, advised the Full Bench that there was no objection to both the FPU and Inghams being heard in these proceedings. The Full Bench, therefore, decided upon the basis of the grounds for those applications which were adopted in submissions by Mr Borlase on behalf of Inghams and Mr Fiocco, of Counsel, on behalf of the FPU that both of those applicants had sufficient interest to be heard and made declarations accordingly.

Orders were not made as to the specific nature of the right to be heard which remains, subject to submissions, unconditional.

ORDERS FOR A BALLOT

Mr Schapper submitted that, by far the best method of ascertaining the wishes of the employees of Inghams was by secret ballot, a method which he asserted was used to ascertain whether they approved of Enterprise Bargaining Agreements.

Both the FPU and Inghams opposed the application, saying that there were many other factors to be considered, not just this one factor.

We were not persuaded that the decisions of the Commission in Re applications by AWU and CMETSWU 79 WAIG 3012 and Re an application by CMETSWU 78 WAIG 1581 (FB) ("The Mineral Sands case") were wrong. In any event, the Full Bench should not lightly overturn its own decisions. There is no power in the Commission to order that a secret ballot be taken for the reasons expressed in those decisions, directly or through the Registrar and, further, as a matter of merit, a secret ballot, whether through the Registrar or by a straight order of the Commission, should not be ordered.

For the same reasons which the President expressed in Re applications by AWU and CMETSWU (op cit) at page 3014 (Coleman CC at page 3015 and Fielding SC at page 3016 agreeing), the matter of the preference of employees is one relevant matter only and it is better that that preference be before the Commission through witnesses in proceedings where all other evidence can be tested. The decision in the end is one for the Commission. Employer preferences are relevant, too, and these should be open to testing in open court.

For those reasons, the Full Bench joined in dismissing that application and dismissed the application to adjourn on that basis.

APPLICATION TO ADJOURN BY INGHAMS AND THE FPU

There was then an application by the FPU to adjourn the proceedings to be fixed on a separate date for ten days. This was supported by the affidavit of Mr Bullock.

What occurred was this. On 27 January 2000, the application which was made on 5 January 2000, appeared in the Government Gazette.

According to the evidence of Mr Bullock, the notice of application, as published in the Gazette, was not seen by the FPU. It seems to us unusual for an organisation not to have examined a Gazette sufficiently to see such a notice.

According to Mr Borlase, the notice was not drawn to the attention of Inghams until late February 2000.

By facsimile transmission dated 13 February 2000 to the Secretary of the FPU, Mr Schapper drew to the attention of the FPU the existence of the application. Nothing was done by the FPU in relation to the matter until the application for an adjournment and for a declaration of interest to be heard was filed on behalf of the FPU on 1 March 2000, about 17 days later.

The FPU's application is based on the fact that it has historical, constitutional and industrial coverage of the workers concerned. Inghams, of course, have an interest in the matter because they are the employer.

In our opinion, there was an inordinate delay in this matter which was unexplained on the part of the FPU and that, if the FPU were to suffer inconvenience as a result of the matter proceeding on 7 March 2000, then that organisation is the author of its own misfortune and, within the context of Myers v Myers [1969] WAR 19, the greater injustice is the deprivation of the right of the applicant to proceed. In any event, the FPU had over two weeks in which to prepare.

Similarly, with Inghams, it is difficult to understand how it remained unaware of the application.

As for Inghams, we see no difficulty in the matter proceeding either, there having been something in the order of seven to ten days within which to prepare.

There was mention of the necessity for the FPU to file its own application under s.72A of the Act. It seems that this had not been done as at 7 March 2000. There was ample time within which to do so, and the AFMEPKIU should not suffer because of that omission, given that the FPU has also a right to be heard in this matter.

We, therefore, dismissed the applications to adjourn.

ORAL APPLICATION FOR ADJOURNMENT

Mr Schapper orally applied for an adjournment if the Full Bench was of the view that the matter could not be completed

on 7 and 8 March 2000. Since he had nine witnesses to call, we did not think that this was likely to occur and agreed that there would be prejudice likely to be occasioned to the AFMEPKIU if it had to unnecessarily interrupt its case.

The application to adjourn was then granted, for that reason, subject to the directions which the Full Bench made and which are contained in its Orders and Directions of 8 March 2000.

APPEARANCES: Mr D H Schapper (of Counsel), by leave, on behalf of the AFMEPKIU

Mr M C Borlase, as agent, on behalf of Inghams

Mr J G M Fiocco (of Counsel), by leave, and with him Mr J W Bullock, on behalf of the FPU

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

No FBM 1 of 2000.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY
COMMISSIONER S J KENNER
COMMISSIONER S WOOD.

8 March 2000.

Orders and Directions.

This matter having come on for hearing before the Full Bench on the 7th day of March 2000, and having heard Mr D H Schapper (of Counsel), by leave, on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch (hereinafter referred to as the "AFMEPKIU"), and Mr M C Borlase, as agent, on behalf of Inghams Enterprises Pty Ltd (hereinafter referred to as "Inghams"), and Mr J G M Fiocco (of Counsel), by leave, and with him Mr J W Bullock, on behalf of The Food Preservers' Union of Western Australia, Union of Workers (hereinafter referred to as the "FPU"), and the Full Bench having determined that the following orders and directions were necessary and expedient for the just hearing and determination of the matter, it is this day, the 8th day of March 2000, ordered and directed as follows—

(1) THAT all of the abovenamed applicant and the s.72A(5) participants in these proceedings do file and serve the written statements of all witnesses called whom it is proposed to call to give evidence in these proceedings on or before the 17th day of March 2000.

(2) THAT the abovenamed applicant and the s.72A(5) participants do file and serve any answering witness statements by the 31st day of March 2000.

(3) THAT such written statements, if admitted in evidence, shall stand as the evidence-in-chief of such witnesses.

(4) THAT any documents which any party intends to adduce in evidence shall be annexed in copy form to the statement of the witness through whom it is to be tendered.

(5) THAT no evidence-in-chief may be adduced which is not contained in the said written statements of witnesses without the leave of the Full Bench.

(6) THAT copies of all documents proposed to be produced in the abovementioned proceedings other than through a witness shall be served on the applicant on or before the 17th day of March 2000.

(7) (a) THAT the applicant and the s.72A(5) participants shall give notice to each other in writing on or before the 7th day of April 2000 of the names of those witnesses whom they seek to cross-examine and the same shall then be produced for cross-examination by the applicant or participant seeking to adduce their evidence.

(b) If no such notification is given, then such witnesses shall not be required to attend.

(8) THAT a witness in respect of whom a written statement as aforesaid has not been filed shall not give evidence without the leave of the Full Bench.

(9) THAT the applicant and the s.72A(5) participants shall file and serve full opening statements and lists of authorities 72 hours prior to the date and time of the hearing.

(10) THAT a list of all witnesses to be called in triplicate shall be filed and served by the applicant and all participants 48 hours prior to the date and time of the hearing.

(11) THAT there be liberty to apply on 48 hours' notice to the Commission to the applicant and the s.72A(5) participants.

By the Full Bench

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

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

No FBM 1 of 2000.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY
COMMISSIONER S J KENNER
COMMISSIONER S WOOD.

8 March 2000.

Order.

This matter having come on for hearing before the Full Bench on the 7th day of March 2000, and having heard Mr D H Schapper (of Counsel), by leave, on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch (hereinafter referred to as the "AFMEPKIU"), and Mr M C Borlase, as agent, on behalf of Inghams Enterprises Pty Ltd (hereinafter referred to as "Inghams"), and Mr J G M Fiocco (of Counsel), by leave, and with him Mr J W Bullock, on behalf of The Food Preservers' Union of Western Australia, Union of Workers (hereinafter referred to as the "FPU"), and the Full Bench having determined that reasons for decision should be delivered at a future date, it is this day, the 8th day of March 2000, ordered and declared as follows—

(1) IT IS DECLARED THAT Inghams and the FPU have sufficient interest to be heard pursuant to s.72A(5) of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act").

(2) (a) THAT the application by the AFMEPKIU for an order that a secret ballot of those employees of Inghams to whom this application applies to determine their wishes for industrial representation and the alternate application for an order that the Registrar investigate the wishes of such employees be and are hereby dismissed.

(b) THAT the application by the AFMEPKIU to adjourn the application herein pending the conducting of the secret ballot be and is hereby dismissed.

(3) THAT the application by Inghams and the FPU to adjourn the application by the AFMEPKIU for an order that a secret ballot be conducted be and is hereby dismissed.

(4) THAT the oral application made by Inghams and the application made by the FPU to adjourn the application herein be and is hereby dismissed.

(5) THAT the oral application by the AFMPEKIU to adjourn the application herein to a date to be fixed by the Full Bench be and is hereby granted.

(6) THAT the application herein be and is hereby adjourned to 9.30 am on Friday, the 28th day of April 2000, 10.30 am or such time as the Full Bench might fix in due course on Monday, the 1st day of May 2000, Wednesday, the 3rd day of May 2000, Thursday, the 4th day of May 2000 and Friday, the 5th day of May 2000, for hearing and determination.

By the Full Bench

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

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

No FBM 1 of 2000.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY
COMMISSIONER S J KENNER
COMMISSIONER S WOOD.

4 April 2000.

Order.

This matter having come on for hearing before the Full Bench on the 7th day of March 2000 and the order and directions having issued on the 8th day of March 2000, and the reasons for decision having been issued on the 16th day of March 2000, and the applicant and the s.72A(5) participants having consented, in writing, to a variation of the order and directions issued on the 8th day of March 2000, and the applicant and the s.72A(5) participants herein having consented to waive the requirements of s.35 of the Industrial Relations Act 1979 (as amended), it is this day the 4th day of April 2000 ordered that the order issued in application FBM 1 of 2000 on the 8th day of March 2000 be varied by deleting the words "31st day of March" in the existing paragraph 2, and inserting the words "7th day of April".

By the Full Bench

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

No FBM 1 of 2000.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY
COMMISSIONER S J KENNER
COMMISSIONER S WOOD.

1 May 2000.

Directions.

This matter having come on for hearing before the Full Bench on the 1st day of May 2000, and having heard Mr D H Schapper (of Counsel), by leave, on behalf of the applicant and Mr R I Viner (of Queens Counsel), by leave, and with him Mr M D Cuerden (of Counsel), by leave, on behalf of the Food Preservers' Union of Western Australia, Union of Workers, and Mr M C Borlase, as agent, on behalf of Inghams Enterprises Pty Ltd, and the parties herein having waived the requirements of s.35 of the Industrial Relations Act 1979 (as amended), it is this day, the 1st day of May 2000, ordered and directed as follows—

(1) THAT the applicant effect service of a copy of—

(a) this direction;

(b) pages 1 and 2 of the opening statement of the applicant; and

(c) pages 1, 9, 10, 11 and 12 of the statement of Mr Joseph Warrington Bullock filed herein dated 7 April 2000;

upon Mr William McIntosh before 10.30 am on Tuesday, 2 May 2000.

(2) THAT if Mr William McIntosh wishes to be heard, then he appear in this Commission at 10.00 am on Wednesday, 3 May 2000.

(3) THAT a declaration of service be filed before 10.30 am on Tuesday, 2 May 2000.

(4) THAT there be liberty to apply if service is not able to be effected.

By the Full Bench

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

No FBM 1 of 2000.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY
COMMISSIONER S J KENNER
COMMISSIONER S WOOD.

8 May 2000.

Order.

This matter having come on for hearing before the Full Bench on the 28th day of April 2000 and the 1st, 3rd, 4th and 5th days of May 2000, and having heard

Mr D H Schapper (of Counsel), by leave, on behalf of the applicant and Mr R I Viner (of Queens Counsel), by leave, and with him Mr M D Cuerden (of Counsel), by leave, on behalf of the Food Preservers' Union of Western Australia, Union of Workers, and Mr M C Borlase, as agent, on behalf of Inghams Enterprises Pty Ltd, and the Full Bench having determined that the reasons for decision will issue at a future date, it is this day, the 8th day of May 2000 ordered that the application for interim and procedural orders filed herein on the 5th day of May 2000 on behalf of the applicant be and is hereby dismissed.

By the Full Bench

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

No FBM 1 of 2000.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY
COMMISSIONER S J KENNER
COMMISSIONER S WOOD.

22 May 2000.

Reasons for Decision.

THE PRESIDENT: These are the unanimous reasons for decision of the Full Bench. At the conclusion of proceedings on 5 May 2000, the applicant, through its counsel, Mr Schapper, made oral application for orders expressed in a Minute of Proposed Orders. The application had been earlier foreshadowed. The orders sought were as follows—

"PART A

1. Within 7 days of this order Inghams Enterprises Pty Ltd ("Inghams") shall provide to the Applicant a list of names and addresses of all process workers employed by it at Osborne Park ("the list") and to whom the proceedings herein relate.
2. The Applicant shall pay Inghams its reasonable costs of providing the list referred to in paragraph 1.
3. The Applicant shall not use any of the information contained in the list for any purpose other than to conduct a survey of the process workers as to their wishes as to union representation.
4. Upon completion of the survey referred to in paragraph 3 the Applicant shall destroy the list and shall not retain any information contained in it.

PART B

5. Pending hearing and determination of the substantive application, Inghams shall not make or enter into any industrial agreement with any union as to the wages or conditions of employment of the process workers referred to in Part A hereof.

PART C

6. There be general liberty to apply."

PART A OF THE ORDERS SOUGHT

It was sought by this Part, that Inghams Enterprises Pty Ltd (hereinafter referred to as "Inghams") be ordered to provide to the applicant a list of the names and addresses of all process workers employed by Inghams at Osborne Park, and to whom the proceedings herein relate.

Paragraph 3 of that proposed order refers, somewhat obliquely, to the use of the list, if ordered to be provided, to conduct a survey of the process workers to determine what their wishes for "union" representation are.

We were informed that the Industrial Appeal Court had, on 1 May 2000, dismissed an appeal against the decision of this Full Bench to dismiss the applicant's application that the Full Bench order the conduct of a secret ballot to ascertain the wishes of the process workers for "union" coverage (No IAC 2 of 2000).

The two s.72A(5) participants opposed the order being made. It was submitted that there was no power to order the provision of the names and addresses to the applicant.

It is quite clear that s.27(1) of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act") empowers, particularly by s.27(1)(v), the making of the order. Even if that were not so, the Commission is empowered to direct the Registrar to issue a summons to witness to any person to appear and given evidence and produce any document before the Commission relating to the proceedings (see s.33(1)(a) of the Act) and such an order is within power.

The order (a "machinery order") to produce information or to provide information is one plainly contemplated by s.27(1)(v) of the Act, as that section's function is defined in RRIA v FEDFU 67 WAIG 315 (IAC).

However, the Commission is sought to be used as the instrument whereby a secret ballot of process worker employees is effected. This is a secret ballot to be conducted upon the motion of and at the instance of the applicant.

It is common ground that the applicant has no constitutional coverage of those employees and that the Food Preservers' Union of Western Australia, Union of Workers (hereinafter referred to as "the FPU") does. It is also the case that the Commission is being asked, by its order, to make an order which enables a ballot to take place which the Full Bench has itself refused to order.

The reasons of Their Honours of the Industrial Appeal Court are not available, so that we are unable to know whether the appeal was dismissed on grounds of merit or jurisdiction or both.

However, the Full Bench had rejected the application.

Now, by this order, the Full Bench is being asked to quite clearly, by a lateral process to permit or enable a ballot which order it has refused to make. In some respects, this part of the application is an oblique appeal.

We would add that HSOA and CSA 76 WAIG 1673, which Mr Schapper cited to the Full Bench, was a case where an organisation canvassed its own employees and the result was admitted in evidence. That is a very different process from the sort of ballot sought to be conducted here as a result of an order to reveal confidential information.

There is a patent vice in an organisation, without coverage of employees, without an order, conducting a ballot of employees over whom the FPU has present coverage. (Indeed, we doubt that the organisation has any right to conduct such a ballot.)

Next, if there were merit in making the order, it is too late and might well lead to an unnecessary prolongation of the proceedings whilst the process of the ballot is dealt with in evidence.

Next, nothing has been said, in our view, to alter the opinion of the Full Bench already expressed in these proceedings other than that that matter should be dealt with, on the evidence, particularly since that process is well advanced.

Further, and quite cogently, a situation would arise, as is clearly the case, where members of another organisation, the FPU, who have coverage, are to be invited to make their names available so that they might be involved in a politico-industrial process, with the likelihood of accompanying canvassing, by an organisation which has no coverage of them.

This is also a very different process from the Commission ordered ballot originally sought and refused and a potentially much less neutral one, however neutrally conducted.

No good reason has been advanced in the context of this case as to why, given the obviously confidential nature of the information, namely the names and addresses of the employees and the fact of their employment by Inghams, should be revealed to an outside body to conduct a ballot for its own purposes (see ALHMWU and Others v Burswood Resort (Management) Ltd 75 WAIG 1801). The question of the privacy of employees is a very relevant consideration. The order sought seeks to have the Full Bench intrude on that privacy and enable the applicant to do so.

In the circumstances of this case, we are not persuaded that such an order would necessarily promote goodwill in industry (see s.6(a) of the Act).

Further, in that such an order would enable an organisation which does not cover the proposed pollees to poll them. We are not persuaded that it is not a first step in encouraging de facto overlapping without deciding the merits of this application (see s.6(e) of the Act).

That is not to say that the order sought here might not be warranted in some cases. It may. It has, however, not been established that, having regard to s.26(1)(a) and s.26(1)(c) of the Act, such an order should be made in this case, for those reasons.

PART B OF THE ORDERS SOUGHT

By Part B, the applicant seeks "an interim injunction" restraining Inghams from entering into an industrial agreement

"with any union" as to the wages or conditions of employment of the process workers referred to in Part A hereof.

The making of the order was opposed by both Inghams and the FPU. It was submitted that s.72A of the Act contained no power to make such an order and neither did s.27(1)(v).

However, the order was plainly sought not to restrain the making of any industrial agreement with the FPU but to prevent Inghams reaching an agreement with the National Union of Workers (hereinafter referred to as "the NUW"), and having the same registered with the NUW. (The NUW, it is common ground, is an organisation of employees registered under the Workplace Relations Act 1996 (Cth).)

In April 2000, so the evidence goes to date, employees at Inghams rejected such a proposed agreement. The application is really an application for an order to maintain the status quo.

Mr Schapper was at pains to submit that the question of increased pay, which is at the heart of this matter, and the question of continuing FPU/NUW representation were separate questions. We should interpolate that whether NUW representation can be properly aligned with FPU representation remains an open question for us at this stage of the proceedings.

However, the draft NUW agreement (exhibit AMWU 1C), as Mr Schapper correctly submitted, if registered, effectively confers representation on the NUW and might well exclude the likelihood of an effective coverage by the applicant in these proceedings, if the applicant were successful.

There is merit in the submission that the status quo ought to be maintained and that no agreement on behalf of the process workers ought to be finalised until this application is heard and determined.

It was strongly submitted for the two s.72A(5) participants that there was no power expressed in the Act and, in particular, in s.27(1)(v) and s.72A of the Act, to make the orders sought which, in fact, constitute injunctive relief.

Certainly, s.27 and s.72A contain no express power to make interim orders. Nowhere in the Act is there power conferred expressly to make interim orders in the nature of injunctions in s.72A matters. Mr Schapper relied on s.27(1)(v) of the Act to provide such a power.

S.27(1)(v) reads as follows—

"**27. Powers of Commission**

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

.....

(v) generally give all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of the matter."

We were not referred to the well known case in this jurisdiction of RRIA v FEDFU (IAC)(op cit). Whilst that case related to interim orders made after conciliation in a s.44 conference did not effect a settlement, the question which was determined was whether, when the power to make interim orders was not expressed in s.44 of the Act, s.27(1)(v) enabled the making of such orders.

Our attention was not drawn to the Interpretation Act (WA) 1984 and in particular s.50(1) and (2).

We do not think, having regard to RRIA v FEDFU (IAC)(op cit), that there is a power conferred on the Full Bench to make the orders sought; nor does the Interpretation Act assist. That is because—

1. All the other items of power in s.27(1) of the Act, with possibly two or three exceptions, are procedural.
2. The interim order here is one which deals directly with industrial activity and its restraint.
3. S.27(1) of the Act does not confer substantive jurisdiction, but merely legislates for the method by which the Commission may ensure the jurisdiction conferred on it by other sections (in this case s.72A).
4. Further, the interim order has no relevance, either directly or indirectly, to further "the expeditious and just hearing and determination" of this matter.
5. S.27 of the Act is a machinery provision only.
6. S.72A of the Act prescribes, expresses and limits the type of order which can be made under it. An order of the type sought is not expressed or implicitly provided for (see s.72A(2) and (4)).
7. It was not submitted, nor can we see, any other provision of the Act which confers jurisdiction and power to make the order sought.

We have, for those reasons, reluctantly reached the conclusion that there is neither jurisdiction nor power to make the order sought. That such jurisdiction or power does not exist is something of a disadvantage where, in a case like this, there is much to say for an order maintaining the status quo vis á vis any proposed Enterprise Bargaining Agreement or its ilk.

We now turn to a further question of jurisdiction. It was contended for the s.72A(5) participants that the Commission had no jurisdiction to make the order sought because the NUW was a federal organisation. It was submitted by Mr Schapper that the order sought only to bind the employer, who was already bound by a State award, and did not seek to bind a federally registered organisation.

However, the terms of the proposed order are that Inghams be prohibited from entering into any agreement with "any union", which, in our opinion, on a fair reading, includes any federally registered organisation of employees.

Accordingly, as Mr Viner, for the FPU, submitted, the applicant seeks to have this Commission prevent the NUW entering into an agreement which the NUW, invoking the jurisdiction of the Federal Commission, can seek to have it enter into, following the issue of a bargaining notice (see Part VIB Division of the Workplace Relations Act 1996 (Cth) and in particular, s.170LI and LJ).

There is simply no jurisdiction in this Commission to make such an order in the face of the Federal legislation and because, by virtue of s.109 of the Constitution, as Mr Borlase, for Inghams, submitted, there is some substance in the notion that the legislation covers the field (see Clyde Engineering v Cowburn [1926] 37 CLR 466).

In any event, it is Mr Schapper's submission that the Federal draft agreement, if registered, would confer rights on the NUW to the exclusion of the applicant, which represents a direct concession that the matter is outside this Full Bench's jurisdiction.

There is simply no jurisdiction to make such an order.

For those reasons, we agreed to dismiss the application.

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

Mr M C Borlase, as agent, on behalf of Inghams.

Mr R I Viner (of Queens Counsel), by leave, and with him Mr M D Cuerden (of Counsel), by leave, on behalf of the FPU.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

APPLICANT	THE AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION OF WORKERS — WESTERN AUSTRALIAN BRANCH
CORAM	FULL BENCH HON PRESIDENT P J SHARKEY COMMISSIONER S J KENNER COMMISSIONER S WOOD
DELIVERED	WEDNESDAY, 30 AUGUST 2000
FILE NO/S	FBM 1/2000

Decision	Application to reopen proceedings dismissed.
Appearances	
Applicant	Mr D H Schapper (of Counsel), by leave
Participants pursuant to s.72A(5) of the Act	Mr P G Robertson, as agent, on behalf of Inghams Enterprises Pty Ltd Mr M D Cuerden (of Counsel), by leave, on behalf of The Food Preservers' Union of Western Australia, Union of Workers

Order.

The application by Inghams Enterprises Pty Ltd to reopen proceedings to enable further evidence to be adduced, having come on for hearing before the Full Bench on the 30th day of August 2000, and having heard Mr D H Schapper (of Counsel), by leave, on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch, and Mr P G Robertson, as agent, on behalf of Inghams Enterprises Pty Ltd, and Mr M D Cuerden (of Counsel), by leave, on behalf of The Food Preservers' Union of Western Australia, Union of Workers, and the Full Bench having determined that the reasons for decision will issue at a future date, it is this day, the 30th day of August 2000, ordered that the application to reopen proceedings filed herein be and is hereby dismissed.

By the Full Bench

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

2000 WAIRC 00552

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

APPLICANT	THE AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION OF WORKERS — WESTERN AUSTRALIAN BRANCH
CORAM	FULL BENCH HON PRESIDENT P J SHARKEY COMMISSIONER S J KENNER COMMISSIONER S WOOD
DELIVERED	THURSDAY, 7 SEPTEMBER 2000
FILE NO/S	FBM 1/2000

Decision	Application granted.
Appearances	
Applicant	Mr D H Schapper (of Counsel), by leave
Participants pursuant to s.72A(5) of the Act	Mr R I Viner (of Queens Counsel), by leave and with him Mr M D Cuerden (of Counsel), by leave on behalf of the Food Preservers' Union of Western Australia, Union of Workers Mr M C Borlase and Mr P G Robertson, as agents, on behalf of Inghams Enterprises Pty Ltd

Reasons for Decision.

THE PRESIDENT—

1 These are the unanimous reasons for decision of the Full Bench. This is an application by The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch (hereinafter referred to as "the AMWU") for orders pursuant to s.72A of the *Industrial Relations Act* 1979 (as amended) (hereinafter referred to as "the Act").

2 The application was filed on 5 January 2000. Schedule 1 to the application, which contains the grounds of the application and the orders sought, is as follows—

"

Schedule 1

1. The Applicant shall have the right to represent under the Industrial Relations Act 1979 the industrial interests of all those persons employed by Inghams Enterprises Pty Ltd at Osborne Park or such other location as the undertaking at Osborne Park may subsequently be carried out.
2. The Food Preservers' Union of Western Australia Union of Workers shall not have the right to represent under the Industrial Relations Act 1979 the industrial interests of any of those persons employed by Inghams Enterprises Pty Ltd at Osborne Park or such other location as the undertaking at Osborne Park may subsequently be carried out.
3. In this order, Inghams Enterprises Pty Ltd includes its successors, assignees, transmittees or any purchaser of the whole or any part of its business.

Schedule 2

Inghams Enterprises Pty Ltd employs a number of persons at its chicken processing plant at Osborne Park including maintenance tradespersons and production workers. The maintenance tradespersons are covered by the Applicant. The production workers wish to be represented in their industrial interests by the Applicant and not by the Food Preservers' Union. The applicant seeks an exclusive representation order to give effect to the wishes of the employees and to facilitate efficient and orderly representation of the employees."

3 As appears from the orders made herein on 8 March 2000 and the reasons for decision issued by the Full Bench on 16 March 2000, Inghams Enterprises Pty Ltd (hereinafter referred to as "Inghams") and the Food Preservers' Union of Western Australia, Union of Workers (hereinafter referred to as "the FPU") were given leave to be heard in relation to the application pursuant to s.72A(5) of the Act, because they established sufficient interest within the meaning of s.72A(5) of the Act.

4 For convenience, we produce hereunder the grounds advanced as the grounds on which both the FPU and Inghams should be given a right to be heard, because these are convenient summaries of their interests in the matter—

FPU

"(a) The FPU has constitutional coverage of the workers the subject of this application; and

(b) The Applicant herein seeks orders that the Applicant shall have the right to represent the industrial interests of the workers the subject of this application, and that the FPU shall not have the right to represent the industrial interests of those workers."

Inghams

"1. Inghams Enterprises Pty Ltd states that it is the employer of employees the subject of the application by the union to seek coverage.

2. Inghams Enterprises Pty Ltd is party to awards of the Western Australian Industrial Relations Commission to which the Food Preservers Union of Western Australia Union of Workers are respondent.
3. Inghams Enterprises Pty Ltd has a long history of dealing with industrial matters concerning its employees with the Food Preservers Union of Western Australia Union of Workers.
4. Inghams Enterprises Pty Ltd has a long history of industrial relations agreements covering its employees registered under Section 41 of the Act with the Food Preservers Union of Western Australia Union of Workers.
5. Inghams Enterprises Pty Ltd has suffered industrial disputation as a consequence of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch, attempting to represent the employees covered by the Food Preservers Union of Western Australia Union of Workers."

5 We are satisfied that the applicant is an organisation, as that is defined in s.7 of the Act and duly registered under the Act as an organisation of employees.

6 The applicant has a counterpart Federal organisation pursuant to an order of the Full Bench of this Commission dated 8 November 1999 and made under s.71 of the Act, and the Federal organisation's name is The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers (hereinafter called the "AFMEPKIU").

7 The FPU is also an organisation of employees, as that is defined in s.7 of the Act and duly registered under the Act.

8 The FPU has constitutional coverage pursuant to its rules of the process workers or production employees (hereinafter referred to as "the production employees") employed by Inghams, which is an employer. In addition, the FPU has links with the National Union of Workers (hereinafter referred to as "the NUW") which is also a federally registered organisation. However, there is no order making it or any other organisation the Federal counterpart body of the FPU. The NUW, it was conceded, whilst it does cover, by its eligibility rule, production workers in the poultry processing industry, has too wide a coverage of industries to enable it to become the FPU's counterpart Federal body. It is important to record that the NUW did not seek to be heard in these proceedings. The AFMEPKIU did not apply either.

9 The applicant, it is conceded, does not have constitutional coverage of the production employees employed by Inghams. It does have coverage of tradesperson maintenance employees employed by Inghams, of whom there are currently six.

S.72A REQUIREMENTS

10 The orders sought were orders which it is within the jurisdiction of the Commission, constituted by the Full Bench, to make pursuant to s.72A of the Act. It is not necessary to reproduce that section in full here for a proper understanding of it. (The section has now been considered by the Full Bench in a number of cases, including *Re an application by CMETSWU* 78 WAIG 1581 (FB) *Re an application by AWU and Another* 79 WAIG 2998 (FB) and *HSOA and CSA* 76 WAIG 1673.)

11 For the purposes of s.72A of the Act, we have already said that we are satisfied that both the applicant AMWU and the FPU are organisations, as defined in s.72A(1) of the Act and as defined in s.7 of the Act.

12 In addition, we are satisfied that this application relates to a particular class or group of employees employed in an enterprise, as defined in s.72A(1) of the Act, who are eligible for membership of the FPU, an organisation of employees. It is quite clear, on the evidence (to which we will refer later in these reasons) and we so find, that the enterprise, the subject of this application, consists of the two Inghams plants, one of which is at Baden Street and one of which is at Powell Street at Osborne Park in the State of Western Australia.

13 For the purposes of s.72A(1) of the Act, we are satisfied that Inghams conducts an enterprise, as defined in s.72A(1), because they are carrying on a business or part of a business at the two sites and are a single employer.

14 We are satisfied that the application was published in the Western Australian Industrial Gazette as required by s.72A(3) of the Act and that thirty days have expired since the date of publication before the Full Bench commenced to hear this application. There was no impediment, on that ground, therefore, to the Full Bench hearing and determining the application.

15 The application was published in the Western Australian Industrial Gazette on 27 January 2000 (80 WAIG 20).

16 The Commission also afforded to those persons who established a sufficient interest to be heard an opportunity to be heard, they having taken part in the whole hearing of this matter, which was an extensive hearing. We would add that an opportunity to be heard will not always be synonymous with participation in the whole of the hearing of a s.72A application.

17 There was, therefore, and the Full Bench is entitled to find, jurisdiction and power in the Commission to make the orders sought.

CONSTITUTIONAL COVERAGE AND THE RELEVANT RULES

18 For convenience, we reproduce hereunder the relevant part of the eligibility rule of the FPU, which is Rule 4.1(b)—

"(1) The Union shall consist of an unlimited number of persons comprising those—

....

(b) who are engaged in processing by canning, quick-freeze, or other methods of preservation of poultry, rabbits, game, fruit, vegetables, fish including crustaceans and molluscs or any part thereof."

19 It is clear from the terms of that rule that the FPU has constitutional coverage of the production employees who are employed at Osborne Park by Inghams.

20 Whilst the AMWU does not have constitutional coverage, it is nonetheless relevant to reproduce portions of Rule 3 of the objects of that organisation because this clause requires consideration later in these reasons—

" 3—OBJECTS

The objects of the Union shall be—

The control of industry in the interests of the community. The organisation of all workers qualified for membership, the development of the most cordial relations with other unions in the industry with a view to the bringing into existence of one union for the foundry, engineering ship-building and kindred trades, and the obtaining and maintaining of just and proper hours of work, rates of wages, and conditions of labour. The negotiation and settlement of differences and disputes between the members of the Union and employers by collective bargaining and agreement, withdrawal of labour or otherwise. To provide superannuation and long service leave and like benefits for the paid officers and/or employees of the Union. Generally promote the welfare of the members of the Union. The provision of benefits to members as follows—

.....

The provision of legal advice and assistance to members where necessary or expedient.

.....

The extension of co-operative production to assist in altering the competitive system of society for a cooperative system.

.....

> The furthering of any other purpose, or the participation, financial or otherwise, directly or indirectly, in any other purpose, so far as may be lawful, which is calculated in the opinion of the Union to further the interests of Labour, Trade Unionism, or Trade Unionists.
>
> .....
>
> In order to achieve the above objects the Union shall have power, in addition to any other powers conferred by law or by these rules to impose such restraints upon the labour of its members or generally to interfere, whether such interference is in restraint of trade or not but so far only as may be lawful with the trade or conduct of such industries, business and occupations as may be deemed expedient. In particular the union shall have power to provide funds for maintaining all or some of the benefits from time to time authorised in pursuance of these rules, and for the establishment or maintenance of any undertaking of any kind, financial or otherwise, authorised by the Unions and for any action including collective bargaining, striking, withholding of labour, taking action under the Australian and State Industrial Acts or other statutes, either severally or jointly, or in conference, securing agreements concerning wages or other conditions of the contract of service, whether in defence of its own members or in support of other workers of allied or other industries, which may in the opinion of the Union be deemed to be calculated to further the interests of the Union or of the Trade Union Movement generally."

EVIDENCE AND WITNESSES

21 A number of witness statements were filed on behalf of the applicant and the two participants in these proceedings pursuant to s.72A(5) of the Act. The witness statements were filed pursuant to orders and directions made on 8 March 2000 by the Full Bench and ordered to stand, if admitted, as evidence-in-chief, of those witnesses. Further, if witnesses were to be cross-examined, notice was to be given. There was also a substantial amount of other documentary evidence before the Full Bench.

22 In the case of the applicant, the witnesses called were Mr Michael Stephen Anderton, an officer of the AMWU and of the Federal organisation, and Mr David Gordon Woodland Hicks, an official of the applicant. In addition, various employees of Inghams were called to give evidence and were cross-examined. These were Ms Carolyn Josephine Paki, Mr Jose Lito Yabes, Mr Bryan Shane McAuliffe, Ms Iva Prokopieva Atanassova, Ms Suana Ajdinovic, Mr Jose (known as "Jay") Protacio Lopez, Ms Miraflor Dellavanzo, Ms Debra Ann Marbus and Ms Snezana Nasteski.

23 On behalf of the FPU, Mr Joseph Warrington Bullock, the Secretary, and an organiser employed by The Shop, Distributive and Allied Employees' Association of Western Australia (hereinafter referred to as "the SDA"), an organisation registered under the Act, and Mr Andrew John Vitolins, were called to give evidence.

24 In addition, statements were filed on behalf of witnesses on behalf of the FPU, whose statements stand as their evidence since they were not cross-examined upon them, and they were Ms Lolita Jones, Ms Jenieve Christine Berryman, Mr Sam Mazzitelli, Ms Flora Dragan, Ms Anicia Aldana Abalos, Mr Rokiah Ajid, Ms Clarita Beltran, Ms Filomena Beltran Edwards, Mr Ireneo (known as "Eric") Ferrer Nueca, Mr Ilko Trpceveski, Ms Shimelese Regassa Biru, Ms Elizabeth Magtuto, Ms Donna McIlhone, Mr Roman Mladenovich, Mr Robert Larkin Dinsmore and Mr Nestor Besin Carzon.

25 For Inghams, Mr Peter James Manning, the State General Manager, and Mr Charles Michael Burgwyn, the Plant Manager for Inghams at Osborne Park, were called as witnesses.

26 Mr Ande(sic) Streeter, the Production Manager at Inghams Osborne Park, did not give evidence, but was mentioned in evidence. Mr William McIntosh, a former organiser of the SDA who was engaged in FPU organising at Osborne Park, did not give evidence. (Mr Eaton, of Counsel, appeared on his behalf to deny allegations of corruption against Mr McIntosh from the bar table.)

27 There was, as well, a substantial amount of documentary evidence before the Full Bench.

HISTORY AND FACTS

GENERAL

28 This application is concerned with the coverage of employees employed by Inghams as food processing employees at two Inghams plant sites at Osborne Park.

29 Inghams is a company which, for a number of years, has conducted the business of breeding for slaughter and slaughtering and processing fowls and chickens, mainly, it would seem, for the fast food market, although not solely.

30 For over thirty years, employees of Inghams (and its predecessor) who were process or production employees have been represented exclusively by the FPU, the FPU being the only organisation with the constitutional right to do so, and being the union which has covered the poultry processing industry for some years. Mr Manning has been engaged in this business since 1972 and Mr Burgwyn has been so engaged for not much short of that time.

31 It is fair to say that the production employees include many migrant persons and many women with families. In some cases, one or more members of families are employed at Inghams. In addition, as was made clear in evidence, there is a large number of employees to whom English is a second language. Further, as a matter of common ground, the employees are not highly paid.

32 The FPU has been and remains a party to the State registered award to which Inghams is also a party, namely the *Food Industry (Food Manufacturing or Processing) Award* (1990) (77 WAIG 2422) (hereinafter referred to as "the award"), which has given birth to progeny in the form of enterprise bargaining agreements (hereinafter referred to as "EBA's").

33 As we have observed, the Secretary of the FPU is Mr Bullock, he having been first elected to that position in early 1994. Mr Bullock, a union official for twenty-three years, is also Secretary of the NUW, WA Branch, the State branch in this State of the NUW. He is the Secretary of the Western Australian branch of the federally registered SDA, with similar coverage, the Secretary of the State registered West Australian Hairdressers' and Wigmakers' Employees' Union of Workers, the Secretary of the State registered Sales Representatives' and Commercial Travellers' Guild of WA, Industrial Union of Workers, and the Secretary of The Western Australian Clothing and Allied Trades' Industrial Union of Workers. In some cases, he was appointed as Secretary.

34 The NUW has a broad constitutional coverage, much wider than that of the FPU. There are two separate application forms for membership of both organisations on one sheet and members of the FPU usually become members of the NUW also on joining because they are given both forms on commencing employment at Inghams. We so find.

35 As we have observed, for quite some years, the AMWU and its counterpart Federal body has had and exercised exclusive coverage of trades employees at the same plant (except for members of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch). Those employees covered, by virtue of AMWU constitutional coverage, are eight maintenance fitters. Mr John Sharp-Collett was, at all material times, the Secretary of the AMWU and the State branch of the AFMEPKIU.

36 The maintenance tradespersons covered by the AMWU are employed under the *Metal Trades (General) Award* (46 WAIG 707) and the *Inghams Enterprises Pty Ltd*

(Maintenance Department) Enterprise Bargaining Agreement 1997 (78 WAIG 906) and a new agreement in 1999 which has been registered in the Australian Industrial Relations Commission.

37 It was common ground and, indeed, we are satisfied that the AFMEPKIU does not and did not, at any material time, have any right under its rules to represent or cover production employees, nor does or did the AMWU.

38 In December 1998, the financial membership of the FPU was 291. In January 1999, it was 286 and, in February 1999, it was 287. There were (and are), at the material times, approximately 448 employees in total employed at Baden Street and Powell Street by Inghams, of whom 350 are eligible for FPU membership. (There are 29 SDA covered employees at Baden Street.) Currently, the financial membership of the FPU at Inghams is now about 80 (there was general and not precise evidence from Mr Bullock on this point), when previously (i.e. before May-June 1999) 80% of employees covered by the award were financial members (see Mr Bullock's evidence (exhibit FPU2A—pages 3-4)).

39 The company's enterprise has its origins in poultry processing in 1972, during which time the ownership of the enterprise changed from Golden Poultry Farming Industries Ltd to Inghams Enterprises Pty Limited. Inghams has only one competitor in this State, namely Steggles Barter. Inghams employs over 600 employees and has its own breeder farms to breed poultry, one broiler farm, a hatchery, feedmill, the processing plant, distribution and administrative centres and supplies over 50% of the Western Australian market with fresh poultry. They kill and process over 21,000,000 birds per annum in this State.

40 The two sites are only about 500 metres apart. Baden Street is a primary processing plant with a staff of 366 and Powell Street is a smaller plant which value adds, i.e. does things like spice poultry for Kentucky Fried Chicken lines. Mr Bullock referred to it as if it were one operation. It seems, quite clearly, on the evidence, to have been administered as such. We find it to be one operation, Inghams, Osborne Park.

41 That the two premises constitute one operation is evidenced by their being so designated as "the production centre at Osborne Park" in the scope clauses of the 1996 and 1998 enterprise bargaining agreements, entitled the "Inghams Poultry Processing Agreement 1996", No. AG230 of 1996 (76 WAIG 4187) and the "Inghams Poultry Processing Enterprise Agreement 1998", No AG1 of 1999 (78 WAIG 906), which are almost identical and which reads as follows—

1996

" 3.—AREA AND SCOPE

The Area and Scope of this Agreement shall be that prescribed in the Food Industry (Food Manufacturing or Processing) Award No. A20 of 1990, ("the Award") as amended from time to time, insofar as it applies to employees of Inghams Enterprises Pty Ltd, employed at the production centre at Osborne Park, Western Australia."

1998

" 3.—AREA AND SCOPE

The Area and Scope of this Agreement shall be that prescribed in the Food Industry (Food Manufacturing or Processing) Award No. A20 of 1990, ("the Award") as amended from time to time, insofar as it applies to employees of Inghams Enterprises Pty Limited, employed at the processing centre at Osborne Park, Western Australia."

42 The 1998 EBA expired on 18 March 1999, but continues in force since it has not been replaced by another agreement.

43 In other industries, stocks can be built up to cover sales requirements, but the customers of Inghams require fresh produce. Thus, the stock produced on any one day is sold and delivered the next day.

44 Accordingly, the evidence was that any disruptions to the daily cycle of production can have devastating consequences, because stock cannot, as it were, be stockpiled. To illustrate, birds are brought up from farms from midnight to approximately 11.00 am. They are all killed by 3.20 pm on a normal day, and are not usually held overnight for killing the next day (see Mr Burgwyn's evidence). There are also questions of advancing animal welfare by not holding them overnight. It is, therefore, most important that the production process not be interrupted. We accept that evidence.

45 Quite clearly, the application by the AMWU for the right to represent production employees seeks to alter an industrial and legal state of affairs which has existed for thirty years.

46 Not only has the FPU had long-standing constitutional coverage, but it has also enjoyed award coverage as a party on behalf of production employees to the award. That award has given birth to two State registered EBA's which apply to the production employees, registered in 1996 and then in 1998 respectively, as we have observed above.

47 It seems to be common ground that the NUW has coverage of the production employees federally and we accept that to be the case, although neither the rules of the AFMEPKIU or NUW was produced to the Full Bench.

48 Mr Manning gave evidence that the company has, for many years, enjoyed an excellent relationship with its employees, proof of which he said is that the company has many long term employees. He gave evidence that the FPU has covered employees since the company was formed and has fiercely negotiated with Inghams, but there has been no production time ever lost due to industrial disputation. There is no evidence that there were fierce negotiations in April/May 1999. In fact, the evidence was to the contrary.

49 However, Mr Manning's evidence was that, in the last two years, the AMWU has taken maintenance employees out on strike on a number of occasions which has had a material effect on the company's "business and livelihood". There was a strike by AFMEPKIU covered maintenance personnel on 24 December 1999, for example, and we will refer later to the industrial action of former FPU members in which AMWU maintenance employees took some part.

50 This application arises from a dispute, having its genesis in events that occurred over the last one to two years at the two abovementioned Osborne Park sites of Inghams.

51 Whilst there are some differences in evidence about a number of matters, there is a common theme through the events which occurred.

FPU COMPLAINTS

McLean and McIntosh and Perceptions of the FPU—Incidents

52 Over recent years, there was a series of FPU organisers or persons who filled that role. There was Karen Treanor from January 1994 to October 1995. Stuart McLean was the organiser from October 1995 until the end of 1997. Mr McLean, although commended in evidence by Mr Bullock, was criticised quite trenchantly by Ms Nasteski who drew up a petition for his removal which 70 employees signed (see exhibit AMWU 11A). Ms Nasteski was a very impressive witness. She said, and we accept her evidence, that she organised the petition because the employees got no service from the FPU and they wanted to get rid of the FPU. This was when Mr McLean was there. She put the petition in at the office.

53 Shortly after that, Mr McIntosh came out to the factory. She had not seen him before. She was told to go to the office and she and Mr McIntosh were put in a small room together. Mr McIntosh told her that the FPU was a good union, that Mr McLean was no longer the organiser and that he, McIntosh, was taking over. He also told her, significantly, that he was a good friend of Mr Burgwyn and that he would be able to get more out of Mr Burgwyn. He asked her "who started all of this business of trying to get rid of the FPU?" She told him that it started from all of the people because the union did not do anything and the organiser was never there and all of the people wanted a union which would do a better job.

54 After that, nothing more happened. In her opinion, Mr McIntosh was no good because he just took the company's side. We detail that evidence, which coincides with a lot of other evidence from employees including that of FPU witnesses, because it vividly highlights the problems for members.

55 An EBA proposed by Ms Treanor was rejected by employees. Mr McLean left, according to Mr Bullock, to work in Albany. He was followed by Mr McIntosh at the beginning of 1998. Mr McIntosh had been, since 1979, the SDA organiser at the Inghams Distribution Centre at Osborne Park, where SDA members were storepersons. There was also evidence of similar difficulties with an organiser at another FPU site, Brownes Peters in Balcatta, in recent times. Further, few or no magazines or circulars were received by FPU members.

56 It was asserted by Mr Bullock in evidence (exhibit FPU 2A at page 6) that, as a result of the FPU's negotiations in the three years to March 1999, allowing for compounding, an increase of 18% in wages at Inghams was achieved. That was, on the evidence, the case.

57 Both plants worked (and work) day and afternoon shifts, with work coverage from about 7.00 am to 11.00 pm on Monday to Friday. The early finish on Fridays at 2.30 pm still continues and overtime is worked fairly regularly on Fridays after 2.30 pm and on Saturdays as required.

58 During 1998, whilst Mr McIntosh was organiser for the FPU at Inghams, an increase of 3% per annum in wages, effective as at 6 April 1998, reflected in a new agreement registered on 3 February 1999 in this Commission, was achieved (see exhibit FPU 2A Annexure 3). (Clause 14 of the award, which plays a significant part in this matter, was part of that agreement.)

The April—May 1999 Episodes

59 In or about March 1999, negotiations for a new EBA were occurring between Mr Burgwyn for Inghams and Mr McIntosh for the FPU. The company was willing to offer a 4% increase in wages in return for a trade off. That trade off was that the early knock off day, when work ceased at 2.30 pm, be changed from Friday to Wednesday.

60 On 27 April 1999, Mr Burgwyn discussed, at a meeting with Mr McIntosh and FPU delegates, the basis for such a change.

61 This caused a great deal of concern, on the evidence, as we accept, amongst employees who used the early knock-off time on Friday to attend to varied private business such as banking and took advantage prior to the weekend of overtime which was often then worked. We are satisfied, also, that the fact that Friday was an early knock-off day was much valued by the production employees.

62 The managers had also told the employees that management had the right to unilaterally change the Friday early finish day.

63 Mr McIntosh went to the employer to discuss the matter and then returned to a meeting of employees, on the evidence, where he told the employees that the employer had the right to do it and that was the end of the matter. When disagreement from the employees was expressed, he was alleged to have shouted them down and then become angry and left. This, on the evidence, in April 1999, caused a great degree of dissatisfaction among employees.

64 It was not in dispute that Mr McIntosh had told members that Inghams, under the EBA, had every right to do this. He had given that advice, as he admitted to Mr Bullock, by reference to the wrong award, *The Shop and Warehouse (Wholesale and Retail Establishments) State Award* 1997, and indeed without reference to the EBA.

65 However, the evidence from a whole number of employee witnesses was that, when he informed them of this proposal, people were very angry. It is clear, on the evidence, that they remained angry for some time. He did so, having checked the wrong award, to determine the company's rights. When this was queried by members, as we accept that it was, he told them that "even the Prime Minister could not change it". Mr McIntosh put the matter to a vote and the proposal was soundly defeated.

66 It is significant that Mr McIntosh did not advise that a counter offer could or should be made, which it was quite clearly his duty to do. There was much anger that he merely seemed to accept what Inghams offered. Given that Inghams later withdrew the proposal to change the early knock-off days as industrially untenable, such an elementary course might, if taken, have had an effect on the course of events. So angry were the members that 200, including all of the FPU shop stewards, resigned from the FPU. Some resigned because others were, but there is no doubt that there was anger and disappointment throughout the body of employees. We accept that they resigned primarily because of the early day change which was proposed and because they were fed up with the FPU. It was the FPU shop stewards who told Mr Anderton that the members were resigning from the FPU. He then gave them AMWU/AFMEPKIU forms which they distributed around the factory. The FPU shop stewards were then elected by their colleagues as "AMWU shop stewards".

67 We also find, although it was denied, that about this time Mr Burgwyn addressed employees in angry tones on one occasion, saying that Mr McIntosh was right in his advice and he, Mr Burgwyn, was on "Bill's side".

68 Mr Bullock received approximately 200 signed resignations on 5 May 1999, but they were almost all either dated 30 April 1999 or 3 May 1999. (They were resignations from the FPU and presumably, too, from the NUW.) He was shocked to receive them and did not know that they were coming.

69 Immediately, upon receipt of the resignations, Mr Bullock contacted Mr McIntosh and removed him as organiser. Mr Bullock, to his credit, fully admitted that Mr McIntosh would wish that the last six months/year had not happened. Mr Bullock went to meet the employees, particularly the shop stewards. He realised that he had a major problem on his hands. Mr Bullock also sent a memorandum to shop stewards, saying that the FPU wished to win back their confidence (we paraphrase). That was dated 13 May 2000. Mr Bullock also sent in two SDA organisers funded by the FPU who acted thereafter on behalf of the NUW.

70 Prior to that, of course, a number of the shop stewards of the FPU had decided to approach the AMWU to seek their help. That resulted in Ms Marbus' contacting Mr Anderton.

71 It should be noted that the first contact was made by the employees with the AMWU, not by the AMWU/AFMEPKIU with the employees. The resignations clearly emanated from the anger and exasperation of the employees. Barely one of those who gave evidence in these proceedings for either the AMWU or the FPU was not critical of the attempt to change the early day from Friday to Wednesday and of Mr McIntosh's behaviour.

72 When Ms Paula Anderson, Mr Vitolins and Mr Johnston went onto the sites to attempt to regain the confidence of the employees, they were still angry. People would not talk to them. If they did, others dragged their fellow employees away. People were also shouting abuse at Mr Johnston and at Mr Vitolins. Mr Vitolins, in evidence, gave his opinion that the real problem for employees was Bill McIntosh. However, their evidence took the problem further than that.

73 Against Mr Vitolins' opinion, there was intense anger, on the evidence, and serious concern that the Friday early day was proposed to be changed to Wednesday. That anger was directed at Mr Johnston and Mr Vitolins as perceived representatives of the FPU when they came to the plant and continued. More cogently, there was a mass resignation, which action has not, to this day, been reversed nor, if it has, it has not affected the numbers of NUW members or its support.

74 Mr Vitolins listed complaints made by employees to him about Mr Mcintosh. Those included—

(a) That he was rude.

(b) That he shouted at employees.

(c) That he talked down to the employees.

(d) That Mr Burgwyn and he were best friends.

(e) That Mr Burgwyn and he were golfing partners and were unable to negotiate because of that relationship.

(f) That the employees never saw Bill McIntosh and, when he did come, they would see his car but he would go straight up to management.

(g) That union organisers should look after the employees and not the company.

(h) That Mr McIntosh took chickens home which were given to him by the company (see exhibit FPU 3A, pages 4-5). (Mr Burgwyn's evidence was that this had occurred only once and that Mr McIntosh wanted them for a Labor Party "chook raffle" (see exhibit Inghams 6C). However, he told Mr Bullock, as we find, that he received chickens for fund raising for a Highland Pipe band. Mr Burgwyn also said that he had played golf with Mr McIntosh only once and that was on a poultry trade golf day.)

75 We accept all of that as evidence of complaints. We accept that Mr McIntosh took gifts of poultry on one or more occasions for charitable purposes. It was not, we make clear, corrupt, as alleged. It was unwise and led eventually to the correct view that he was, at least in that respect, too close to the company. We also accept the evidence that Mr McIntosh did not take time to explain things slowly for the employees, the majority not having a command of English, and that he brushed questions off, and that he demonstrated a lack of interest in employees, that he shouted employees down. We also accept that he gave wrong advice in an important matter by reference to the wrong award and that he was generally incompetent, except for two EBA negotiations.

76 There were complaints by witnesses that the FPU organisers did not return calls, and only visited the plant, at least to speak to the employees, when it was EBA negotiation time. Further, there was evidence, which we accept, that there was little or no involvement of employees in necessary negotiations (see, for example, Mr Yabes' evidence). We accept the employees' version of the absence of organisers which occurred when there was no EBA negotiations current or in the offing.

77 Those complaints were not confined to Mr McIntosh. Ingham's witnesses stated that Mr McIntosh visited the company forty times in the last two years, but the production employees did not see him. (We accept that the FPU organisers were not sufficiently interested in their members, as alleged in evidence.) However, Mr McIntosh gave no evidence. That evidence of forty visits does not, by itself, negative the evidence that the FPU organisers (not just Mr McIntosh) visited management, did not see employees or did not answer calls. Mr Bullock, to his credit, admitted the failure of Mr McIntosh. We accept that evidence. He said in evidence that Mr McIntosh was a very honest man and a committed organiser for twenty-one years, but that he would wish that the last two years had not happened.

78 We are satisfied, on the evidence of the employees, that the behaviour of Mr McIntosh, his ineptitude, the perceived and actual indifference of the FPU and the failure of the FPU to adequately represent employees, going back some time, was, on the direct evidence of employees and the mass resignations (including the whole body of shop stewards), a reason for the employees to leave the FPU en masse.

79 However, we are satisfied that the failure of the FPU to properly serve its members for some years, together with a perception, to some extent aided by the treatment of employees, that it was more on the side of managers than employees (see, for example, the evidence of Ms Carolyn Paki) as we have found, was aggravated by the very bad handling of the change of early day issue and led to an overt manifestation of a loss of confidence in the FPU which continues to this day.

80 We are also of the view, having seen and heard the witnesses, that that remains the general and justified opinion and attitude, notwithstanding that the pay rises achieved before 1999 were satisfactory. Indeed, even now it is very difficult to find FPU members who will be shop stewards. It is quite clear, too, and we find, that the FPU's indifference to its members has been recognised by the absence of the FPU from the workplace since that time and its replacement, without consent or proper explanation, by the NUW. We are satisfied that, notwithstanding Mr Bullock's evidence, that the NUW was used to prevent the AFMEPKIU obtaining Federal agreement coverage because the AFMEPKIU has no constitutional coverage and that was decided by the Australian Industrial Relations Commission on 22 June 1999, over twelve months ago. There was, and remains, a reasonably widespread perception that the FPU is "in bed" with Inghams. Further, the mistrust of the FPU and Inghams was strongly reflected in the rejection of pay increases in two ballots by employees who are not high wage earners. Even in June 2000, it was necessary to split the sites to achieve acceptance of one EBA where no union was involved. We will deal with that later in these reasons.

AMWU INVOLVEMENT

81 The FPU had formed a consultative committee which had existed only for some time and was made up of each steward in the plant. These were elected by the employees on the shift and, in April 1999, there were eleven stewards who were Debbie Marbus (KFC Hot and Spicy Line), Snezana Nasteski (Packing Floor Area), Suana Ajdinovic (Pieces Line), Anna Murza (Evisceration Line), Alex Stoica (Live Chicken Area), Robert Dinsmore (Rehang Chicken Line), Jay Lopez (Boning Line), Miraflor Dellavanzo (Whole Bird Boning Line), Lito Yabes and Donna McIlhone (Boning Line Nightshift) and Bryan McAuliffe (Boning Line Powell Street). Mr Dinsmore and Ms McIlhone remain stewards or delegates of the FPU. The others see themselves as AMWU representatives.

82 Ms Marbus, who had been an FPU shop steward and who had voted originally to accept this proposition as to the change of early days on Mr McIntosh's advice, approached the AMWU at the request of some of her shop steward colleagues and was put in touch with Mr Anderton, an organiser who, as a matter of evidence, was, at all material times as we accept, an officer of both the AMWU and its Federal counterpart body, the AFMEPKIU. Mr Anderton said in his evidence that, due to family connections amongst employees and because of his involvement in soccer where production employees had children participating in the sport, he had got to know a number of production line employees.

83 The shop stewards of the FPU in April 1999 who approached Mr Anderton were Debbie Marbus, Snezana Nasteski and Suana Ajdinovic, and they sought advice as to whether the company could change the hours by giving seven days' notice. This was an initiative on behalf of their workmates and themselves, not an initiative by the AMWU/AFMEPKIU.

84 Mr Anderton gave them advice as to whether the employer had the right, upon given the requisite notice under the award, in particular Clause 14, to change the early knock-off time from Friday to Wednesday without the consent of the employees. Mr Anderton advised them that the employer could not do this. The relevant parts of Clause 14 reads as follows—

" 14.—ORDINARY HOURS OF WORK

(3) In the absence of any agreement reached in accordance with subclause (2) of this clause the conditions of this clause shall apply.

(4) .....

(e) The starting and finishing times in any establishment shall only be altered by the employer giving seven days notice to the employees of such alteration, except where otherwise agreed between the employer and the union."

85 Mr Anderton told employees that the employer could not change the hours of work without employee consent.

86 There was then, from about April to June 1999, a great deal of anger and difference of opinion within the plants

which has divided the employees. The AMWU asserts that the majority of the employees are still oriented to that organisation, with only a minority still with the FPU. It is quite clear, on all of the evidence, that it was the employees who were aggrieved by the performance of the FPU and who initiated the contact with the AMWU.

87 It is also clear, on the evidence, that, at all times, Mr Anderton and Mr Hicks made it clear to employees generally and to the AMWU representatives, in particular, and to the employer that the AMWU did not have constitutional coverage of the employees, although this was not understood by some of the witnesses for the FPU. It is clear, however, that the AMWU has also permitted employees for whom they had no constitutional coverage to enrol as members, at least to the extent of signing the requisite forms and paying the requisite fees. We so find.

88 Employee witnesses for the FPU gave evidence that they had received bills for membership fees and this angered them, some understandably resigning because they were receiving bills from an organisation that had no right to represent them (see, for example, the evidence of Ms Dragan, Ms Magtuto and Mr Mladenovich). There was one statement by a delegate to Ms Berryman that these bills were sent in error.

89 According to Mr Anderton and, indeed, a lot of the evidence, there was great antagonism towards the FPU because Mr McIntosh had virtually told them they had to accept the change of early days. That was clearly wrong advice, even if there was a right at law in the employer to change the early day without the employees' consent, as we have previously observed.

90 That is borne out by the fact that Mr Bullock, on looking at the clause, thought that there was sufficient there to enable defence of the employees' position and that Mr Manning later did not proceed with the change because, to do so, would be industrially untenable and, even more cogently, that Mr McIntosh was looking at an SDA award, not at the award itself, an extraordinary event.

91 There were meetings of the production employees where AMWU organisers, Mr Hicks and Mr Mark Golesworthy joined Mr Anderton (at the request of the shop stewards) to tell the employees that, in their opinion, the Friday early finish could not be changed without employee agreement. Subsequently, as we have said, at a meeting conducted by Mr McIntosh in the lunchroom, the employees rejected the proposed EBA and the change to the early Friday finish with vehemence. Further, Mr Anderton told the employees that the AMWU would get them better pay and conditions. As a result, later, as a matter of industrial sense, as it was expressed by Mr Manning, the attempt to change the early Friday finish day to Wednesday was abandoned and the employees were duly informed.

92 It is quite clear that a number of employees, including the former FPU shop stewards, sought to have the AMWU enrol the employees as members. In the case of persons like Mr Lopez, who gave evidence, he was firmly of the opinion that he could change unions should he wish to do so, and that that was a matter for him. On the evidence, as we have already observed, it was made clear both to the employer and the persons who wished to join that the AMWU did not have the right at law, constitutionally, to cover these employees. However, some employees, such as Mr Carzon, were not aware of this at the time of joining.

93 However, Mr Anderton did tell the employees that, if they were not members of another union, they could join the AMWU and the AMWU would do its best to represent them. (That, of course, is wrong.) What he did tell them was that the AMWU could not enrol them whilst they were members of another union (exhibit AMWU 1A at paragraph 19). Mr Anderton conveyed the same opinion to Mr Manning.

94 One of the above occasions was on 4 May 1999, when Mr Hicks, an AMWU organiser, and Mr Anderton were allow entry to speak to maintenance staff, but spoke to production employees, telling them that Inghams could not change working hours without their consent. Mr Burgwyn queried them and they told him that production employees had asked them to talk to them about the change of hours. Mr Burgwyn asked them to leave and they refused, but left later.

95 On 5 May 1999, too, in a letter from Mr Anderton to Mr Burgwyn, he advised that they were proceeding only to sign up employees who were not members of another "union". The AMWU/AFMEPKIU also advised that a number of employees had sought representation by it and they wished to hold discussions to achieve an EBA (see exhibit AMWU 1A Annexure 1, page 2).

96 During the first half of May 1999, most of the employees resigned from the FPU (see exhibit AMWU 1A (Annexure 2)) and joined the AMWU. Mr Anderton said that he made it quite clear that staying with or leaving the FPU was the employees' decision. That is not denied. He arranged for them, on his evidence, to be enrolled into the AMWU because it was clear to him that they were determined to leave the FPU and he did not want to see Inghams become a non-union shop. Again, he was frank in so saying, but such an act was contrary to the rules of the AMWU.

97 On 4 May 1999, Mr Anderton caused the AFMEPKIU to give notice to Inghams of initiating a bargain period under the *Workplace Relations Act* 1996 (Cth) (hereinafter referred to as "the Federal Act"). The notice was from the AFMEPKIU at 133 Parramatta Road, Granville, NSW. This was so as to begin negotiating an EBA since the proposed EBA negotiated by the FPU had been rejected (see exhibit Inghams 6A Annexure 2). On 5 May 1999, he wrote to Inghams advising of that situation.

98 On 5 May 1999, Mr Bullock had received the 200 resignations from the AMWU and had removed Mr McIntosh as organiser, as we have already observed. When Mr Bullock visited "the site" with Mr Vitolins and Mr Johnston, he believed that the AMWU had taken advantage of the negotiations with the company and a new organiser was needed. On 6 May 1999, he met Ms Dellavanzo, Ms Marbus, Mr Lopez and Ms Nasteski with Mr Johnston and Mr Vitolins. They were obviously angry with Mr McIntosh. They complained that he was too close to Mr Burgwyn and that he had gone to negotiate without having rank and file representatives with him. This he had, of course, done. The shop stewards complained that Mr McIntosh used to fill the boot of his car with "chooks" on Fridays.

99 On 6 May 1999, a meeting of the consultative committee and Mr Manning and Mr Burgwyn was held (see the minutes of that meeting (exhibit AMWU 1A (Annexure 1, page 3)). Mr Burgwyn and Mr Manning then spoke to the majority of production employees, advising what had been discussed.

100 On 7 May 1999, a pamphlet was issued to Inghams employees, followed by a further pamphlet concerning the proposed to the early Friday finish (see exhibit AMWU 1A Annexure 1, pages 4-6). They were issued by Mr Anderton. On 11 May 1999, Mr Burgwyn wrote to Mr Anderton concerning the proposed change of hours (see exhibit AMWU Annexure 1, pages 7-8) and there was subsequently another meeting of the consultative committee.

101 On 10 May 1999, Mr Anderton and Mr Golesworthy entered the site, with Inghams' permission, and conferred with Ms Ajdinovic, Ms Marbus, Mr Stoica, Ms Nasteski, Mr Dinsmore, Ms Dellavanzo and Mr McAuliffe.

102 On 12 May 1999, the NUW, the Federal union to which we have referred with, it is said, Federal coverage of production employees, gave notice of initiation of a bargaining period under the Federal Act (see exhibit FPU 2A Annexure 8). This was followed by a pamphlet issued on 13 May 1999. On 13 May 1999, Mr Bullock wrote to the shop stewards on FPU letterhead, the last such communication. Mr Anderton conferred with employees on site that day, with permission, and on 14 May 1999 (see exhibit AMWU 1A Annexure 1, pages 12-13).

103 On 17 May 1999, Mr Anderton conducted a meeting of Inghams' production employees which passed resolutions requiring Inghams to recognise and negotiate with the AMWU on behalf of production employees and to serve further notice of initiation of a bargaining period. A copy

was given to management. That showed support of employees for them. All the former FPU stewards were confirmed as AMWU stewards and were nominated to the workers' consultative committee. Inghams issued, on 17 May 1999, a memorandum to production employees (see exhibit AMWU 1A, page 14).

104 On 18 May 1999, the AMWU advised that it wished to hold a stop work meeting of employees, a proposal which was rejected by Inghams.

105 There was a conference before Commissioner S A Cawley in this Commission on 20 May 1999 at which the employer appeared as applicant and the FPU as respondent. (The matter came before Cawley C by application of Inghams.) The AMWU attempted to intervene, but was not successful in that attempt because it had no constitutional coverage. Cawley C made a number of recommendations to resolve the dispute which, on the evidence, were not pursued by the AMWU. However, the question of change of "early days" was resolved with Inghams.

106 There was a meeting with the AMWU representatives (also referred to in evidence as a "consultative committee") on 21 May 1999 at which Inghams said that it would not deal with the AMWU and also advised that it was unlikely to now change the Friday early finish (see exhibit AMWU 1A Annexure 1, pages 19-20). That day, Mr Hicks conceded, in the presence of employee representatives, to Mr John Jones, the National Industrial Relations Adviser for Inghams, Mr Manning and Mr Burgwyn that the AFMEPKIU (and, by implication, the AMWU) had no coverage of production employees.

107 In May 1999, there were about three meetings with the "AMWU representatives", the former FPU shop stewards. At all of the meetings, the latter were critical and indeed angry. On occasions, people said to the NUW organisers at these meetings "We don't want you any more." Ms Dellavanzo, at one meeting, said that these approaches were too late.

108 One meeting in May 1999 involved Mr Jones, as well as Mr Manning and Mr Burgwyn, discussing "union" representation. They agreed to hold a meeting with the AMWU and union representatives. That meeting occurred on 21 May 1999 and Mr Anderton, Mr Hicks and Mr Golesworthy were present (see exhibit AMWU 1A Annexure 1, page 19). We accept that these matters arose because of a very deep seated feeling of anger amongst the majority of employees, accepting the evidence of Mr Anderton and a number of other witnesses.

109 The AMWU said that the representatives could act as bargaining agents for the employees, but Mr Jones told them that it was company policy to deal with the parties to the award. The AMWU officials told them that they could pursue the matter further. Significantly, at that meeting, as we accept, Mr Manning said that the company no longer needed to change the "early day" and it was no longer an issue.

110 On 4 May, 17 May and 24 May 1999, the AMWU gave further notice of intended industrial action, and there were further pamphlets and correspondence. Many employees requested that the AMWU act as bargaining agent for those employees (exhibit AMWU 1A Annexure 5).

111 On 26 May 1999, employee representatives asked Mr Burgwyn whether Inghams would recognise the AMWU as "Employee Bargaining Agents" and were told that it would not.

112 Inghams issued a notice under s.127 of the Federal Act seeking that the AMWU cease and not initiate further industrial action at Powell and Baden Streets. Inghams also sought an order terminating the bargaining periods which had been initiated, not only by the AMWU, but also by the NUW.

113 On 28 May 1999, there was a stop work meeting for two hours, addressed by Mr Anderton, even though employees were informed by Inghams that this was unprotected industrial action.

114 On 31 May 1999, resolutions were passed at stop work meetings of employees advising that members require management to negotiate an agreement with the AMWU. Other resolutions were passed also requiring management to recognise the AMWU as the union of choice of the majority of employees and authorising the AMWU to forward to Inghams a Notice of Intention to Bargain.

115 In May 1999, the AFMEPKIU referred the matter to the Australian Industrial Relations Commission and a conference before Commissioner O'Connor of that Commission was convened on 4 June 1999. During this time, those employees who had joined or were being represented by the AMWU had imposed various bans and limitations on work. These included bans on overtime, working slowly, stop work meetings and a one day strike. The purpose of this action was to endeavour to have Inghams negotiate an EBA, or alternatively, to ensure that the AMWU was permitted to represent them. There was some difference of opinion about that in evidence.

116 O'Connor C found, in his reasons of 22 June 1999, that the AFMEPKIU could not represent the employees, dismissed the Inghams application to prevent industrial action, but did not set aside the NUW notice.

117 The NUW wrote to the Registrar of this Commission in relation to this matter, although it had not previously been present or active at all or very little at Inghams (see exhibit AMWU 1A Annexure 1, pages 27-28).

118 Overtime bans were imposed and then later, a fifteen minute meeting took place, the latter being agreed to by Inghams (subject to the time being made up; the time was not made up) so as to lift the bans.

119 There were further meetings between the employee representatives and Mr Manning and Mr Burgwyn in June 1999.

120 On 10 June 1999, Inghams made application to the Australian Industrial Relations Commission for termination of the initiated bargaining period and a s.127 order for cessation of the industrial action then occurring. On that same date, Mr Burgwyn issued, on behalf of Inghams, a memorandum to the stewards concerning the industrial action then occurring, which was a "go slow" (see exhibit AMWU 1A Annexure 1, page 30).

121 On 11 June 1999, at a meeting, employees informed Mr Manning and Mr Burgwyn that the dispute was not about money, but about union membership. This was having regard to what occurred and was a very important matter for the employees. However, given that, as Mr Anderton said in evidence, the dispute was about representation by the AMWU and also because, in the beginning, Inghams refused to give a 4% pay increase without a trade off of Friday "early day" for Wednesday. Further, there was evidence, which we accept, that the employees asked the AMWU/AFMEPKIU to negotiate an EBA. We accept that the dispute contained both elements after a while.

122 On 14 June 1999, O'Connor C, following a conference on 4 June 1999, heard the Inghams applications, delivered his decision on 22 June 1999 and held, as the AFMEPKIU had conceded before him, that the AFMEPKIU did not have Federal constitutional coverage of the employees and could not, therefore, initiate a bargaining period and, thus, the employees were not able to take protected industrial action under the Federal Act (see exhibit AMWU 1A (Annexure 4)). The AMWU advised O'Connor C that all industrial bans had been removed.

123 On 23 June 1999, the day after O'Connor C's decision, 173 individual employees gave notice to Inghams of initiating a bargaining period under the Federal Act (see exhibit AMWU 1A Annexure 3).

124 Throughout this period, Mr Bullock had arranged and, pursuant to his instruction, in order to win back employees, the NUW organisers who Mr Bullock commended highly, namely Mr Vitolins and Mr Johnston, were attending Inghams on a daily basis attempting, on their evidence and on the evidence of employees, to establish a relationship with the employees. A number of employees were annoyed with this and sought to have the employer prevent this occurring. We accept this evidence.

125 Whilst Mr Vitolins said in evidence that he was unaware of complaints made about the approaches to employees

daily and the very regular attendance of Mr Johnston and Mr Vitolins at the worksites, Mr Burgwyn acknowledged those complaints, but said that they were permitted to attend as a matter of law. Thus, the attendance and interviewing was permitted to continue.

126 The AMWU, on the other hand, through Mr Anderton and others, continued throughout this period to assist employees and their representatives and give advice on a number of matters.

127 Cawley C's statement of 21 June 1999 was published by Inghams to employees on 22 June 1999 and on 23 June 1999, the NUW issued a pamphlet (exhibit 1A (Annexure 1) pages 33-35).

128 In about May or June 1999, a gentleman called Troy Coleman was seen working on the floor at Inghams as an employee. He had only just started working there and, in fact, a job for him had been obtained by Mr Johnston. He was a shop steward at another plant for the SDA and, indeed, was an acting organiser. Mr Anderton recognised him and advised the AMWU representatives of his occupation. Shortly after that, Mr Coleman left. Some witnesses regarded him as a spy. Mr Vitolins said, in evidence, that he was put in there because they could not get information from their own members who would not communicate with them, so they looked to Mr Coleman for information.

129 It should be observed that this was extraordinary behaviour. The officials of an organisation are there to serve their members, not to seek intelligence in the workplace about their affairs by such surreptitious means. In this case, however, too, the NUW was using FPU funds to pay SDA organisers to use an SDA steward to, unknown to the employees, learn information about FPU members or former FPU members so as to provide information to the SDA organisers.

130 During this time, Inghams had made it clear that they did not deal with the AMWU because there was no right in it to represent the process workers. Mr Anderton informed employees, and there was evidence to this effect, that the AMWU could not represent them. Some employees did not become aware of this until later and some resigned when they did. However, Mr Anderton informed Mr Manning that the AMWU would enrol persons who were not members of another union. He did not say that this was restricted to those who came within the eligibility rule.

131 As it turned out, a number of production employees purported to join the AMWU and received bills from it for membership fees. This caused some to resign, particularly because the AMWU was unable to represent them, as it had conceded.

132 On 25 June 1999, the NUW, by a letter written by Mr Bullock, referred the question of union representation at Inghams to the Trades and Labour Council (hereinafter referred as "the TLC") of this State.

133 On 28 June 1999, the stewards, comprising the "consultative committee" (the AMWU representatives), gave notice of initiation of a bargaining period under s.170ML of the Federal Act (see exhibit AMWU 1A (Annexure 1) pages 39-42).

134 On 30 June 1999, Inghams issued a memorandum to production employees and distributed a proposed EBA under s.170LK of the Federal Act, in which there was mentioned an early finishing day without express reference to Friday (see exhibit AMWU 1A Annexure 1, pages 43-48).

135 On 1 July 1999, Inghams responded by letter to the employees who had given notice of intended action and, on the same day, the AMWU representatives issued a pamphlet to employees (see exhibit AMWU 1A Annexure 1, pages 49-52).

136 On 1 July 1999, the AMWU representatives asked Mr Manning if Inghams would recognise their right to bargain. He told them that Inghams only recognised the union which was a party to the award.

137 On 2 July 1999, Mr Manning and Mr Burgwyn addressed all factory staff.

138 On 5 July 1999, the employees' representatives served a further notice under s.170ML and this advised, inter alia, of a stoppage of work on 16 July 1999 which was responded to by a pamphlet from Inghams (see exhibit AMWU 1A Annexure 1, pages 51-52). It was signed by 176 signatures, less than 50% of the staff payroll, but a very significant number, having regard to the result of the July EBA ballot, in any event.

139 On 8 July 1999, the offer to pay a 4% wage increase was made. There was a 24 hour stoppage on or about 9 July 1999 in support of the claim for an EBA. Picket lines involving 50 to 60 employees were set up to prevent employees entering the Baden Street premises. The remainder, except for the 30 mentioned, did not work. Mr Anderton, Mr Golesworthy and Mr Sturman of the AFMEPKIU were involved. Approximately 30 employees walked through the picket line and worked as did a number of NUW and SDA officials, such as Mr Vitolins and Mr Johnston. There was evidence of some employees who wanted to work being obstructed. The factory was able to work, but at a very slow rate.

140 On 12 July 1999, the AMWU representatives, comprising the consultative committee gave further notice of intended action under the Federal Act. On that date, Inghams offered to production employees a 4% pay rise in return for employees not going on strike and agreeing not to strike for another twelve months (see exhibit AMWU 1A Annexure 1, pages 55-56). If the employees accepted this offer, they were required to sign the document and return it to the office and a number of employees did.

141 On that day, too, the AFMEPKIU held a stop work meeting of production employees which about 40% of the workforce attended and, after which, did not return to work.

142 On or about 15 July 1999, Inghams issued a pamphlet entitled "General Information" concerning this (see exhibit AMWU 1A Annexure 1, page 60) and at about this time started paying the 4% increase to all production employees irrespective of whether they had signed or not. There was a request then by the consultative committee, on 19 July 1999, for a secret ballot of employees to say whether they wished to enter into the Inghams proposed agreement (see exhibit AMWU 1A (Annexure 1) page 62)).

143 There were further meetings between AMWU representatives and Mr Manning or Mr Burgwyn during July 1999. (We have not detailed all of the meetings which occurred or every element of industrial action.)

144 On 21 July 1999, a meeting between Mr Bullock and Mr Sharp-Collett, Secretary of the AMWU, with Mr Anderton and Mr Johnston present, was held with Mr Tony Cooke, Secretary of the TLC. An agreement was reached in terms of exhibit AMWU 1A (Annexure 1) pages 65-66.

145 The agreement was that the NUW would be offered the opportunity to "re-establish the confidence" of the "existing membership" (an acknowledgement that that confidence had not been regained) and potential membership within the existing coverage of that union, that the AMWU would not apply pressure or direct employees in relation to questions of union membership; in the interim the AMWU would retain its role in representation of union members within that union's area of constitutional coverage (our emphasis), that both the NUW and AMWU recommend to all employees that they vote against the s.170LK agreement and that any matters of detail or the implementation of them would be the subject of further discussion at meetings convened by the TLC. (This was to be for a period of approximately six months.)

146 There is no evidence that such discussions occurred. It is significant that all of the activities in the plant were now being conducted and were to be conducted by the NUW (see TLC letter dated 20 July 1999). (There was evidence that employees did not know the connection between the two.)

147 On 27 July 1999, after the meeting with the TLC, a ballot (under the Federal Act) was conducted of the employees at Baden and Powell Streets in relation to the proposed

Inghams EBA (a s.170LK agreement), which agreement was roundly rejected, 165 against, 48 for and 17 informal. This agreement, as a non-union agreement, was opposed by the NUW and the AMWU.

148 Mr Anderton (and other AMWU officials) then ceased to go to Inghams to see the production employees but, as a matter of evidence, held a number of meetings with production employees to provide them with advice outside the gates, and with shop stewards at a nearby coffee shop, and helped them with production of leaflets and member letters. This was during the period of the moratorium. These were, on the evidence and as we find, regular meetings.

149 Mr Anderton did, however, during this time, as he was entitled to do, go to Inghams to see maintenance employees. The evidence from Mr Anderton was that he met with the stewards at their request and it is clear that he did. Indeed, on the evidence, Mr Vitolins, for some time, was there every day and, more latterly, every two or three days. Mr Johston was also there and Ms Anderson was visiting Powell Street.

150 From August to December 1999, on the evidence, the NUW continued what has been described as and what in fact was an intensive organising effort at Inghams' works. The organisers were present in the factory (in sharp contrast to the previous practice) virtually every day and officials of the NUW were meeting with management and two or three employee representatives to discuss a new EBA. The FPU representatives were selected by Mr Vitolins but were not elected by the members. Subsequently, they, or one of them, have continued to attend one or two days a week.

151 After the defeat of the non-union EBA in July 1999, Inghams offered employees an over-award agreement of 4% per annum, retrospective to June 1999 on condition that they eschew industrial action for twelve months. This occurred in about August 1999. This was described by Mr Manning as a goodwill offer of 4% as an over award payment to endeavour to break the deadlock, offered on condition that it was part of the EBA. Only some employees signed such an undertaking and, in the end, all employees, whether they gave the undertaking or not, were paid a 4% wage increase, described as an over-award payment. This was also negotiated with Steggles Barter, Inghams' competitor which has a 250 person workforce. In May 1999, Mr Bullock had negotiated a pay rise of 14% over two years with Steggles Barter.

152 There was a dispute as to whether the six months' period of grace for the FPU ended in early December. The letter from Mr Cooke declares the period to be approximately six months. That would take it to about 21 January 2000. During the six month period, quite frequent meetings occurred between Mr Anderton and AMWU representatives in the course of which he gave them advice as to a variety of matters, was given pamphlets to produce and de facto acted as a union organiser assisting shop stewards of his "union".

153 It is fair to say that the AMWU, through Mr Anderton, acted in breach of the agreement brought about by the intervention of Mr Cooke. As Mr Anderton conceded in evidence, he was taking a short cut to try and avoid "litigation" under s.72A of the Act and the indisputable expense of such "litigation".

154 There was activity, too, from time to time, in the form of various pamphlets issued by the NUW and by the AMWU.

155 From about May to November 1999, the NUW attempted to negotiate payment of what had been obtained from Steggles, from Inghams.

156 On 22 November 1999, the NUW announced a new EBA (exhibit 1A (Annexure 1) pages 73-76) which was said to grant a 14% rise. The 14% rise included the 4% which had been paid by the employer from June 1999, but this was said by the employer not to be enforceable and withdrawable at any time. It was claimed to be part of an 14% increase achieved by the FPU over a period of three years. The agreement proposed, too, a 2% increase backdated to 1 October 1999, a 4% increase on 1 July 2000 and 4% on 1 July 2001.

157 On 23 November 1999, the AMWU issued a pamphlet discussing the proposed agreement and other information, said to be misinformation (see exhibit AMWU 1A Annexure 1, page 77). "AMWU representatives" certainly campaigned against the EBA, counselled and assisted by the AMWU. On 6 December 1999, as was admitted on the evidence, without warning, so as to circumvent any activity by the AMWU, employees were required to vote on the new proposed agreement. This occurred by ensuring that, when the employees arrived at work, they were directed to a room where they were required to vote. On the evidence, they did not know that they were going to be asked to vote, nor were they told that they did not have to. The voting was said to be secret, but was able to be observed by those present, including a manager and an NUW organiser. However, in evidence, Mr Vitolins said that the ballot was truly a secret ballot and that no-one could see how persons voted. Indeed, he said, too, that Mr Burgwyn and Mr Streeter did not remain in the room. No steward or member of the consultative committee was permitted to be present. In any event, secret or not, a result favourable to the NUW was not obtained, as we observe later in these reasons.

158 We are satisfied that there was not or no sufficient involvement of employees in the negotiation or approval of the agreement which is borne out by the fact that opinions were ascertained after, but not before.

159 Mr Vitolins also gave evidence that the draft December 1999 EBA was displayed on the notice board at both sites for 14 days prior to the ballot. Further, he said that, even though the ballot was not notified in advance, what the employees were to vote on was well publicised. There was evidence that people were surprised and confused. There was certainly some evidence from employees that they objected to being ordered about like this.

160 In addition, employees were queried by NUW officials as to reasons for rejection sometime after the ballot. It is a matter of valid criticism that they were not asked their views of the EBA before it was negotiated and/or that their representatives were not involved in the process. Most seriously, they were not told that they did not have to vote in the ballot. We accept that evidence. That is entirely understandable and justified.

161 These included, on Mr Bullock's evidence—

(a) Many were influenced by workmates without understanding the issues. (That is Mr Bullock's judgment.)

(b) Some said that the agreement was too long and complicated.

(c) Some misunderstood the sick leave provision.

(d) Many felt that, having regard to the impending implementation of the Goods and Services Tax ("GST") and the uncertainty of its impact on them, the term of the agreement was too long.

(e) Some thought that the amount of 2% retrospective payment offered was too little.

(f) Some at Baden Street thought that the AMWU supporters would vote against the agreement in any event (see exhibit FPU 2A, paragraph 70).

162 As Mr Bullock conceded, this feedback to the NUW resulted in an amended claim by "the FPU" (but it was not the FPU, it was the NUW) for a more simple agreement over a shorter term with "more money up front".

163 There is no evidence that the EBA was put to employees for their opinion before the ballot in December 1999 in such a manner as to elicit their views. Nor were their views therefore available to take account of. Again, the employees had reason to regard themselves as being presented with a fait accompli, and/or as being ignored in the negotiation process. What should be observed is that, after six months, the NUW had not gained the confidence of employees at the plant and that, whilst the AMWU had maintained contact contrary to the agreement, that was by request of the former FPU shop stewards. Further, as the previous and the later course of events shows and, having regard to NUW conduct too,

the majority of employees wanted nothing to do with the FPU or the NUW.

164 The proposed EBA (a Federal agreement), to which the NUW was proposed as a party, was rejected, 201 against, 108 for and 2 informal, another significant defeat. Inghams then withdrew all offers of back pay. Mr Lopez, who was a scrutineer, told Mr Vitolins and Mr Johnston, who were disappointed with the vote, that the vote was against NUW participation. The increase to be determined was 10% which was not insignificant. We do not count the 4% over-award payment already delivered.

165 That proposed agreement was described as an "excellent agreement" by Mr Bullock, in evidence. Notwithstanding that comment and, having regard to the employees' opinions critical of the proposed agreement, a new approach was taken by the NUW .

166 On 24 December 1999, the maintenance workers covered by the AFMEPKIU went on strike, but this was protected action under the Federal legislation. Maintenance workers had declined to cross the production employees' picket lines on 9 July 1999.

167 On 24 February 2000, the NUW issued a pamphlet saying it was making a fresh start in negotiations with Inghams (see exhibit AMWU 1A Annexure 1, pages 78-79). This occurred 50 days after this s.72A application was made. Shop stewards and officials met with the company in February 2000 seeking an agreement to expire in mid 2001, with a 6% wage increase and back pay of 2% to October 1999. FPU and "AMWU" shop stewards met but could not agree on a united approach. An 8% wage increase was prepared.

168 Mr Bullock opined that employees' patience with the AMWU was waning in late February and early March 2000 and that employees wanted a wage increase. His evidence was that AMWU site representatives approached management late in the week commencing 6 March 2000 and offered to accept the agreement negotiated by the NUW in 1999. (We should add that the non-union agreement of June 2000 delivers a 6% increase to employees at Baden Street only.) Those negotiations came to nothing. Mr Bullock blames the AMWU for these negotiations coming to nothing.

169 On 7 and 8 March 2000, the AMWU representatives issued an interim claim to Inghams for a 2% increase from 1 December 1999 with a further 4% increase from 1 March 2000 with a new union-based agreement to be negotiated in six months, when the question of union coverage had been sorted out in the Commission. In the meantime, there was to be no industrial action. It is alleged by Mr Anderton and by others that the great majority of production employees at Inghams continued to be represented by the AMWU and that many employees signed documents of support for that wage claim.

170 On 8 March 2000, Mr Streeter, according to Mr Manning, informed him that a number of AMWU representatives had approached him and said that they wanted the December 1999 EBA revisited or there would be go slows and strikes over Easter 2000 (a busy time for Inghams). In any event, no such action occurred. We place little weight on that evidence. In any event, on 8 March 2000, the AMWU representatives, as a group, (not a number of them) had proposed a six month industrial action free term on a quite formal basis.

171 Subsequently, at about Easter 2000, there was a threat of disruption to production. The industrial action referred to has been complained about in evidence by Mr Burgwyn and Mr Manning as being "very disruptive" of their business. Given what was the current management of time obviously taken by it and by the other negotiations, the action was clearly disruptive.

172 In June 2000, a petition was taken around the plant for signature seeking a 6% wage increase.

173 After the first part of the proceedings in this application had occurred, there was dealt with by ballot in June 2000 a separate non-union agreement which was approved at Baden Street and rejected at Powell Street. This was the first time that a separate EBA was offered to Powell Street in an operation which, it is fair to say, constituted one.

174 The agreement was approved at Baden Street by a vote of 127 to 106 with 3 informal. The NUW had received only one request from a member to apply to be bound by the agreement. A number of employees objected to the application to register the agreement (see s.170LK of the Federal Act). The NUW intends to be bound by the agreement. That is an agreement, Federal though it is, which builds on the State award and would enable employees to be represented by a State registered organisation, in everyday matters.

175 The December proposed EBA would, in contradistinction, by Clause 8, on a fair reading, have placed jurisdiction in the hands of the Australian Industrial Relations Commission. That is not a matter of criticism, but an observation directed to the fact that the FPU is simply not involved now as a State organisation, even though a State award exists and governs employment with a State EBA.

176 Mr Vitolins gave evidence that he, at all times, attended the site as a representative of the FPU and, at the same time, identified himself as an NUW organiser. However, no relevant communication from the FPU was in evidence after 13 May 1999.

177 Further, Mr Bullock's own evidence was that the Committee of Management and he had handed the site over to the NUW. We do not accept and, indeed, find that the site is being organised for the NUW. Further, every EBA sought to be negotiated was one under the Federal Act. Presently, too, an application to register the June 2000 non-union EBA is listed for hearing in the Australian Industrial Relations Commission at Perth on 15 and 16 September 2000. A number of employees, as is common ground, have objected to the application and the NUW has leave to participate in the proceedings.

178 The agreement was a non-union agreement but it was not specifically opposed, on the evidence of Mr Vitolins, by the NUW organisers whom, he said, sympathised with the employees because they had not had an increase for a long time. Thus, because of the history of ballots and, for that reason, the NUW took a neutral stance. That is significant. The NUW, as we infer, did not have the support, in its judgment, to attempt to negotiate an EBA and, therefore, left it to the employees.

179 Mr Vitolins says that there is a change of attitude on the part of employees over that time. Many workers want to discuss union issues with him. However, that is not borne out by any increase in membership, nor is the NUW able to negotiate any agreement on the part of members. Further, even if that is not the case, the NUW cannot and does not purport to represent the employees in relation to the State award to which the FPU is a party.

180 Presently, the situation is that there is a non-union agreement delivering a 6% wage increase in place at Baden Street. There is no such agreement in place at Powell Street. The former FPU shop stewards, or almost all of them, and a substantial number of employees remain wedded to the AMWU. Some employees remain loyal to the NUW, but it is difficult to find NUW shop stewards. Mr Vitolins nominates them. There is no steward at Powell Street. There are only 80 financial members left out of 350. It is not certain how many persons are AMWU oriented.

181 Some employees, on the evidence, are awaiting the decision of this Commission. It is quite clear, on the evidence, that the former FPU shop stewards, now AMWU representatives, many of whom gave evidence, wield great influence which explains why they were elected in the first place and were subsequently re-elected and remain as leaders. We find them, overall, to be credible witnesses and, in particular, credible as to the main issues in these proceedings. We are satisfied that they have endeavoured to act and do act in the best interests of their colleagues at all times Even the industrial action, of which we are critical and which the AMWU involved itself in, arose out of frustration and a wish to do the best for fellow employees and themselves, we are satisfied and find.

182 It is clear, too, from the evidence, that Inghams fear a more vigorous industrial approach from the AMWU and

have a clear preference for the FPU. That is understandable. However, the FPU, on the evidence, has shown little sign of overall effective activity in recent times. We accept Mr Manning's evidence that competition from inside and outside the State is increasing. We also accept that plants where fresh meat is produced, where birds have to be treated properly and where halts in production can cause great difficulties, are a source of worry to management if the industrial climate might cause halts or interruptions or delays. We also accept that that is a serious matter for Inghams, which has a business to run and faces difficulties, particularly in times of serious competition.

183 We are satisfied that the AMWU enjoys influential support through AMWU representatives and majority support from the employees. We are also satisfied that the FPU does not have any presence at the plants, nor is there any evidence that they will return. Further, there is no evidence that the FPU enjoys majority support among employees, in any event. Certainly, we are satisfied and find that the NUW does not either. The support is only minority support.

184 That is the background history and the facts, as we find them.

APPLICATION TO RE-OPEN

185 After the conclusion of the hearing of this application on 25 July 2000, Inghams made application, filed on 24 August 2000, in the Commission to re-open its case to adduce new evidence. The application was served on 25 August 2000.

186 The new evidence was a statement by Mr Peter Robertson, producing a copy of the AFMEPKIU/AMWU publication entitled "The Manufacturing Worker" for the months of August/September 2000. The actual evidence which it was sought to adduce, if Inghams case was re-opened, was an article on page 4 of the publication headed "Foodies scout members in new areas".

187 The article purported to report the Secretary of the National Food and Confectionery Division of the AFMEPKIU as seeking to increase its membership across the country and in this State in particular. He was reported as saying that research was carried out which found that, in this State, "a potential in excess of 2,000 non-union workers was employed in food and confectionery industries". He also observed that, at the time the research was being carried out, "we had approximately 250 workers at Inghams Chickens in WA join the AMWU after resigning from the NUW. This caused some concern in WA and we are hoping that this matter will be resolved soon so that we can get on with cementing our base in WA", he said.

188 Of course, as we have observed, the Federal AFMEPKIU has at present no constitutional coverage of Inghams' production employees. The evidence was sought to be adduced to contradict Mr Hicks' evidence of no intention on the part of the AFMEPKIU to seek coverage of food and confectionery employees in Western Australia.

189 First, it is no more than a journal report to which we would attach little weight. Second, this is an application in which the State AMWU seeks coverage of employees at one Inghams' enterprise in circumstances involving disenchantment with the FPU by its employees, the FPU's abandonment of the enterprise and the employees', through their representatives, seeking out the AMWU for assistance.

190 That is the clear evidence, as we have found it. It therefore follows that the evidence sought to be adduced would not be admitted because it is irrelevant.

191 As a general rule, the discretion to permit re-opening will not be exercised. We would also observe, as follows, that the decision could have been affected by the evidence if leave to re-open and adduce that evidence were given, it is competent to apply to re-open and that the evidence was manifestly not available before the close of the hearing. We do not apprehend, either, that the Judges in *Smith v The New South Wales Bar Association* (1992) 176 CLR 256 at 266-267 to have disapproved of the dicta of Wolff J in *Watson v Metropolitan (Perth) Passenger Trust* [1965] WAR 88 at 89. In particular, Their Honours were cited, with approval, by Rowland J with whom Frankly and Ipp JJ in *Dragut v The West Australian Conference of the Seventh Day Adventist Church* (unreported) (WA Sup Ct FC) delivered 29 September 1995 (Lib No 950523S).

192 This evidence is not so material that the interests of justice require it to be adduced or that there be a re-opening permitted to adduce such evidence. It could have no effect on the result of the application. It is indeed irrelevant as well. The power is to be exercised, having regard to the public interest in maintaining the finiteness of litigation. For those reasons, we dismissed the application to re-open to adduce fresh evidence.

SUMMARY OF FINDINGS

193 We now wish to summarise our major findings. However, these do not detract from the detailed findings which we have made above.

194 We are, therefore, satisfied and find that—

1. The AMWU is a trades union, covering a multiplicity of trades and a number of industries.
2. The FPU is a union with long constitutional and industrial coverage in food processing and in the poultry processing industry in this State.
3. The FPU has constitutional coverage and award coverage of the Inghams production employees and has had such coverage for many years.
4. The AMWU has never had constitutional coverage of the Inghams production employees, either federally or in this jurisdiction and does not have such coverage now (nor has or had the AFMEPKIU).
5. The AMWU has had long standing coverage of the few maintenance employees at Inghams, Osborne Park.
6. That Inghams correctly refused to negotiate with the AMWU because it has and had no constitutional coverage of production workers.
7. The FPU has played no part in the affairs of employees at Baden Street or Powell Street since 13 May 1999, over twelve months ago. There is no evidence that it will again. The FPU has, to all intents and purposes, abandoned the employees.
8. There has been no serious disputation between Inghams and the FPU or its members in 30 years of FPU coverage.
9. That the FPU had negotiated satisfactory wage increases, at least in the last three to four years.
10. There was disputation between the AFMEPKIU and Inghams at Christmas 1999, but that was protected action.
11. We accept the evidence of those employees who gave evidence that the FPU was inept, gave them inadequate service, that the organisation did not attend to their needs, that there was dissatisfaction with a number of organisers and that, so bad a performance was that of the FPU in relation to the proposed early day trade off, that the bulk of employees were alienated, leaving the FPU never to return. That those defects are not met merely by evidence of wage increases negotiated. Important as that is, union membership service does not stop there. That the difficulties arose not through the fault of the employees or the AMWU, but through the failure of the FPU over a period of time to properly serve its members. (The complaint made to Mr Vitolins partially describe the problem, but there is ample evidence.) In particular, the criticism of Mr McIntosh's behaviour was, for the most part, entirely justified.
12. That the FPU has lost the confidence of significant numbers of its members who left it and have not returned.

13. That the prime reason for the employees leaving the FPU to join the AMWU was as we have outlined it.
14. That the AMWU did not primarily instigate the resignations from the FPU or the influx to it.
15. That the AMWU well knew and said that it had no constitutional coverage or right to represent employees in this Commission and the Australian Industrial Relations Commission, to employees, even though some did not apprehend this clearly. There is ample evidence of this, even from FPU witnesses (see the evidence of Mr Berryman, Mr Carzon, Mr Dinsmore, Ms Jones, Ms Magtuto and Mr Mazzitelli).
16. That the AMWU became de facto involved, as if it were the union representing the employees and, by billing them, reinforced its de facto coverage of them by financial involvement of them, contrary to its rules.
17. That the AMWU sought to both genuinely help and to use the situation for its own advantage.
18. That the AMWU, albeit at the behest of the members of the employees' consultative committee, acted contrary to the TLC sponsored agreement, treating employees as members, even to the extent of billing them for membership fees.
19. That the campaign against the NUW and for the AMWU, including the opposition to the December 1999 EBA, was conducted by the AMWU with the consent and assistance of employees, including their elected representatives.
20. That the NUW, which is a Federal organisation, has taken over since, displacing the FPU and cannot represent employees in this Commission.
21. That the NUW has not gained the confidence of employees in any significant numbers.
22. That the FPU was a mere shell and has disappeared from the worksites.
23. That the AMWU is not a shell and has a counterpart Federal body. (Mr Anderton is both a State and Federal officer, for example.) (See s.71(1), (2), (3), (4) and (5) of the Act.)
24. That much of the action, of which we have heard evidence, has been conducted on behalf of two Federal organisations.
25. That the three EBA's have been Federal agreements which exclude this Commission.
26. That, as at the time of hearing this application, the employees who have voted for an EBA have voted for a non-union agreement, namely the June 2000 EBA.
27. That that approval was achieved by a very narrow margin and by achieving a result contrary to the scope clause of the State award by splitting one enterprise into two.
28. That the AMWU has wrongly used industrial action to attempt to achieve its ends and those of former FPU members when it had no coverage.
29. That Inghams clearly prefers the FPU (or the NUW more recently) as the organisation of employees with which it wishes to deal, after 30 years of dealing and no industrial disputation.
30. That the AMWU is far more capable of achieving the interests of the employees in accordance with their wishes than is the NUW and certainly the FPU, insofar as there is any relevance in this.
31. That the NUW has, in the use of Mr Coleman and the NUW's behaviour in relation to the December 1999 EBA ballot, insofar as it is relevant, acted exceptionably.
32. That the preference of employees was very adequately expressed by people of different backgrounds on low wages rejecting not insignificant wage increases proposed by the NUW, as well as being directly expressed in evidence.
33. That the consistent campaign to replace the FPU with the AMWU, including industrial action, and the rejection of pay increases has been carried out at the instigation, direction and support of a large number of employees at Inghams, and the "AMWU representatives" have, in the context of these activities, acted in accordance with the wishes of those employees.
34. That the conduct of some organisers and the inadequacy of service and of attitudes of the FPU over some time caused mass resignations, and a loss of confidence in it which continues to the present.
35. That the AMWU acted in breach of the TLC agreement with the NUW of 20 July 1999.
36. That the NUW and/or the FPU is incapable of representing the employees in negotiating an agreement with the employer by virtue of lack of support.
37. That the financial membership of the FPU fell from 350 to 80, at which number it remains.
38. That there is no substantial support for the NUW.
39. That there remains an undecided group of employees whose numbers are about 70, on the evidence.
40. That majority support is for the AMWU.
41. That the reason why the EBA's have been rejected is, to any significant extent, not because of deception by or misinformation by the AMWU.
42. That there has been some division (now less) in the workplace caused by these difficulties which is not beneficial either to employees or the employer.
43. That the disruption stems, to a large extent, from the inability of the FPU to properly represent its members.
44. That the FPU has suffered organising difficulties at another site, namely the Brownes/Peters site in Balcatta.
45. That the FPU has lost about one-third of its members in this State and is not functional. It gives the impression of being and having been a mere satellite of the SDA and the NUW, incapable of existing or operating in its own right.
46. That a great deal of time and managerial effort on the part of Inghams has gone into an attempt to resolve these matters and there has been disruption at the workplace.
47. That such disruption can have serious effects on the competitiveness and efficiency of Inghams.

ISSUES AND CONCLUSIONS

195 There are a number of issues to be considered and conclusions to be made on the findings we have made above.

196 We have observed the witnesses very carefully when they have been called. A number of witnesses, some eighteen in all for the FPU, were not called, nor were they required to be called. However, the Full Bench ensured that they were present in court when their statements were tendered as evidence. Their evidence was therefore not challenged in cross-examination. We accept much of it, therefore, where it has not been denied.

197 We have considered the demeanour of the employee witnesses for the applicant, along with the content of their evidence (as we have all of the witnesses). Apart from some evasiveness in relation to the part played by Mr Anderton and the AMWU in these affairs, we found them generally (with some exception in the evidence of some witnesses as to the part played by the AMWU) to be people who knew what they wanted, who made their own decisions, and who expressed to the Full Bench what occurred with accuracy and truthfulness, and who had a sense of responsibility to their fellow employees. In any event, a great deal of what was said by them in evidence to have occurred was not in dispute.

198 The evidence is, and it is unchallenged, that, in April 1999, an offer was made by Inghams for a 4% increase in wages in return for a "trade off". That trade off was that the early finish day to which we have referred above would change from Fridays to Wednesdays. As the evidence was and as we find, the early knock off day on Friday is much prized by the employees at Inghams to enable them to do business before the weekend or to work overtime. This offer was conveyed to members in a meeting by Mr McIntosh, the FPU organiser, who had met with management.

199 It was vehemently and overwhelmingly rejected by the membership who were angry and expressed their anger. It is quite clear on the evidence and we find that Mr McIntosh did not involve any members of the workforce in this transaction. We also accept that Mr McIntosh said that "even the Prime Minister could not change the offer".

200 We are also satisfied that, when this proposition was overwhelmingly and angrily rejected, Mr McIntosh was angry and left the meeting. Mr McIntosh had told the meeting, too, that the employer was able to do this without the employees' consent. He did not propose that a counter offer should be made. It is clear, too, on Mr Bullock's evidence, that the advice which he gave was based on his perusal of the wrong award (or agreement), in this case, the SDA award which related to other employees (not production employees) at Baden Street and Powell Street. This was a very unsatisfactory performance.

201 It is quite clear that the FPU shop stewards were so concerned about this proposition and that there was such a feeling of anger amongst employees that there was a decision to approach another organisation for advice. There was, as we have observed, the feeling of being fed up with the FPU as well. These events were the straw which broke the camel's back. That organisation was the AMWU which already had a presence at the site through its coverage of maintenance workers pursuant to its rules and to the *Metal Trades (General) Award*. Also, some FPU members had family members who were AMWU members and others knew Mr Anderton through personal contacts.

202 It was after Mr Anderton was approached and after he told a meeting of employees that his view was that the employer could not change the early day without consent that 200 employees resigned from the FPU, including all of the shop stewards and a large number signed forms to join the AMWU who were, it would seem, accepted and received bills for membership fees. This concerned a number of people who subsequently resigned because they received bills. This occurred in May 1999.

203 We should add that the evidence is that there are and were about 350 employees at Baden and Powell Streets eligible to be members of the FPU, of whom about 70 were left after these resignations and of whom approximately 80, at most, existed as at the hearing of these proceedings. Mr Bullock, surprisingly, was unable to give the Full Bench exact figures. Thus, in the fifteen months since the resignations occurred, there was no evidence of any return to the FPU and it has very much minority membership at the sites. Indeed, the FPU's membership has dropped overall by about half between January 1999 to January 2000.

204 There is evidence, independent of the evidence of employee witnesses, of the preference of employees for the AMWU as well as direct evidence of preference which was not shaken in cross-examination, even when it was put to them that the AMWU had betrayed their trust.

205 There was evidence, particularly, from the AMWU representatives, who are shop stewards in a de facto sense, that the majority of employees preferred the AMWU. Over Mr Viner's objection, the Full Bench admitted that evidence. The Full Bench is not bound by the rules of evidence (see s.26(1)(a) of the Act). In industrial matters, it is the business of shop stewards to know the workplace and the views of their colleagues so that they can represent them. Similar views about the preference of employees were expressed by NUW witnesses in statements which were tendered. We accept that evidence.

206 However, their evidence was somewhat more general and was not the evidence of persons who palpably have influence over and were elected by their colleagues. The NUW shop stewards were selected by Mr Vitolins, not elected. Further, it is clear from the evidence of the NUW shop stewards and the other NUW witnesses, that the FPU is no longer active or even present in the workplace. It is the NUW. The FPU was withdrawn in May 1999 by a decision of its Committee of Management (see Mr Bullock's evidence). There is no evidence that that decision has been reversed. There has, as we find, been no FPU activity since 13 May 1999. Since then, the NUW has been the only organisation with constitutional coverage active in the workplace at Inghams. We attach little weight to the evidence of preference in the FPU witness statements, for those reasons.

207 However, it is necessary, before moving further in the consideration of these events, to consider the performance of the FPU.

208 We accept Mr Manning's and Mr Burgwyn's evidence that, for thirty years or more, the FPU had coverage of production employees at Baden and Powell Streets. The FPU were and are also at Inghams Thornlie processing plant and there was no industrial disputation in all of that time. It was the evidence of Mr Manning and Mr Burgwyn that the FPU were fierce negotiators. Certainly, an increase of 10% and perhaps 14% was achieved in the last two years.

209 However, the complaints, on the evidence, went beyond that. The complaints of members was that the FPU organisers went first to management when they came to the site, that the employees only saw them at the time when EBA's were to be negotiated. There were complaints that enquiries were not attended to and phone calls went unanswered. Further, there were complaints that the FPU was in bed with Inghams.

210 In addition, there was uncontradicted evidence that similar difficulties to this had arisen at another FPU site, Browne's Peters at Balcatta. There was also complaints about two previous organisers, Ms Treanor and Mr McLean. Ms Nasteski had taken up a petition to have Mr McLean removed as organiser which attracted seventy signatures. Those facts lend further to the accuracy of the disgruntled members' judgment. Mr Bullock denied in evidence that Mr McLean had been removed because of complaints and said that he had gone, at his own request, to Albany.

211 Mr McIntosh was accused of not being able to negotiate properly with Mr Burgwyn because they played golf together. That was denied by Mr Burgwyn. Mr McIntosh was not called to give evidence of any of these matters. There was undenied evidence, which we accept, that Mr McIntosh received a gift of chickens to raffle for an ALP function from Inghams and that he told Mr Bullock that he had received chickens to raffle for funds for a Scots Highland pipe band. There was a perception, on the evidence, amongst the employees that Mr McIntosh was driving away from Inghams with bootloads of chickens. There was, on the evidence, some truth in that view of what he did. Certainly, as we have observed, this was unwise conduct and such action could rightly, and did contribute to the loss of trust of employees.

212 Mr Burgwyn gave evidence that he had only played golf once with Mr McIntosh and that that was on a poultry trade day. However, he did not deny that they had known each other for some years or that they were on friendly terms. There was evidence that Mr McIntosh had visited the premises forty times in the last two years, according to Inghams' log. That, however, did not gainsay the evidence that he always went to see management and that employees did not see him except when an EBA was to be negotiated. We accept the employees' evidence and so find.

213 After the mass resignations came to the notice of Mr Bullock, he immediately removed Mr McIntosh as an organiser. In a letter of 13 May 1999 to shop stewards on FPU letterhead, Mr Bullock admitted that the FPU had lost the confidence of members and assured them that they would do everything to win that confidence back.

That confidence had not been won back by the FPU or anyone else by the end of July 1999 when the TLC agreement was reached with the AMWU because an expressed purpose of the agreement was to give the NUW an opportunity to win back the confidence of the employees.

214 The erroneous handling of the matter by Mr McIntosh was borne out by Mr Bullock's evidence that, having examined the correct and relevant clause of the award, he was of opinion that the FPU could defend the employees' right to retain the Friday early day. That in itself was a confirmation that Mr McIntosh's advice was wrong and that he had failed seriously in not making a counter offer to what was, in fact, an offer to increase wages for a trade off, constituted by a change in early days.

215 As to the receipt on at least one and probably more than one occasion of a gift of "chooks", whilst not a basis for an allegation of corruption, was quite inappropriate and a justification for the mistrust of the employees. Mr McIntosh's serious failure to properly handle a serious matter and to serve his members is further borne out by the fact that, having regard to the attitude of the members, Mr Manning correctly decided that the change of early days was not an industrially tenable decision and, soon after, advised employees accordingly.

216 The AMWU did not solicit or take steps to approach the membership of the FPU in the beginning. The employees, in their anger, disappointment and exasperation, went to the AMWU/AFMEPKIU through Mr Anderton. Certainly, thereafter the AMWU or the AFMEPKIU treated them, to a large extent, as de facto members.

217 Further evidence of the FPU's being out of touch is that it was unaware of the application herein being advertised in the Western Australian Industrial Gazette on 27 January 2000 until the solicitor for the applicant wrote to the Secretary advising of this on 13 February 2000 (see exhibit 1).

218 As to the increase of 4% achieved in July 1999, as we have outlined above, by an over award payment and later incorporated in the draft EBA of December 1999, that was already achieved without the intervention of the NUW. Its inclusion in the draft EBA was not anything other than the formal inclusion in an EBA of an existing achieved increase.

219 We must say, too, that we have a great deal of difficulty with the proposition that the amount of that 4% increase was an over award payment which could be withdrawn at any time. It seems to us that the better opinion is that it was an amount paid to persons which increased the amount of wages and was an agreed variation to the contract of employment for twelve months, and was enforceable as such.

220 In any event, the December 1999 draft EBA was an NUW negotiated agreement, not an FPU agreement.

221 That there was no consultative committee instituted to represent employees in day to day problems until after the resignations is another ground for criticism.

222 We are satisfied, on all of the evidence, that there were valid complaints about the three last FPU organisers, going back several years, that the FPU had not given the service required by their members, consulted with them or sufficiently invited their participation, not attended or represented them sufficiently and, as Mr Bullock acknowledged in his letter of 13 May 1999, lost their trust and confidence. We are satisfied that the loss of confidence was entirely justified and was the cause of mass resignations and the search for an organisation which could and would properly represent them. That that loss of confidence still existed as at 20 July 1999 is evidenced and confirmed by the terms of the TLC agreement between the NUW and the AMWU. As a result, for reasons which we will discuss later, that trust and confidence has not been regained, whether it is manifested in the majority pro-AMWU approach or an intent to remain "non-union" until the Commission resolves the matter, or to remain "non-union". The narrow base of support remains. The FPU has not sought to regain it and is, in any event, absent; nor has confidence been gained by the NUW on any real basis.

223 After its letter of 13 May 1999, the FPU has had no presence or organisers in Baden Street or Powell Street which, we are satisfied and find, have been treated and managed as one operation (including in the State award and EBA's) and organised in the past by the FPU as one enterprise, but that all organisation of and transactions purported to be conducted of the production employees at Inghams has been conducted by the NUW, a federally registered organisation.

224 There is no evidence that the FPU will return to the sites. The only evidence is of the activities and intentions of the NUW. Indeed, all of the credible evidence is of the continued and intense activity of the NUW. The NUW entered the sites, where it had played no part in the past, in late May 1999, at the direction of Mr Bullock in his capacity as Secretary of the State Branch of the NUW and with the consent of the Committee of Management of the FPU, a consent not withdrawn.

225 Mr Bullock recognised that there were major problems, so he put in two persons whom he regarded as capable organisers and these were Mr Vitolins and Mr Johnston. These gentlemen are and were not officers or employees of the FPU, and did not constitute an FPU presence in the place. Their position was somewhat unusual. They were SDA employees or officers working on behalf of the NUW, but paid out of FPU funds. The NUW had not had any prior presence, except that FPU members signed and completed NUW application for membership forms at the same time as they did the same with FPU membership forms. These gentlemen, on Mr Vitolins' uncontradicted evidence and on the other evidence and as we find, were greeted with hostility and rejected. There is no cogent evidence of any change. Further, they were involved in the events surrounding the December 1999 ballot and the extraordinary incident involving Mr Coleman.

226 This, we find, was a measure of the hostility to the FPU amongst employees. It has never, as we find, been made clear to employees, given that the award and EBA's are State, that the NUW is not the FPU, and that the NUW is a federal organisation or, if it has, there is no evidence to that effect.

227 A meeting occurred on 6 May 1999 between the FPU shop stewards, who had all been elected as representatives and de facto shop stewards of the employees under the auspices of the AMWU, which had undertaken to act for the employees, and Mr Bullock, Mr Johnston and Mr Vitolins on behalf of the NUW. The "AMWU employee representatives" were later called a "consultative committee" and have been referred to herein, for convenience, as the "AMWU representatives".

228 That was a meeting which was somewhat acrimonious and reflected what was a clear, deep-seated resentment or mistrust by employees of the FPU or persons purporting to represent or be connected with it. It is clear that employees have not been properly advised by the NUW organisers of the FPU's role because all of the employee witnesses on behalf of the FPU, in their evidence, refer to the FPU, to themselves as FPU members and to Mr Johnston and Mr Vitolins, by implication or expressly, as working on behalf of the FPU. In this, for the reasons which we have explained, they are mistaken.

229 In our opinion, it was the duty of the FPU to advise their members that it has left the sites in favour of the NUW and to do so unequivocally, stating reasons. That this has not been done is quite unsatisfactory.

230 Mr Anderton and the AMWU representatives met in May 1999. Mr Burgwyn, Mr Manning, Mr Jones and Mr Hicks of the AMWU were also present. It was made clear, on behalf of Inghams and they maintained this approach throughout, that they would only deal with the organisation with constitutional coverage, which was the FPU and, of course, the NUW. Mr Schapper, on behalf of the applicant, in submissions, criticised that approach but it was and is the correct approach.

231 The AMWU wished to negotiate an EBA but, of course, Inghams, for those reasons, correctly refused to do so. At all times, the AMWU advised the former FPU shop stewards (the AMWU representatives) and some, if not all, of the employees that they had no constitutional coverage. During this time, on the preponderance of the evidence, to force recognition of the AMWU and, with the advice and participation of Mr Anderton and other AMWU officers, officials and/or employees, the AMWU "members" conducted industrial action in the form of go-slows, stoppages, stop work meetings and a one day strike with a picket line. These actions were not justified, at the very least.

232 In May 1999, Inghams applied to this Commission and sought an interpretation of the appropriate clause from this Commission. The AMWU sought to intervene but that application was rejected. Commissioner Cawley offered to make available the Registrar's services for the problems to be discussed between the parties, but the AMWU did not follow the recommendations. The AMWU admitted that it had no constitutional coverage.

233 A number of notices issued in the month of May 1999, pursuant to the Federal Act, giving notice of intention to bargain on behalf of the AFMEPKIU. By these notices, it was purported to protect the employees from any action when they took industrial action. Mr Anderton told them that they were protected when they took such action by the statute. Inghams brought the matters to which the NUW became a party before Commissioner O'Connor of the Australian Industrial Relations Commission. The AFMEPKIU conceded that it had no constitutional coverage and it was dismissed from the proceedings. That was on 22 June 1999. We should also observe that O'Connor C declined to make an order halting further industrial action by the AFMEPKIU on the basis that no further action was likely to occur. In fact, such action did occur and caused disruption to Inghams' business.

234 There were notices under the Federal Act signed, too, by 170 employees as individuals, of intention to bargain which were not recognised, although it is arguable that they should have been. It matters not that this was less than 50% of the workforce. It was equal to more than 50% of the previous FPU financial membership. In any event, the numbers are substantial. Inghams, through Mr Manning, said that it would be impracticable to recognise the individual employees and there was a policy not to, but the law provides otherwise.

235 It is quite clear that, on the advice of Mr Anderton and others, that these campaigns were said to be protected industrial campaigns. They were not. The advice was wrong. Mr Schapper submitted that the campaigns were conducted in the mistaken belief that the action was protected. For the FPU and Inghams, it was submitted that Mr Anderton and the AMWU knew that this action was not protected and put the employees at risk. It was also submitted that the employees were swept along in these actions by the advice. However, that is not Mr Anderton's or the AMWU representatives' evidence. We are not persuaded that they were entirely swept along by external advice. They wanted an EBA and wanted AMWU representation. That is clear.

236 It was, being only one day's strike and supported by several lesser industrial actions, not severe in the scheme of things, however. In any event, it had no effect on the attitude of Inghams to the AMWU. Nonetheless, the action was disruptive and was aided, abetted and participated in by an organisation of employees with no coverage of the employees concerned, contrary to the AMWU rules and s.61 of the Act; even though they had also sought help from that organisation.

237 Although it is obvious, we should say that all of these actions were conducted by or on behalf of the applicant's counterpart Federal body and are and were not within the jurisdiction of this Commission, just as is the case, too, with the NUW and its actions. No further industrial action was mounted by the AFMEPKIU in relation to the production employees thereafter; nor was any mounted by the applicant.

238 On 25 June 1999, on behalf of the NUW, Mr Bullock referred the dispute between the AMWU and the NUW to the TLC. In the meantime, as occurred in late May 1999, and as continued until recent times, Mr Vitolins and Mr Johnston continued to visit the sites and attempted to engage employees in conversation. Their visits occurred daily for some time and then several days in each week. This was an intense, vigorous and very prolonged organising campaign, on the evidence, conducted on behalf of the NUW. In the light of the objective facts and Mr Bullock's evidence, as we have observed, we find that the FPU was not any more involved at the site.

239 Further, we are satisfied that the AMWU representatives and the majority of employees wanted someone other than the FPU or the NUW, whether it was identified as such or not, to represent them and were prepared to act to compel this to occur. The depth of ill feeling against the NUW, Mr Johnston and Mr Vitolins, the rejection of the December EBA and the termination of the March 2000 negotiations, as well as the NUW's preference for a non-union EBA in June 2000 rather than another defeat, support this finding. We also find that Mr Vitolin's evidence of increased goodwill is, at best, vague.

240 Further, we are satisfied, on the evidence, that the AMWU attempted to make it clear to employees that it could not represent them and did make it clear to many, and that it did not deceive them in that respect, although some were not aware until later.

241 We are, however, of the view that the AFMEPKIU knew or ought to have known that it had no coverage sufficient to warrant it intervening in proceedings in this Commission or participating on behalf of employees under the Federal Act and in the Australian Industrial Relations Commission.

242 We also find that, whilst the employees, led by their former FPU shop stewards, were taking action on their own account, that this coincided with the rush of the AMWU to cover them and that the AMWU/AFMEPKIU took what Mr Anderton said was a "short cut", to do so. There was a deliberate use of industrial action to force recognition of the AMWU.

243 We are satisfied and find that, after Commissioner Cawley's decision, the applicant was not involved in any industrial action. On the evidence, too, the applicant made it clear to employees and to Inghams that it saw itself as able to advise employees in matters, including workers' compensation matters, and saw itself as being able to enrol as members employees who were not members of other unions. That, of course, was manifestly wrong and should have been known to be wrong. Neither the State AMWU or Federal AFMEPKIU had that right.

244 In July 1999, under the auspices of the TLC and its Secretary, Mr Cooke, in particular, the applicant, represented by its Secretary, Mr Sharp-Collett, and the NUW, represented by the Secretary of its Western Australian Branch, Mr Bullock, met and reached an agreement which we have set out above.

245 The agreement is evidence of the fact that the production employees remained disaffected with the FPU or any manifestation of it. We say that because there was an approximate six month moratorium to, inter alia, allow the NUW to win back these employees and their confidence. That is, of course, misleading because the NUW had never, as a matter of reality, industrially represented these employees nor evinced an intention to. It was not winning back their confidence, but winning it for themselves. It had no awards or agreements and there is no evidence that it did anything other than enrol FPU enrolees, too.

246 In any event, in July 1999, as we have said, an EBA between the company and the employees at both sites was put to the ballot. It was soundly defeated, as we have advised above. It was campaigned against by both organisations because it was a non-union EBA. There followed an offer of a 4% increase from Inghams, conditional upon employees undertaking not to involve themselves in industrial action for twelve months. Some signed such an undertaking an received the 4% increase.

Others did not. Eventually, all were paid the 4% increase, whether they signed or not. This is the 4% over award payment to which we have referred above.

247 After that, as we find, neither the production employees or the applicant or the AFMEPKIU took any industrial action. Also, after that, as we have observed above, there was a continuing intensive and vigorous attempt to organise the employees. There were, as we find on the evidence, complaints by production employees about the presence of Mr Johnston and Mr Vitolins being on the premises and about their attempting to engage employees in conversation during their lunch breaks. Inghams' response, on the evidence, was that those gentlemen had a right to be there. As a matter of law, as Mr Schapper submitted and for the reasons submitted by him, they did not.

248 The NUW had no rights under the award, under the EBA or under Federal Act (in the latter case because there is no relevant Federal award or agreement to which the NUW is a party). Mr Johnston and Mr Vitolins could have been lawfully prevented. They therefore attended with the consent of Inghams, who actively approved of the FPU and, by implication, the NUW.

249 During this time, too, there were meetings held of AMWU representatives and sometimes other employees at which Mr Anderton and other AMWU officials were present and gave advice. It is fair to say and, on the evidence, we find that the representatives sought his advice. It was provided. These regular meetings occurred off the premises, either outside the gate or at a coffee shop nearby. Not only was advice sought and given, but leaflets were drafted to put a point of view on behalf of AMWU employees. These leaflets, in December 1999, were directed at attempts by the NUW to negotiate an EBA on behalf of production employees with Inghams. This was a Federal EBA which, as we find it, would have moved the employees into the jurisdiction of the Australian Industrial Relations Commission, even though it proposed a wage increase.

250 The contention for the applicant was that it was entitled under its rules to provide advice to persons subject to FPU constitutional coverage (or NUW constitutional coverage). This, it was submitted, was to distinguish the situation from representation in the Commission which was prevented. We will turn to that question later in these reasons.

251 What, however, did occur, although Mr Schapper submitted that there was no breach of the TLC agreement, was that the AMWU breached the agreement by its de facto representation of and its advice to persons covered by the NUW. (The FPU had walked away and was no longer involved.)

252 The applicant is a State registered organisation. The NUW is not. The NUW has no Federal agreement or award in this workplace and has never had any presence except for coincidental membership. The AFMEPKIU is party to no Federal agreement or award in relation to the production employees, nor is the AMWU a party to any State award or agreement. Insofar as it is relevant to these proceedings, which is another matter entirely and is therefore of any weight, the AMWU committed breaches of the TLC agreement in that, through Mr Anderton, it involved itself in a campaign to defeat the NUW EBA of December 1999. It did so at the request of the elected employee representatives, but that is not the point. It did so in providing advice and document reproduction facilities and by meeting employees subject to NUW coverage.

253 We now turn to the proposed December 1999 EBA. That was an agreement which would deprive the FPU of industrial coverage or leave it with no award with any force to which it was a party. It would transfer jurisdiction over employees to the NUW and their industrial coverage to the jurisdiction of the Federal Commission and leave no organisation to represent them in relation to the State award.

254 It was submitted by Mr Viner, on behalf of the FPU, that the NUW had entered the industrial arena at Inghams because the AFMEPKIU had entered there, but the AFMEPKIU has no coverage nor is there any evidence that, since 22 June 1999 and the decision of O'Connor C, it has sought or pursued coverage. Indeed, since this application was filed on 5 January 2000, the matter has been pursued, so far as the evidence reveals, by the applicant and not by any Federal organisation. We do not accept that there has been any valid reason for the NUW to remain in the workplace, valid that is in the context of this application.

255 There is in evidence a lot of material in the form of leaflets or circular letters produced by the "AMWU representatives" with the help of the AMWU and responses by the NUW. No documents or letters on FPU letterhead have been produced since 13 May 1999. There is no evidence that the FPU seeks to exercise its industrial or constitutional coverage.

256 It was said that the employees were apprised by the placing of copies of the proposed December 1999 EBA on the noticeboards at the two sites. However, a ballot was conducted one morning in December 1999 at Baden Street and Powell Street. This was done without notice or warning to employees. The operations of the plants were stopped by the employer, Inghams, for 15 minutes. The employees were shepherded into a room where they were to vote. Mr Johnston and Mr Vitolins, on behalf of the NUW, were present. It was a proposed Federal NUW agreement.

257 In saying that, we make no criticism of any transfer of coverage to a Federal organisation or the Federal jurisdiction. It is the case here, however, that the two State organisations are claiming coverage on their merits as organisations.

258 We accept the evidence that no-one told the employees that the ballot was occurring until they were shepherded in to vote on the ballot. We accept the evidence in that respect, too, of Mr Vitolins who said that no prior notification of the ballot occurred because they did not wish to alert the AMWU to it occurring. However, as he conceded, this had not prevented the issue beforehand of critical leaflets. We accept the evidence of employees who objected to the way in which they were treated in relation to the ballot. This conduct by the NUW was akin to the sort of treatment that employees complained of at the hands of the FPU. We regard their objections as justified.

259 It was also said in evidence that the ballot was not conducted in secret because Mr Vitolins and Mr Johnston could have seen how they voted. Whilst that may have been the case, it did not prevent the employees soundly rejecting the EBA, notwithstanding that, by doing so, they denied themselves a 10% increase. It was submitted that the vote was lost through misleading and deceptive information promulgated in the AMWU leaflets. There is nothing in the leaflets, which we have read thoroughly, that is seriously misleading or deceptive. Indeed, the answers cited as reasons for not voting for the agreement by Mr Bullock in evidence make no mention of that either. They identify some serious flaws in the agreement which the NUW was informed of by its own members, sought in February/March 2000, and indeed promised to remedy including the fact that there was not sufficient money up front and that the agreement was far too long a period.

260 In particular, it was acknowledged by the NUW that, in fixing the proposed December 1999 agreement for such a long term, employees would be prevented from seeking adjustments to meeting the effect of the GST. There was also evidence from a number of witnesses that the employees would not accept the agreement because they wanted to have nothing to do with the FPU. Mr Lopez told Mr Vitolins so, for example.

261 It is open, given the rejection of the agreements and the evidence of employee dislike and distrust of Mr Johnston and Mr Vitolins and continuing disenchantment with the FPU, including the handling of the ballot, that that factor, given the substantial wage increase, played a significant part in the rejection of the EBA. The extraordinary manner in which the ballot was conducted put some persons off. They, on the evidence, resented being ordered around.

We accept that they did and it is easy to understand why they were resentful.

262 In that context, we also refer to the extraordinary placement by the NUW of Mr Coleman in the factory at Baden Street to provide intelligence to Mr Johnston and Mr Vitolins.

263 We are not persuaded that any deception by the AMWU or the AFMEPKIU, which was denied in any event, there not being any significant deception, if any, in any event, played any material part in the defeat of the EBA.

264 As we have said, this application was filed on 5 January 2000. There were discussions about a further EBA. The NUW remained and remains active. The submission was that the NUW remained in place and still does because of the attempts of the AFMEPKIU to achieve an EBA. That attempt was defeated and ended by the decision of O'Connor C on 22 June 1999, but the NUW, through Mr Vitolins and other organisers, remained and remains.

265 There is, as a matter of fact, no State organisation now actually involved in the sites at Powell Street and Baden Street. There are, as we have observed, at most 80 members of the NUW or the FPU at those sites. There is evidence that the majority of employees wish to be members of the AMWU. Some employees, on the evidence, await the result of these proceedings.

266 There is evidence that some members left the AMWU, which they had purported to join, when they found that that body could not represent them. There was some evidence in broad terms that there was intimidation of persons wanting to join the FPU and certainly evidence that their shop stewards were appointed by Mr Vitolins.

267 We are not satisfied, on the evidence, that there has been any significant or effective intimidation of employees by or on behalf of the AMWU. There was some shunning of persons and some ill feeling. There is even evidence from FPU witnesses that some verbal attacks and some "sending to Coventry" incidents have, for the most part, died away. The FPU has not returned and there is no evidence that it has or will return.

268 In June 2000, there was an EBA offered by the employer to employees at Baden Street. No party to the EBA is an organisation of employees. The NUW does not support non-union agreements. However, it did not and does not oppose this agreement because, on Mr Vitolins' evidence, the employees had been denied an increase in wages for too long. On Mr Bullock's evidence and significantly, there was consideration by the NUW of the ballots on EBA's. The agreement was offered only to Baden Street and not to Powell Street. The evidence was and we find that it was not usual, if not unprecedented, to separate the sites which are administered as one unit and geographically very close to each other. Indeed, the Scope Clause of the award recognises them as one enterprise, as we have said.

269 There was uncontradicted evidence that Powell Street is regarded as pro-AMWU. We accept that evidence. We draw the inference, on the balance of probabilities, that a separate agreement was deliberately offered to Baden Street only as a means of dividing the employees. In any event, it was accepted by a comparatively narrow margin of 127 for and 106 against, with 3 informal. Baden Street have gained a 6% increase which those at Powell Street have not been offered (see exhibit FPU 2C). This occurred, significantly, too, after the resolution of the question of an increase in wages had been drawn out for over twelve months.

270 It is now sought to register the agreement. It is objected to by a number of employees. The NUW is participating in the proceedings. The proceedings is listed for hearing in the Australian Industrial Relations Commission on 15 and 16 September 2000, as we have observed. That agreement, as Mr Schapper submitted, because it builds on the State award, would not prevent the AMWU, were the application to be granted, representing employees. Further, there has been no industrial action by or on behalf of the AMWU or its de facto members since July 1999. (The industrial political pamphleteering is not industrial action.)

271 There has, as a matter of fact, been no rejoining or joining of the NUW. Indeed, in numbers, nothing has changed since June 1999. There are, as we find, 350 to 360 process workers. About 200 resigned on or about 5 May 1999. 80 to 100 stayed with the FPU, 150 to 160 stayed with the AMWU and there are about 70 employees who are members of neither.

272 The NUW is unable to negotiate an agreement or represent the workforce, because it does not have their confidence. The FPU certainly does not. The AMWU, through the former shop stewards and otherwise, has a strong voice, but no right to coverage. That is a situation which it now seeks to change.

273 The only State organisation with coverage has, as we find, abandoned the sites and been replaced by a Federal organisation, the NUW. However, as Mr Schapper submitted, the NUW cannot still represent the workforce. Even the FPU witnesses, according to the references in their evidence, are unaware of this. They refer to the FPU.

274 We are satisfied that, whether it is a shell or not, the FPU has abandoned the field. We accept that the state AMWU is not a shell. We accept that the AMWU and the State branch of the AFMEPKIU, its counterpart Federal body, operate as one union and that, pursuant to s.71 of the Act, Mr Anderton is an officer of both. The AMWU is not a shell, but it is a separate organisation at law (see *Re McJannett; Ex parte Minister for Employment, Training and Industrial Relations for Queensland and Others* [1995] 184 CLR 620).

275 We are satisfied that the employees left the FPU in large numbers for the reasons which we have mentioned above and because they were seen to be too close to management. A large number of employees, led by their shop stewards, lost confidence and sought assistance elsewhere. That confidence has not been gained by the NUW and the FPU has done nothing to retain it.

Rules of the Applicant

276 We now deal with the contention of the applicant that, as a matter of law, Rule 3 of the applicant's rules enable the AMWU to lawfully advise and act for, but not represent, in this Commission, persons over whom the FPU has constitutional coverage. On a fair reading, the rule does not.

277 It is convenient to deal with the construction of Rule 3 of the objects of the rules of the AMWU. It is trite to observe that the rules of an organisation should be interpreted and construed in the manner of any legal document (see *HSOA v Honourable Minister for Health* 61 WAIG 616 (IAC) and *R v Aird; Ex parte AWU* [1973] 129 CLR 654). This means that Rule 3 must be read in the context of the whole of the rules and Rule 3 itself should be read as a whole.

278 The rule refers to the "organisation of all workers qualified for membership, the negotiation and settlement of difficulties between the members of the Union and employers", (our underlining) provides assistance to members, including the provision of legal advice and assistance to members. There is also the object of the furthering of any other purpose, or the participation, financial or otherwise, directly or indirectly, in any other purpose, so far as may be lawful (our underlining) which is calculated, in the opinion of the union, to further the interests of labour, trade unionism or trade unions.

279 Rule 3, in its last clause, purports to confer power on the union to perform certain acts which seems, as Mr Cuerden, on behalf of the FPU, submitted, to confer power to engage in secondary boycotts, inter alia. On a fair reading, the clause does not confer any power to advise and assist persons who are not eligible to be members, as if they were members, or to enrol persons as members who are not eligible to be members. Mr Schapper's submission that the AMWU's enrolment of production workers as AMWU members did not have any merit; nor was there power to advise and assist persons as members when they were not eligible to be members, as we find clearly occurred in this case. Rule 3 provides that anyway.

280 Further, we are not persuaded that the right of constitutional coverage by the FPU limits the FPU to

merely representing members in this Commission whilst other organisations, without constitutional coverage, are at liberty to support, advise and otherwise represent FPU members. To do so would render eligibility clauses meaningless. Mr Anderton, the other officials and the AMWU had no authority under the rules to do as they did and, indeed, acted ultra vires the AMWU rules, as we find, as well as contrary to s.61 of the Act.

RELEVANT FACTORS

281 We now turn to deal with the relevant factors as follows—

1. Constitutional coverage and eligibility.
2. Employer preference.
3. Employee preference.
4. Discouragement of overlapping coverage.
5. The established pattern of membership and award and agreement coverage.
6. The interests of the employer.
7. The interests of the employees.
8. The interests of the FPU.
9. The interests of the AMWU.
10. The industrial behaviour of the organisations concerned and the employer.
11. The views of the Australian Council of Trade Unions (hereinafter referred to as "the ACTU").
12. The ability to service membership.
13. The effect of the orders sought.
14. The interests of the community.
15. The advancement of the objects of the Act.

1.—Constitutional Coverage

282 We do mention that, whilst Mr Viner, in the course of his careful submissions, equated this application in many respects to *Re an application by AWU and Another* (FB)(op cit), we are not of the opinion that that case is equatable to this application to any significant extent.

283 It is conceded and it is quite clear that the applicant has no constitutional coverage of the production workers at Inghams. On the other hand, the FPU clearly does. It is also the case, as the Full Bench observed in *Re an application by AWU and Another* (FB)(op cit) that constitutional coverage should not be lightly brushed aside.

284 There should be evidence or a compelling reason or reasons why this should occur.

285 In addition, the AMWU is a trades union and the FPU is a vocational union, with particular coverage of the food processing industry, as is represented by Inghams.

286 We are of opinion that the ineptitude of the FPU, the loss of confidence and trust in it by Inghams' employees, the abandonment of the worksites by the FPU and the justified preference of employees, as well as other factors, represent compelling reasons together with other reasons which we advance to regard constitutional coverage no obstacle to the application, subject to other factors (see *Re an application by AWU and Another* (FB)(op cit) at page 3006).

2.—Employer Preference

287 The employer preference is expressed very clearly. It is emphasised by the positive assistance given by the employer to permit the NUW organisers to vigorously and for a long period, despite some protests as to their conduct, organise the site through the SDA organisers, Mr Vitolins and Mr Johnston, even though there was no right under statute or award in the NUW to enter the workplace, for the reasons submitted by Mr Schapper. In any event, the employer preference for the FPU is a somewhat hollow one given, as we have found, that the FPU has abandoned these sites. Indeed, the employer has sought to preclude State organisation participation by purporting to enter into a Federal agreement direct, but only with some of its employees.

288 The FPU, when it was not absent from the sites, had thirty years of coverage and there was no industrial disputation during that time, but that evidence is simply not to the point, because the FPU is no longer there. Indeed, its own Secretary and/or Committee of Management made the decision that there was such a serious situation that the FPU should leave the scene and its members, and abandoned, on the face of it, the award to which it is a party.

289 It is not a matter within the jurisdiction of this Commission, nor is it relevant to these proceedings to decide the merits of coverage by the NUW. Because the FPU has gone, and there is no evidence that it will return, Inghams' preference for the FPU is of little weight and can be of little weight. In any event, the preference of employees and the conduct of the FPU are much stronger factors in this case.

3.—Employee Preference

290 As we have found, there was great resentment of the FPU and lack of confidence in it. There is no organisation with coverage which is able to represent the production employees because no such organisation has sufficient support.

291 After fourteen months, as at the time of hearing this matter, there was no change in the number of members. There are, at most, 80 FPU/NUW members. There are considerably more AMWU members and a large number uncommitted. This is notwithstanding a protracted and vigorous organising effort by Mr Vitolins and Mr Johnston. The employees left the FPU because they lost confidence and have not returned. There is no evidence, even if it were relevant, of any real confidence in the NUW.

292 It is, in part, recognised by the FPU, who have, as it were, acknowledged their rejection, left the sites and not returned even though the AMWU has, as it were, been properly banished from the scene. That is supported by the fact that the NUW and the employer have sought Federal EBA's, in the employer's case, most lately, direct with the employees and then only with a limited number of employees, splitting the workforce.

293 Further, there was evidence of the resentment of the FPU and the NUW by the fact that two EBA's affording wage increases to low wage workers were rejected. It was only when Inghams went direct to the employees that an agreement was approved by a narrow margin at one site and then only after a protracted period without a wage increase.

294 As we have observed, we were impressed by the former FPU "shop stewards" (and now the AMWU representatives) as witnesses and their clear enunciation of the reasons why they left the FPU and still reject it. We did not think that they were persons who were manipulated but, as a body, had their own minds and remained as spokespersons for their colleagues. It is clear, from their re-election and the fact that they remain as spokespersons, that they maintain that confidence. The trust and confidence in sufficient numbers which it is necessary for employees to have in their industrial organisation to represent them has gone. It has been replaced by trust and confidence in the AMWU representatives. There is no evidence that it will return. There is no evidence that the FPU will return.

295 In any event, there can be no preference for the FPU. The NUW has been a de facto s.72A(5) participant in these proceedings. Any preference for it, as a matter where industrial constitutional coverage of it in this jurisdiction is in issue, is irrelevant. There is clearly sufficient evidence on the part of the AMWU witnesses as to numbers and as to conviction (the numbers of the FPU not having changed), to find that there is a clear preference for the AMWU which is the only State organisation, on the evidence, to wish to be industrially active at the sites. The preference of the employees is a very strong factor in this case.

4.—Overlapping Coverage

296 To grant the application would not cause overlapping coverage because the AMWU would cover production workers exclusively. The AMWU is an organisation with a presence at the sites already. That factor does not militate against the applicant.

5.—Established Coverage

297 The established pattern of coverage, both constitutional and industrial, has been for thirty years at least with the FPU when it ended, as a fact, in May 1999. The AMWU has not had constitutional coverage of production workers at Inghams or elsewhere in this jurisdiction. We should add, as we have found, that there is no established pattern and, indeed, no evidence at all of NUW industrial coverage or AFMEPKIU constitutional or industrial coverage of production employees at Inghams, or of any activity by them in the workplace until April/May 1999. That factor is negatived or diluted by the abandonment of the scene by the FPU.

6.—Interests of the Employer

298 The interests of the employer are, as the evidence plainly revealed, served by its operation which relies on a humane and uninterrupted, efficiently conducted production process of edible chicken from live birds not being disrupted. Plainly, too, the undisputed evidence that the FPU had enjoyed in no industrial disputation in thirty years would strongly persuade the employers to favour it. However, the FPU is no longer there.

299 There is a requirement for an organisation which can efficiently and effectively and fairly negotiate with the employer so that the employer and employees can have agreed conditions and the existing uncertainty is eliminated in the interests of employer and employees. The FPU cannot provide this. The AMWU, in the numbers who support it and with a stable and responsible shop steward structure can. We so find.

7.—The Interests of the Employees

300 The interests of the employees are plainly served by being represented by an organisation which serves its members' interests and deals justly and fairly but vigorously where necessary with the employer to ensure that the employees have the best and fairest terms and conditions of employment obtainable and which are obtainable by fair and lawful means, having regard to the employer's right to conduct its business without unfair, unlawful or unreasonable disruption, and within the limits of the employer's rights to conduct its business for the maximum result achievable. There is evidence that, overall, the FPU has not carried out that duty.

301 There is sufficient cogent evidence that the level of confidence in the FPU does not warrant it continuing to represent employees, even if it had not waived its right and abandoned its duty to do so.

302 Against that, of course, the AMWU did not mislead its employees into thinking that their industrial action was protected, but the AFMEPKIU did. That the same persons did this attaches responsibility, to some extent, to the AMWU, but it remains a separation organisation. In the case of both organisations, there are flaws which cannot be ignored. We should say that the involvement of employees in industrial action in May, June and July 1999 is to be criticized. However, it does not detract from the need of employees to have the sort of representation which we have described.

303 We are satisfied, for the reasons expressed in detail in these reasons, that the interests of employees are best served by the AMWU's application being granted.

8.—Interests of the FPU

304 The interests of the FPU in maintaining coverage would not be seriously affected because it has abandoned the sites and its members.

9.—Interests of the AMWU

305 The interests of the AMWU would be well served by its gaining coverage of more employees and a different category of employee.

306 It is not to the point that the Thornlie plant would still be covered by the FPU. The legislation permits this sort of application in relation to this identifiably separate "enterprise", the Inghams Osborne Park enterprise, as defined in s.72A of the Act, and there are factors which support coverage being granted to the AMWU. The interests of the AMWU would be served by this application being granted. We so find.

10.(a)—Industrial Behaviour—FPU

307 The industrial behaviour of the organisations involved is a matter of importance. The industrial behaviour of the FPU has indisputedly been unexceptionable as regards the employer. The industrial behaviour of the FPU, as regards the employees, has been so exceptionable that it quite clearly caused a large number of employees, in their anger, to resign and, for the most part, not return, the change of early day issue being the straw which broke the camel's back. The FPU has installed organisers who have caused the ire of its members by their neglect, by some justified impressions of closeness to the employer and by ineptitude.

308 Finally, the FPU, once it became unpopular, no longer maintained nor does it maintain a presence in the workplace and has, to all intents and purposes, abandoned it, without so much as properly publicising this fact to its members. Its actions have resulted in such a loss of confidence that the FPU has handed over to the NUW which, despite a long and protracted campaign, cannot negotiate an agreement of which the employees approve.

309 The FPU, like the NUW, has, in abandoning its members, engaged in serious industrial misconduct and has probably acted contrary to its rules and s.61 of the Act. That compounds its proven unwillingness or inability in the past to properly serve its members. We find the behaviour of the FPU to be a serious factor militating in favour of the applicant and against the FPU, as these reasons explain.

10.(b)—Industrial Behaviour—Inghams

310 Next, we come to the question of the behaviour of the employer. The employer has actively supported the FPU and now the NUW. It caused us some concern that Mr Manning, when cross-examined, said that he did not know whether Inghams would abide by the decision of the Commission until he spoke to his head office. One would think that an enforceable order of this Commission would be regarded as binding.

311 Further, in relation to the December 1999 EBA ballot, the employer's part in assisting to facilitate a ballot, of which employees had no or no sufficient notice and where they were not told even that they did not have to vote, was partisan and unsatisfactory.

312 Further, the pressing of an EBA on employees by the employer when this matter was part heard ran the risk of pre-empting the decision of this Commission. Historically, and as a matter of evidence, the Baden and Powell Street sites have been dealt with industrially and administratively as one unit. The offer of a separate EBA, at a historically and award recognised unified enterprise, to the Baden Street employees when a separate one was offered to Powell Street, quite clearly because it was seen, as we infer from the evidence, to be an AMWU stronghold, shows an element of discrimination and an attempt to influence and separate the employees during the currency of these proceedings.

313 Next, Mr Manning suggested that the terms of an agreement, if concluded, which required the active promotion (we paraphrase) of membership to the FPU, was not to be completely complied with. We have difficulty with such an approach to an agreement.

314 Those are matters which leave Inghams open to some criticism.

10.(c)—Behaviour of the AMWU

315 The behaviour of the AMWU requires some careful consideration. First, those employees who threw in their lot with the AMWU did so of their own initiative, led by their own elected FPU shop stewards and then elected "AMWU representatives". They did not do so because they were "stooges". They were angry with the FPU and rightly so. Some were not clear and some obviously returned to the NUW (or FPU as they thought it to be) when they found that the AMWU did not have constitutional coverage, but their return made no real difference to the small numbers remaining.

316 The remainder remain AMWU oriented, or at least some 70 declined to be covered by the NUW or any organisation, despite the very strenuous efforts to organise them by Mr Johnston and Mr Vitolins. We say that because we wish to make it clear that the production workers went to Mr Anderton and the AMWU for help, not he or the AMWU to them. The workers were not, in the beginning, poached. They sought assistance in large numbers because they were resentful and had lost confidence, and were given advice and assistance in a matter in which they received none from the FPU or the NUW. The AMWU or its counterpart Federal body, until July 1999 (in the case of the latter) genuinely offered assistance, but then did seek to capitalise on the situation to increase its membership for other reasons.

317 What then occurred was exceptionable and was most unsatisfactory. The workers were given the applications to join and billed as if they were members. The AMWU took advantage of the situation in that respect. Next, the AMWU purported to represent the workers in this Commission, in transactions under the Federal Act and in the Australian Industrial Relations Commission. We do not accept that the AMWU and the AFMEPKIU did not know that, either as a State or Federal organisation, they had no constitutional coverage and could not represent them in either this Commission or the Federal Commission, particularly when they admitted this all along.

318 We are also very critical of the AFMEPKIU Federal body telling employees that industrial action pursuant to Notices of Intention to Bargain was protected when it was not. We are not certain that it was an attempt to mislead. We are left with the view that there was a calculated attempt to protect employees by use of the notices, whilst putting pressure on Inghams. However, this conduct was quite unsatisfactory. The advice given to the AMWU oriented employees, as if they were members of the AMWU directed to industrial action, to achieve AMWU coverage was wrong, and was aggravated by the participation of AMWU officials in the July 1999 picket line.

319 We have some sympathy with the employees taking this action, although we do not countenance it, because they saw themselves quite justifiably as badly treated. They were angry and wanted what they saw as proper representation and an EBA negotiated by an organisation which they thought that they could trust. Indeed, had this matter been properly negotiated in the first place and, had that event been preceded by proper treatment of and service to the employees over some years, and not confined to negotiations of wage increases in EBA's (important as they are) this unfortunate chain of events might not have occurred. The final straw must be the FPU's abandonment of employees.

320 Mr Anderton's meetings outside the site during the currency of the TLC agreement, whilst it was clearly at the request of and to assist the employees as well as to advance the interests of the AMWU, was plainly in breach of the TLC agreement and represented unsatisfactory conduct. However, the agreement related to the NUW and not the FPU and less weight is attachable to that in the context of these proceedings.

321 It is quite clear, as we have found, that the AMWU, on Mr Anderton's evidence, took a short cut rather than invoke the jurisdiction of this Commission (lengthy and expensive as the procedure might be, it is the law). However, very significantly, no industrial action took place after the TLC agreement was reached and as soon practicably as it was possible to do so after the expiry of the period of the agreement, which was approximately six months and did not expire in December 1999, an application was filed under s.72A of the Act and there is no evidence of any criticisable conduct by the AFMEPKIU or the AMWU since. We discount the mild threat at about Easter 2000, which seems to have been almost an individual thing of which nothing came and was contrary to a formal offer made the same day.

322 There was a reference to intimidation of and by employees and to the conduct of only two employees against whom contempt proceedings were taken. No inferences can be drawn from the conduct of these proceedings for contempt before the President, referred to in Mr Viner's submissions. Those proceedings were criminal proceedings and what occurred there is not at all relevant to these proceedings, given the burden of proof and the right to silence in those proceedings. In any event, there was no evidence that the persons concerned in those proceedings were engaged in intimidation before this Full Bench. Further, there were only two of them. There was no evidence before this Full Bench that any intimidation was AMWU encouraged or countenanced, even if there were credible evidence of any real intimidation, where there was not. There was, as we have observed, evidence of some ill feeling between employees and some shunning of persons who did not take part in the "AMWU strike", or who remained in the FPU and some divisions remain. However, on the evidence, the ill feeling has died down for the most part.

323 There was no evidence of any significant deception or misleading of employees by the AMWU, nor was there any evidence if there were deception and misleading, it had any effect on workers in relation to the December 1999 EBA. There was an exception in that respect that the Federal legislation "protected industrial action" in May/June/July 1999 when there was no protection and Mr Anderton said that there was, and the statements that the AMWU could advise persons on workers' compensation and other advisory matters, even though they were not members, which it was patently not permitted to do, were also wrong. However, there were attempts to assist rather than exploit the employees and more of the former evident than the latter. In the case of the advice as to protected action, that was advice emanating from the AFMEPKIU which sought support for that action in the Australian Industrial Relations Commission, in any event.

324 There was, too, as we find, a breach of s.61 of the Act and of the rules of the AMWU committed, which breaches however did not continue. We would add that there was an explanation from the bar table as to why a s.72A application was not made some time ago. Had it been made (and it should have been made) instead of matters taking the course which they did, this matter may well have been determined by now.

325 The AMWU's behaviour has been unsatisfactory and, in some respects, unlawful. That includes its part in the disruptive industrial action. Some of its advice has been given recklessly. It has sought to serve its own purposes. It has also, however, genuinely sought to assist the employees when their own organisation was unwilling or unable to assist, and they prefer it.

11.—The Views of the ACTU

326 There is no doubt that the views of the ACTU as reached and as they currently are, so far as the evidence is concerned, are that the coverage of production employees in the food processing industry should lie with the FPU and the NUW. However, this is a matter where employees covered by a State award are not being currently served by an organisation with constitutional coverage of them and where there is no representation for them in this Commission, nor has there been since May 1999. That fact negates that consideration. We are not of opinion that the ACTU preference is an obstacle to or weighs against the application.

12.—Ability to Service Membership

327 We now turn to the ability to service membership. No question was raised of any validity as to the ability of the AMWU to service membership. Indeed, there is sufficient evidence of an ability and intention to do so in the work done for and on behalf of production employees. There was evidence, too, which we accept and which it is clear is the case, that the AMWU has attempted to and provided better service than the FPU. We find that the AMWU is able and willing to service the subject employees.

328 As to the FPU, it no longer services the membership and there is no evidence of its intention to resume doing so. Further and cogently, the FPU lost the bulk of its

membership because of its inability to serve its membership adequately. It fled in the face of its members' disapproval. We find that it is unwilling and/or unable to service its members.

13.—The Effect of the Orders Sought

329 If the orders sought were made, we would not anticipate serious difficulties. Certainly, the AMWU is more vigorous. However, it has covered other employees in the sites at Osborne Park. This is not a major barrier to the application being granted. However, once this issue was resolved, then there would not be a major issue except an EBA to be resolved. There is evidence of both AMWU and AFMEPKIU participation in industrial action in May/June 1999. There is no evidence of industrial disruption of any consequence by the AFMEPKIU acting on behalf of the maintenance workers, except the Christmas 1999 strike which was protected action under the Federal Act and was, in any event, conducted by the Federal union; not that the AMWU is absolved from all culpability.

330 As to the award, once it had constitutional coverage were it successful, the applicant could properly apply to become a party to the award as the only State organisation with constitutional coverage. That, we think, is an answer to Mr Borlase's submission on behalf of Inghams that, if the application were acceded to, the workplace would be covered by an award to which the applicant was not a party. Since the FPU would not have constitutional coverage, there would not be scope for conflict (see s.72A(6) of the Act). We agree that that would require a further application, but it is not a major process.

331 As to work practices, there is no evidence of any change proposed by the AMWU.

332 It was also submitted by Mr Borlase that the company has choices under both Federal and State law, namely—

(a) It could choose not to negotiate an agreement.

(b) It could negotiate agreements under the *Workplace Agreements Act* 1993 (WA) as amended.

(c) It could negotiate a Federal agreement.

(d) It is already in the process of endeavouring to register a Federal non-union certified agreement. (We have already referred to that situation.)

(e) The NUW remains on site with a notification of intention to bargain period current and the ability to take industrial action if it chooses.

333 In our opinion, what the NUW does or might do is not a matter of real relevance. What the employer might choose to do is a matter for the employer. In the light of all of the alternatives outlined by Mr Borlase, it is even more important that the employees have a State organisation (assisted in this case by a counterpart Federal body) present in the workplace, there being no such organisation at present.

334 In particular, as Mr Schapper submitted, if Inghams chose not to negotiate an agreement with the AMWU and the AMWU had coverage, it could seek to arbitrate the matter in this Commission.

335 As to the potential for disputes, that potential may be higher, but mainly because, if more problems are dealt with by a more active organisation by sheer increase in activity, there is greater potential for differences. That is not a matter which we mention by way of criticism. Differences which lead to disputes not properly resolved are the problem. This would and should be countered, at least to some extent, by an effective consultative committee. Further, we did not apprehend and the evidence bears this out, that the "AMWU representatives" are or were persons given to precipitous industrial action. They were people who had rightly become exasperated because of the treatment which they received. Indeed, the uncontradicted evidence of some, which we accept, is that they want to be on good terms with their employer.

336 We would also observe that the situation which has existed for thirty years would not be reinstated if the application were dismissed, because the FPU is not present and there is no evidence that it will return. On the balance of probabilities, the NUW would and will remain. There can, in that sense, be no return to the status quo.

337 On the evidence, too, the employee witnesses do not regard the AMWU as having betrayed their trust and there remains a majority who have thrown their lot in with the AMWU, led by the influential representatives to whom we have referred. Given that the employees were slow to become disenchanted with the FPU, it is not probable that they will leave it readily if the AMWU provides the service which its members are entitled to require and, indeed, to some extent, which it has attempt to provide.

338 We draw the inference that the employees who now seem, generally speaking, to be aware of their rights as union members and the obligations of organisations of employees, will not be slow to require that their interests are properly served.

339 We do not see, therefore, if these present difficulties are resolved and there are better attempts to meet the aspirations of employees, that there will be any significant disruptions in the workplace if the AMWU is granted coverage, together with a perceived coincidence of interests between the NUW and Inghams. This chain of circumstances grew out of a history of ineptitude sparked into flame by a matter which should have been resolved as industrially untenable, which is what Mr Manning conceded that it was.

340 We make the observation that industrial action may sometimes not be a symptom of unwarranted militancy, although it patently sometimes can be, but might also be a symptom of justified grievance. In this case, whilst the action is to be criticized, the sense of grievance at its root cannot be.

14.—The Interests of the Community—s.26(1)(c) of the Act

341 These are served, in our opinion, by the fulfilment of the objects of the Act, by this Commission in its orders. We have already adverted to the unlawful participation in industrial action by the AMWU and our finding that the probability is that this will not recur. The interests of the community in this case are served if the employer, Inghams, is able to conduct its business efficiently and without unjustified disruption, if the employees achieve just and fair terms and conditions of employment, if there is peace and co-operation in the workplace, if disputes can be readily, fairly and lawfully resolved and if the employees can be represented by an efficient, vigorous organisation which can help the achievement of those ends. It will be clear from our findings that the AMWU, which has the majority of members' preference, will be more likely to be an instrument of achieving that object, despite its misconduct and shortcomings, than the FPU.

15.—Objects of the Act—S.6 of the Act—Their Advancement

342 The following objects of the Act are most relevant in this case—

343 (a) S.6(a) of the Act provides as follows—

"To promote goodwill in industry"

Goodwill in this industry, which has been a State regulated industry subject to State awards and EBA's, cannot be promoted whilst there is not a State registered organisation which can speak with authority and with the consent of the majority of employees so that just agreements to the employer and the employees can be reached with the employer. That is currently and manifestly not the case. However, against that is the AMWU history in this matter of acting contrary to s.61 and ultra vires its rules. We are of opinion that this object is better advanced, despite the behaviour of the AMWU and because of the preference of employees and the need for an organisation to exist which the employer can deal with certainly, in granting the application. We so find.

(b) S.6(1)(b) of the Act provides as follows—

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

Again, conciliation has not been easily achievable and cannot be without an efficient, viable, active organisation to speak for the majority of employees. (See also our observations under (a) above.) This object would be served by granting the application.

(c) S.6(c) of the Act provides as follows—

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

We make similar observations as we did in relation to (a) and (b) hereof.

(d) S.6(1)(d) of the Act provides as follows—

"(d) to provide for the observance and enforcement of agreements and awards made for the prevention or settlement of industrial disputes"

Currently, on the evidence, no State organisation (i.e. registered under the Act) is present in the workplace, which is willing or able to observe or enforce the agreement or award and which also has constitutional coverage. We refer to our observations in (a), (b) and (c) hereof and find that this object would be advanced by granting the application.

(e) S.6(1)(e) of the Act provides as follows—

"(e) to encourage the formation of representative organizations of employers and employees and their registration under this Act and to discourage, so far as practicable, overlapping of eligibility for membership of such organizations"

The FPU is plainly not an organisation which is representative of employees in reality because of its rejection by the majority and its minority in membership of employees. It is, as a fact, not representative of them because it declines to do so.

Further, it has not been rejected, unlike The Australian Workers' Union, West Australian Branch, Industrial Union of Workers in *Re an application by AWU and Another* (FB)(op cit) for invalid reasons connected to internal politics.

The FPU has been rejected by the majority of its members who have still not returned to it for good reasons, namely ineptitude, disinterest, attitude and abandonment of them. Further, there is no evidence that there is any widespread confidence in the FPU, in fact quite the contrary.

If the applicant were given exclusive coverage, then there would be no overlapping, consistent with s.6(1)(e) and, indeed, there would be one less organisation of employees covering employees in this enterprise. That object would be best advanced by the application being granted.

(f) S.6(1)(f) of the Act provides as follows—

"(f) to encourage the democratic control of organizations so registered and the full participation by members of such an organization in the affairs of the organization"

To refuse the application would not be to further this object because it would be the employees' representation to an organisation which is not an organisation, as defined in the Act, but an organisation not within the ken of the Act or within the jurisdiction of the Commission, namely to the NUW. That is, for the reasons we have outlined above, the conclusion to which one is led.

The democratic participation of the employees in the AMWU is achievable and has occurred, albeit on a de facto basis through tried and true elected shop stewards who, on all of the evidence, exercise influence as shop stewards should. The democratic participation of employees is achieved in this case by giving them coverage by the State organisation whom the majority prefer and which is the only State organisation presently able or willing to represent them in the workplace.

The FPU does not exist as an organisation in which the employees have been afforded any meaningful democratic participation because it has withdrawn from the workplace, and they were not even properly apprised of that decision. There is a substantial argument that, in doing so, the FPU, which is party to a State award, has acted contrary to its rules as well. The FPU has de facto removed itself from coverage of its members after it rightly incurred their wrath and lost their confidence. There is no evidence of a minority imposing its will on a majority. Indeed, the preponderance of evidence is to the contrary. We so find.

(g) S.6(1)(g) of the Act provides as follows—

"(g) to encourage persons, organizations and authorities involved in, or performing functions with respect to, the conduct of industrial relations under the laws of the State to communicate, consult and co-operate with persons, organizations and authorities involved in, or performing functions with respect to, the conduct or regulation of industrial relations under the laws of the Commonwealth."

To order that the AMWU has exclusive coverage would be to advance this object because the applicant has a counterpart Federal organisation, but is itself State registered.

344 Thus, we are satisfied that all of the objects of the Act would be advanced by an order in favour of the applicant.

The NUW and the Federal AFMEPKIU

345 There is another consideration and that is the place of federally registered organisations in these proceedings. It is fair to observe that, whilst the application by the FPU, as a person with sufficient interest to be heard, was granted, it became quite clear, on all of the evidence, that the person being heard was not the FPU but the NUW, an organisation not within the jurisdiction of this Commission and not a party to the subject award or EBA. Further, it is not an "organisation", as defined in s.72A of the Act. Had we been aware that that was the evidence, we might well have concluded that the FPU had no sufficient interest to be heard. In the end and more substantially, and in reality, it was the NUW which was heard and not the FPU.

346 Further, insofar as the conduct of the NUW might be relevant, it was significant that the part of the NUW in the manner of conduct of the December 1999 EBA ballot and the placing of Mr Coleman in the workplace to provide intelligence could only be reasonably regarded as ill-judged and offensive behaviour. There was also the failure of the NUW to ask the opinion of employees before the December 1999 EBA ballot instead of after it was defeated.

347 There was evidence, again insofar as it is relevant, of the Federal AFMEPKIU's participation in May and June 1999 at Inghams, but, in the end, it has correctly retreated and even if this application is granted, will not, unless the Australian Industrial Relations Commission grants it, enjoy constitutional coverage of these production employees. Thus, the employees at this time cannot as a matter of law be represented by the AFMEPKIU. They can only be represented by the AMWU, if this application is successful.

348 There is much to be said for the proposition that the FPU is not using the coverage for which it has under the rules to "shepherd" the AMWU to allow the NUW into the workplace when the place of the NUW is not a matter for this Commission. In that respect, too, it is acting improperly and misusing its function.

CONCLUSIONS

349 We wish, without detracting from our findings above, to summarise our conclusions.

350 The majority of those relevant factors came down in favour of the granting of the application, for the reasons which we have expressed.

351 In this case, the Commission must consider the factors relevant to the case, which is self-evidently distinguishable from the facts in *Re an application by AWU and Another* (FB)(op cit). In particular, in the case of this application, the enterprise is small, there is a different history, the reasons for the employees' action is different, and their preference is a major factor. The serious ineptitude and the behaviour of the FPU is a major factor.

352 Further, there has been a unilateral retreat by a State organisation, the FPU, with constitutional coverage and no counterpart Federal body exists. That retreat is arguably also contrary to its rules, certainly its objects and, therefore, likely to be also contrary to s.61 of the Act (see, in particular, Rule 5(a) and (b), and Rule 24(d) which read as follows)—

> " 5—OBJECTS
>
> The objects of this Union are and shall be—
>
> (a) To watch over and protect the interests of its members working in the trade of the food preserving industry in the State of Western Australia;
>
> (b) To raise funds by contribution, levies, fines and donations for the objects hereinafter specified;"
>
> " 24—POWERS AND DUTIES OF COMMITTEE OF MANAGEMENT
>
> The Committee of Management shall have the general management and control of the affairs of the Union subject to any directions given to it by a majority of the members present at any general meeting and in particular it shall have power—
>
> .....
>
> (d) to call a Special General Meeting of the Union whenever it deems it necessary."

353 There are other distinguishing matters which it is not necessary to mention in detail here.

354 Each s.72A application must be decided on the facts, factors and considerations peculiar to it.

355 The preference of the employees, the conduct of the FPU, the objects of the Act, the interests of the employees and the AMWU, the ability to service, the conduct of the employer, the effect of the order if granted, notwithstanding the preference of the employer and the history of coverage, are all fulfilled and/or tip the balance in favour of the AMWU.

356 Constitutional and award coverage do not negative the factors in favour of the granting of the application, nor do the interests or preference of the employer. The objects of the Act and s.26(1)(a) and (c) would be best served by granting the application.

357 It will be clear from what we have found that the constitutional and long standing award coverage has been with the FPU and remains with the FPU. It will also be clear that the interests of the employees and their majority preference lies with the AMWU, and that the employer's preference lies with the FPU, in our opinion.

358 It will further be clear from our conclusions that the conduct of the employer in not recognising the AMWU when it had no constitutional coverage was correct, but that there were some elements of employer behaviour at which some criticism might be levelled.

359 The AMWU's behaviour is to be rightly severely criticised, which acted ultra vires to its rules and contrary to the Act, in part utilised industrial action to get its way and acted, in part, de facto as an organisation with constitutional coverage when it did not.

360 However, that consideration is somewhat diluted, but not excused, by the fact that employees who had suffered from negligent and unsatisfactory FPU representation sought help and were given it. The alternative was to return to an area of representation by the NUW which they currently identified as being aligned with the FPU (or were unaware of the difference) and of which their only experience resulted in disappointment, resentment, anger and severe loss of confidence.

361 The FPU is to be almost equally severely criticised for probably acting contrary to s.61 of the Act and its rules, particularly its objects rule, for its inept and unsatisfactory service to its members and for their abandonment. Its replacement, the NUW, then embarked on a campaign which is open to strong criticism in the respects mentioned above, but this is not really relevant.

362 The fact of the matter is that both the FPU and the AMWU have acted wrongly and neither should benefit from it. It is not to be thought that the Full Bench does not strongly disapprove of some facets of the AMWU's conduct. It does. It should also disapprove equally of the FPU's conduct. The employer's conduct, which we have outlined above, was, in some respects, unsatisfactory.

363 The interests of the employer would require, in its opinion, the continuing coverage of the FPU, but the FPU cannot effect satisfactory representation of the employees and there is no evidence that it can (neither can the NUW, were it relevant, which it is not). The AMWU can. The interests of the AMWU and the FPU would not, of course, be best served by dismissing the application (in the FPU's case) or granting it (in the AMWU's case).

364 The interests of the employer require that there be an organisation which can provide certainty and effective representation in the workplace and who can be a party to an award of this Commission. That cannot be the FPU.

365 The interests of the employees who have suffered a great deal, through no fault of their own, would be and will be best served by an organisation which can properly represent them. The AMWU's behaviour is not so bad, although it is bad, that it should be allowed to negative the employees' interests. The alternative is to leave them with membership of an organisation whom most distrust which is not even present in the workplace or a Federal body foisted on them when the FPU fled the scene in the face of their justified anger and loss of confidence. That is not a tenable view.

366 To grant the employees the majority preference and serve their interests is a cogent enough reason, in this case, to grant constitutional coverage to the AMWU and this application too. The interests of the employees and the majority preference is the single most important factor in granting this application, even though, as we have found, there is a multiplicity of other factors too.

367 The AMWU has, however, been of genuine assistance to the employees who, as we have observed, are not led by ciphers and we are persuaded that, for the reasons mentioned above, that there is not likely to be unjustified or unnecessary disruptive conduct given that this matter has now been finalised.

368 In some respects, this is a highly unusual case.

369 In the circumstances, given the requirements of the objects of the Act and the preference of the employees and the need for them to be properly and effectively represented by an organisation, following their abandonment by their organisation, we are, having regard to all of the factors which we have considered above, for all of the reasons which we have expressed above, persuaded that the equity, good conscience and the substantial merits of the case lie with the applicant.

370 The Full Bench was, in this matter, in our opinion, assisted by three able final addresses. We have very carefully considered the evidence, all relevant material and the submissions.

371 We would grant the application and order exclusive coverage of the production employees at the Inghams Baden Street and Powell Street sites and, as the application further seeks, to be granted to the AMWU, for those reasons.

372 We would order that the rules of both organisations be brought before the President for alteration if he deems that necessary (see s.72A(6) of the Act).

373 We would issue a minute of proposed orders to reflect these reasons.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

APPLICANT	THE AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION OF W O R K E R S — W E S T E R N AUSTRALIAN BRANCH
CORAM	FULL BENCH HON PRESIDENT P J SHARKEY COMMISSIONER S J KENNER COMMISSIONER S WOOD
DELIVERED	TUESDAY, 26 SEPTEMBER 2000
FILE NO/S	FBM 1/2000

Decision	Application granted.
Representation	
Applicant	Mr D H Schapper (of Counsel), by leave
Participants pursuant to s.72A(5) of the Act	Mr M C Borlase and Mr P G Robertson, as agents, on behalf of Inghams Enterprises Pty Ltd Mr R I Viner (of Queens Counsel), by leave, and with him Mr M D Cuerden (of Counsel), by leave, on behalf of the Food Preservers' Union of Western Australia, Union of Workers

Supplementary Reasons for Decision.

THE PRESIDENT—

1 These are the unanimous reasons for decision of the Full Bench. The solicitor for the Food Preservers' Union of Western Australia, Union of Workers (hereinafter referred to as "the FPU") and the agent for Inghams Enterprises Pty Ltd (hereinafter referred to as "Inghams"), the s.72A(5) participants in these proceedings, requested that there be a speaking to the minutes hearing in respect of the Minutes of Proposed Order issued by the Full Bench on 7 September 2000.

2 When the Full Bench issued the Minutes of Proposed Order, the Full Bench raised for consideration the question of whether the participants, pursuant to s.72A(5) of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act"), were entitled to speak to the minutes. Subsequently, the Full Bench directed Madam Associate to draw the attention of the applicant and the s.72A(5) participants to the reasons for decision of the Industrial Appeal Court in Australian Bank Employees Union v FCU and Others 70 WAIG 2086 (IAC) per Brinsden P.

3 Subsequently, the applicant indicated that it wished to speak to the minutes.

4 The application by the s.72A(5) participants to speak to the minutes was heard on 12 September 2000. Mr Schapper, for the applicant, submitted that, whether the FPU and Inghams had a right to be heard on the speaking to the minutes, they should be heard as a matter of grace.

5 Counsel for the FPU and the advocate for Inghams maintained that the FPU and Inghams were entitled to be heard and wished to be heard, as of right. The Full Bench, therefore, heard submissions directed to that issue and submissions as to the minutes of the proposed orders.

SPEAKING TO THE MINUTES, THE RIGHT TO BE HEARD

6 S.35 of the Act, which is a mandatory section in its requirements, requires the Commission to, with some exceptions (of which the decision in this matter is not one) to draw up its decision in the form of a minute which is "handed down to the parties". It is not required to be handed down to persons who are not parties (see the terms of the section and see RRIA v AMWSU (1989) 69 WAIG 990 at 996 per Nicholson J).

7 S.35(3) of the Act entitles the "parties concerned", who are obviously the parties referred to in s.35(1) of the Act, to the proceedings to whom the decision is handed down (and to whom the reasons for decision of the Commission are published, then or later) to speak "to the matters contained in the minutes of decision". There is no definition of a "party" or "parties" in the Act.

8 S.29B of the Act clearly prescribes that the parties to proceedings before the Commission are the claimant or applicant by whom or which the proceedings were initiated and the other persons, bodies, organisations or associations upon whom or which a copy of the claim or application is served.

9 An intervener is not a party and cannot be either a "party" or a "party concerned", for the purposes of s.35 of the Act (see Australian Bank Employees Union v FCU and Others (IAC)(op cit)). A person who has a sufficient interest to be heard and is heard pursuant to s.72A(5) of the Act is, by that description, not a party and is not an intervener. Such a person is not a party, for the purposes of s.29B of the Act, because that person is not an applicant and they are heard not because they are served. They are not, and are not required to be served, but take part in the proceedings because, and only because, the Full Bench reaches the opinion that the person or persons concerned has or have sufficient interest in the matter under s.72A(5) of the Act.

10 Further, an intervener, who is in a much stronger position in that he/she/it has a right of appeal, is not a "party" within the meaning of s.35 of the Act. The Industrial Appeal Court has held that a s.72A(5) participant is not a party (see Re the AFMEPKIU (unreported) [2000] WASCA 233 (No IAC 2 of 2000) delivered 28 August 2000 (IAC) and the cases cited therein). Such a participant is therefore, by implication, not a party. The s.72A(5) participants have been held by the Industrial Appeal Court in this case not to be parties (see Re the AFMEPKIU (IAC)(op cit)).

11 Mr Viner, on behalf of the FPU (and Mr Borlase on behalf of Inghams) submitted that the Commission had a duty to afford natural justice, unless there was a clear intention in the legislation that it be excluded. He relied on Annetts and Another v McCann and Another [1990] 170 CLR 596 and Kioa and Others v West and Another [1985] 159 CLR 550. We agree with that submission. Indeed, there is an express provision in s.72A(5) of the Act which requires the Full Bench not to make an order without giving a person, with sufficient interest in the matter, in the Full Bench's opinion, an opportunity to be heard.

12 In this case, the Full Bench gave a full opportunity to the FPU and Inghams to be heard on equal terms with and to the same extent as the applicant. Natural justice has been fully afforded, and the FPU and Inghams have taken advantage of the opportunity to present their cases, in full.

13 However, the matters of the issue of decisions, of minutes and of speaking to the minutes are governed by a provision relating to all proceedings in the Commission, s.35 of the Act, and the right to receive a decision and to speak to the minutes is confined to parties. S.72A(5) participants do not have that right conferred on them nor do interveners (see Australian Bank Employees Union v FCU and Others (IAC)(op cit)). The prescription of the Act cannot be diluted by a misdescription in Regulation 101 of the Industrial Relations Commission Regulations 1985 (as amended) of a s.72A(5) participant as a party. The FPU and Inghams are not parties. They, as a matter of clear statutory prescription, have no right to have the decision handed down to them, or to speak to the minutes.

14 Were the application dismissed, no minutes are required to be issued (see s.35(1) of the Act).

15 Placed at is highest, the FPU and Inghams could only speak to the minutes by leave of the Commission as a matter of grace.

16 For convenience, the Full Bench did hear submissions on behalf of the applicant, the FPU and Inghams as to the minutes of the proposed order, as part of their submissions as a whole. They were not heard as of right.

17 There is and was no right in the FPU and Inghams, as s.72A(5) participants, to be heard under s.35 of the Act, or at all.

18 Notwithstanding the Full Bench's direction in the matter, the Full Bench did not enjoy the benefit of any written submissions from Mr Schapper's instructing solicitors.

19 We are not of the opinion that there should be any reference to the maintenance employees of Inghams who are already under the constitutional and award coverage of the applicant, a fact which requires no repetition in these reasons.

20 We entirely agree, however, with the submission that the minute of proposed order should be amended so that the reasons for decision and the nature of the applications should be properly recognised, in certain limited respects.

21 This case concerned the coverage at Inghams, Osborne Park of the production employees and no-one else. Indeed, "production employees" were referred to in the application. The evidence led from employees, other than managerial employees, was from production employees only. The reasons for decision dealt with these employees and their coverage. There was, in evidence, no difficulty in identifying them for the applicant or the s.72A(5) participants. No other employees were, as a matter of reality, concerned in the application.

22 As to persons "assisting in the poultry production" process, as designated by Rule 4(1)(d) of the FPU rules. There was no evidence adduced concerning the coverage of those employees or any change in that coverage and the Full Bench was not requested to resolve any question relating to them. It was not part of the case before the Full Bench, nor of our reasons for decision either, that the presence of the FPU should be removed from Inghams.

23 Further, Mr Schapper submitted that the minute should manifest itself in an order couched in terms conferring constitutional coverage on the applicant of members of other organisations employed at Inghams, such as the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch and The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch. It was not clear that, due to certain vagueness, that is what the application encompassed.

24 In any event, no evidence was led and no submissions were made that that would properly lead to such an order being made to that effect. It was not part of the applicant's case and not part of the Full Bench's decision that such an order would be made; indeed, it was never submitted that such an order should be made. To allow the order to reflect such a provision would certainly not be to reflect the reasons for decision of the Full Bench.

25 Exception was taken to those parts of the order conferring coverage of employees employed in the Osborne Park enterprise on the applicant, if the enterprise is relocated. We were of opinion, as the order reflects, that the word "enterprise" should be used rather than "undertaking". The word "enterprise" is the defined word used in s.72A(1) of the Act and encompasses, by definition, activities, business, parts of business, single projects, undertakings or places of work.

26 There were submissions that such an order should not be made because there might be in the future an amalgamation with other enterprises of Inghams (perhaps with different coverage). There is no evidence that that will occur and such a consideration is too remote. In any event, if it did occur, there is nothing to suggest that the present order would not be appropriate for the Osborne Park enterprise at its new location.

27 The merit in that order is that certainty in representation exists for this enterprise and its employees, wherever it is located in the future, while the present orders have force. We did not agree to alter that provision, for those reasons.

28 It was also submitted that an order demarking the enterprise to the applicant, for the purposes of any transmittees, successors or assignees of Inghams should not be made. The main ground of this submission was that such an order might affect the sale of the enterprise. Again, there is no evidence that that is the case. Further, there is certainty in the future provided in coverage by such an order.

29 In addition, in any event, the rules of employee organisations govern employees, occupations and industries prescribed in the eligibility or constitution rules of organisations, whether an enterprise changes hands or not (see the FPU rules as they currently are and have been for some time, for example).

30 There was a submission that such an order might not be within power. We would say, however, that that submission, as was the case with the submissions as to the effect of the order covering any relocation of the enterprise and the order relating to assignees, transmittees, etc and respectively, is not relevant to a speaking to the minutes. They should have been made in the course of submissions proper.

31 However, be that as it may, we were not persuaded that the order was not within power. Indeed, it clearly is. S.72A orders relate to employees in an enterprise. An enterprise is defined in s.72A(1) of the Act, as we have observed above, to include activities, a business, a part of a business, a single project, an undertaking, or place of work. Further, the prime purpose of the order is to confer the right to represent employees in an enterprise.

32 We see nothing in s.72A or elsewhere in the Act which requires the Full Bench to make s.72A orders restricted to particular locations, nor do we read any requirement that an enterprise should always be identified as being synonymous with a location.

33 Mr Schapper's proposed amendment to the Minutes of Proposed Order does not reflect the function of the President as accurately as the minute does and that amendment was not made.

34 The Full Bench agreed, for those reasons, in the issue of an order which reflected, in our opinion, the reasons for decision of the Full Bench issued in these proceedings.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

APPLICANT	THE AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION OF WORKERS — WESTERN AUSTRALIAN BRANCH
CORAM	FULL BENCH HON PRESIDENT P J SHARKEY COMMISSIONER S J KENNER COMMISSIONER S WOOD
DELIVERED	THURSDAY, 14 SEPTEMBER 2000
FILE NO/S	FBM 1/2000

Decision	Application granted.
Appearances	
Applicant	Mr D H Schapper (of Counsel), by leave
Participants pursuant to s.72A(5) of the Act	Mr M C Borlase and Mr P G Robertson, as agents, on behalf of Inghams Enterprises Pty Ltd Mr R I Viner (of Queens Counsel), by leave, and with him Mr M D Cuerden (of Counsel), by leave, on behalf of the Food Preservers' Union of Western Australia, Union of Workers

Order.

This matter having come on for hearing before the Full Bench on the 28th day of April, the 1st, 3rd, 4th and 5th days of May, the 17th, 18th, 19th, 20th, 24th and 25th days of July and the 30th day of August 2000, and further for a speaking to the minutes hearing on the 12th day of September 2000, and having heard Mr D H Schapper (of Counsel), by leave, on behalf of The Automotive, Food, Metals, Engineering,

Printing and Kindred Industries Union of Workers—Western Australian Branch (hereinafter referred to as the "AFMEPKIU"), and Mr M C Borlase, as agent, and Mr P G Robertson, as agent, on behalf of Inghams Enterprises Pty Ltd (hereinafter referred to as "Inghams"), and Mr R I Viner (of Queens Counsel), by leave, and with him Mr M D Cuerden (of Counsel), by leave, on behalf of The Food Preservers' Union of Western Australia, Union of Workers (hereinafter referred to as the "FPU"), and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 7th day of September 2000 and supplementary reasons for decision to be delivered at a later date, it is this day, the 14th day of September 2000, ordered and directed as follows—

(1) THAT leave be and is hereby granted to the FPU to insert the amended witness statement of Joseph Warrington Bullock dated the 7th day of April 2000 to replace the unsigned and undated witness statement of Joseph Warrington Bullock filed herein and marked as "exhibit FPU 2A".

(2) THAT the application by the FPU to strike out paragraph 4 of the applicant's outline of submissions filed herein be and is hereby dismissed.

(3) THAT the application by the FPU for the applicant to particularise the allegations contained in paragraph 4 of the applicant's outline of submission be and is hereby dismissed.

(4) THAT leave be and is hereby granted to the applicant to file the answering statements of Michael Stephen Anderton, Jose Lito Yabes, Bryan Shane McAuliffe, Jose (Jay) Protacio Lopez and Snezana Nasteksi out of time.

(5) THAT leave be and is hereby granted to the FPU to file the further statements of Joseph Warrington Bullock, Andrew John Vitolins and Fiolmena Beltran Edwards out of time.

(6) THAT leave be and is hereby granted to Inghams to file the further statement of Charles Michael Burgwyn.

(7) THAT application No FBM 1 of 2000 be and is hereby granted and the Full Bench does declare and order as follows—

1. THAT the applicant organisation shall, as and from the date hereof, have the right to represent under the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act") the industrial interests of all those persons employed by Inghams Enterprises Pty Ltd as production employees in the poultry processing industry at Osborne Park in the State of Western Australia, namely the sites of the Inghams Enterprises Pty Ltd enterprise currently situated in Baden Street and Powell Street, Osborne Park, or at such other location or locations at which the said enterprise at Osborne Park may subsequently be carried out.
2. THAT the Food Preservers' Union of Western Australia Union of Workers shall not, as and from the date hereof, have the right to represent under the Act the industrial interests of any of these persons employed by Inghams Enterprises Pty Ltd at Osborne Park or at such other location or locations as the said enterprise at Osborne Park may subsequently be carried out at and referred to in Order (7) 1 hereof.
3. In this order, Inghams Enterprises Pty Ltd includes its successors, assignees, transmittees or any purchaser of the whole or any part of its business.

(8) THAT the Full Bench, being satisfied that the rules of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and that the rules of the Food Preservers' Union of Western Australia, Union of Workers require alteration, does hereby order, pursuant to s.72A(6) of the Act, that such rules of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and the Food Preservers' Union of Western Australia, Union of Workers be referred to the President for such further consideration as may be appropriate.

By the Full Bench

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

COMMISSION IN COURT SESSION— Matters dealt with—

2000 WAIRC 00815

CONTRACT CLEANERS AWARD, 1986

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	AUSTRALIAN LIQUOR, HOSPITALITY AND MISCELLANEOUS WORKERS UNION, WESTERN AUSTRALIAN BRANCH APPLICANT *v.* AIRLITE CLEANING PTY LTD AND OTHERS RESPONDENTS
CORAM	COMMISSION IN COURT SESSION COMMISSIONER P E SCOTT COMMISSIONER S J KENNER COMMISSIONER J H SMITH
DELIVERED	FRIDAY, 6 OCTOBER 2000
FILE NO/S	APPLICATION 975 OF 2000
CITATION NO.	2000 WAIRC 00815

Result	Directions Issued
Representation	
	Mr D Schapper (of Counsel) and with him Ms D MacTiernan on behalf of the applicant
	Mr R Le Miere (of Queens Counsel) and with him Mr R Lilburne (of Counsel) and Mr H Downes (of Counsel) on behalf of various respondents and parties seeking leave to be joined or in the alternative granted leave to intervene
	Ms C Fitz Gibbon on behalf of various parties seeking leave to be joined or in the alternative granted leave to intervene
	Mr R Andretich (of Counsel) on behalf of Hon Minister for Labour Relations
	Mr G Blyth on behalf of the Chamber of Commerce and Industry of Western Australia
	Mr O Moon on behalf of the Combined Small Business Associations of Western Australia and the Master Cleaners Guild of Western Australia (Inc) seeking leave to intervene
	Ms M Saracini (of Counsel) and with her Mr R Gifford on behalf of the Australian Mines and Metals Association

Directions.

WHEREAS this is an application pursuant to Section 40 of the Industrial Relations Act 1979; and

WHEREAS on the 6th day of October 2000 the Commission convened a conference at which conference the Commission issued directions for the expeditious hearing of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby directs that—

1. Those common rule respondents to the Contract Cleaners Award, 1986 ("the Award") that have made applications to become parties to the application or to be granted leave to intervene shall file and serve written submissions in support of those applications by the close of business on Tuesday, the 10th day of October 2000.
2. The Chamber of Commerce and Industry of Western Australia and the Australian Mines and Metals Association (Inc) shall file and serve answers to the application and submissions as to effect of service of the application upon them and whether they are parties to proceedings; their interests in the matter, how they are effected by the application, and any limitations to their participation in proceedings, by close of business on Tuesday, the 10th day of October 2000.
3. The Master Cleaners Guild of Western Australia (Inc) shall file and serve submissions in support of its application to be granted leave to intervene by close of business on Tuesday, the 10th day of October 2000.
4. The Honourable Minister for Labour Relations shall file and serve submissions regarding the limitations proposed by the applicant to be placed on the Minister's intervention, by the close of business on Tuesday, the 10th day of October 2000.
5. The parties are to notify each other of any objections and grounds for such objections to evidence filed by any party, by close of business Tuesday, the 10th day of October 2000.
6. The applicant is to file and serve responses to each of the matters dealt with in Directions 1. to 5. inclusive by close of business Wednesday, the 11th day of October 2000.
7. Where, pursuant to Direction 5, the applicant gives notice to any respondent, that respondent shall file and serve on the applicant its response to the applicant's objections and grounds for objection by close of business, Wednesday, the 11th day of October 2000.

(Sgd.) P.E. SCOTT,
[L.S.] Commission in Court Session.

PRESIDENT—
Matters dealt with—

2000 WAIRC 00790

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

RE AN APPLICATION PURSUANT TO S.72A(6) OF THE INDUSTRIAL RELATIONS ACT 1979 (AS AMENDED)

RE THE RULES OF THE AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION OF WORKERS — WESTERN AUSTRALIAN BRANCH

RE THE RULES OF THE FOOD PRESERVERS' UNION OF WESTERN AUSTRALIA, UNION OF WORKERS

CORAM	HIS HONOUR THE PRESIDENT P J SHARKEY
DELIVERED	WEDNESDAY, 4 OCTOBER 2000
FILE NO/S	PRES 15 OF 2000, PRES 16 OF 2000
CITATION NO.	2000 WAIRC 00790

Decision	Alteration of rules made.
Appearances	Mr D H Schapper (of Counsel), by leave, on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch
	Mr M D Cuerden (of Counsel), by leave, on behalf of
	The Food Preservers' Union of Western Australia, Union of Workers
	Mr M C Borlase, as agent, on behalf of Inghams Enterprises Pty Ltd

Reasons for Decision.

THE PRESIDENT—

1 In this matter, a Minute of Proposed Order, which was subject to some formal amendment, was placed before the Commission, constituted by the President, on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch (hereinafter referred to as "the AFMEPKIU") in a hearing pursuant to s.72A(6) of the *Industrial Relations Act* 1979 (as amended) (hereinafter referred to as "the Act").

2 I gave leave to the AFMEPKIU and to The Food Preservers' Union of Western Australia, Union of Workers (hereinafter referred to as "the FPU") to each be heard in relation to the proposed amendments to their own rules and to the other's rules.

3 I held, without objection, that Mr Borlase, on behalf of his client, Inghams Enterprises Pty Ltd (hereinafter referred to as "Inghams"), had sufficient interest to be heard in these proceedings. I am not, on reflection, of opinion that his client could be an intervener, any more than the two abovementioned organisations of employees are interveners. There was no objection to Inghams being heard. However, the right of a person, in Inghams' position in these proceedings, to be heard remains, in my opinion, an open question. It should be borne in mind that s.72A(6) proceedings are proceedings where the President, following the making of an order by the Full Bench pursuant to s.72A(2) and (4) of the Act, determines whether it is necessary to alter the rules of an organisation or organisations to reflect or implement those orders.

4 The order, in its terms was not objected to by Mr Borlase, nor by Mr Cuerden, on behalf of the FPU.

5 Upon a fair reading of the rules, it was clear to me that the Minute of Proposed Order adequately and properly reflected the orders made by the Full Bench in matter No FBM 1 of 2000 on 14 September 2000 and was necessary to be made to implement such orders.

6 Accordingly, for that reason, the equity, good conscience and the substantial merits of the case required me to order the alterations to the Rules of each of the abovenamed organisations to adequately and properly reflect the Full Bench's orders under s.72A of the Act and in order to implement such orders. I did so.

2000 WAIRC 00769

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	THE AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION OF WORKERS — WESTERN AUSTRALIAN BRANCH
	THE FOOD PRESERVERS' UNION OF WESTERN AUSTRALIA, UNION OF WORKERS
	APPLICANTS
CORAM	HIS HONOUR THE PRESIDENT P J SHARKEY
DELIVERED	FRIDAY, 29 SEPTEMBER 2000
FILE NO/S	PRES 15 OF 2000, PRES 16 OF 2000
CITATION NO.	2000 WAIRC 00769

Decision	Alteration of rules made.
Appearances	
	Mr D H Schapper (of Counsel), by leave, on behalf of
	The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch
	Mr M D Cuerden (of Counsel), by leave, on behalf of
	The Food Preservers' Union of Western Australia, Union of Workers
	Mr M C Borlase, as agent, on behalf of Inghams

Order.

These matters having been referred to the President by order of the Full Bench dated the 14th day of September 2000 pursuant to s.72A(6) of the Industrial Relations Act 1979 (as amended) (hereinafter called "the Act"), and these matters having come on for hearing before me on the 29th day of September 2000, and having heard Mr D H Schapper (of Counsel), by leave, on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch (hereinafter referred to as the "AFMEPKIU"), and Mr M D Cuerden (of Counsel), by leave, on behalf of The Food Preservers' Union of Western Australia, Union of Workers (hereinafter referred to as the "FPU"), and Mr M C Borlase, as agent, on behalf of Inghams Enterprises Pty Ltd (hereinafter referred to as "Inghams"), and I, being of the opinion that the abovenamed persons should be heard and that the alterations to the rules of both the AFMEPKIU and the FPU are necessary to reflect the orders made by the Full Bench on the 14th day of September 2000 in application No FBM 1 of 2000, and the parties herein having waived their rights under s.35 of the Act, it is this day, the 29th day of September 2000, ordered as follows—

(1) THAT the FPU be and is hereby granted leave to be heard in matters No. PRES 15 and PRES 16 of 2000.

(2) THAT the AFMEPKIU be and is hereby granted leave to be heard in matters No. PRES 15 and PRES 16 of 2000.

(3) THAT Inghams be and is hereby granted leave to be heard in matters No. PRES 15 and PRES 16 of 2000.

(4) THAT the rules of the AFMEPKIU be and are hereby altered as follows—

The following rule 2(5) be inserted in the Rules—

"5. The union shall also consist of persons employed as production employees in the poultry processing industry by Inghams Enterprises Pty Ltd situated, as at 14 September 2000, in Baden Street and Powell Street, Osborne Park or at such other location or locations at which the said enterprise at Osborne Park may subsequently be carried out. In this paragraph, Inghams Enterprises Pty Ltd includes its successors, assignees, transmittees or any purchaser of the whole or any part of its business."

(5) THAT the Rules of the FPU be and are hereby altered as follows—

The following Rule 4(1) is amended by the insertions of the words "Subject to paragraph (3)" prior to the words "The Union shall …"

The following Rule 4(3) be inserted in the Rules—

"3. The following persons shall not be eligible for membership of the Union—

Persons employed as production employees in the poultry processing industry by Inghams Enterprises Pty Ltd situated, as at 14 September 2000, in Baden Street and Powell Street, Osborne Park or at such other location or locations at which the said enterprise at Osborne Park may subsequently be carried out. In this paragraph, Inghams Enterprises Pty Ltd includes its successors, assignees, transmittees or any purchaser of the whole or any part of its business."

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

2000 WAIRC 00586

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

APPLICANT	CHUBB SECURITY HOLDINGS AUSTRALIA LIMITED
RESPONDENT	PAUL RAYMOND DANSON
CORAM	HON PRESIDENT P J SHARKEY
DELIVERED	TUESDAY, 12 SEPTEMBER 2000
FILE NO/S	PRES 14/2000

Decision	Application granted.
Appearances	
Applicant	Mr A J Randles (of Counsel), by leave
Respondent	Mr G McCorry, as agent

Reasons for Decision.

THE PRESIDENT—

1 This is an application by the abovenamed applicant employer made pursuant to s.49(11) of the *Industrial Relations Act* 1979 (as amended) (hereinafter referred to as "the Act"), to wholly stay the operation of an order of the Commission in matter No 635 of 1999 made on 11 August 2000.

2 The order was deposited in the office of the Registrar on 14 August 2000.

3 A Notice of Appeal was filed on 29 August 2000.

4 The order appealed against reads, formal parts omitted, as follows—

"THAT

1. The applicant was unfairly dismissed by the respondent.
2. Reconciliation is not availing and the compensation will be final.
3. Chubb Security Holdings Australia Ltd T/as Chubb Protective Services pay Paul Raymond Danson $28,000 compensation for unfair dismissal.
4. The claim for contractual benefits be dismissed."

5 No appeal book has been served in accordance with the *Industrial Relations Commission Regulations* 1985 (as amended).

6 I am, however, satisfied that the appeal has been instituted, within the meaning of s.49(11) of the Act. I would observe, however, that undue delay in filing and serving appeal books and/or failing to properly expedite an appeal might be a relevant factor in deciding an application made under s.49(11) of the Act. There is no such undue delay in this case.

7 I am also satisfied that the applicant has sufficient interest to make this application since the applicant is a party, as is the respondent, to the proceedings at first instance.

8 It is to be noted that the applicant was found by the Commission to have dismissed its employee, Mr Paul Raymond Danson, on 19 April 1999.

9 The grounds of appeal, formal parts omitted, read as follows—

"SCHEDULE.

1. The Commissioner erred in fact in finding that the Respondent (Applicant) was employed by the Appellant pursuant to a single ongoing contract of employment when he should have found that the Respondent (Applicant) was employed pursuant to a series of separate contracts of employment.
2. Further, or in the alternative, the Commissioner erred in fact in not finding that the Respondent (Applicant) was employed for a specified task, namely the construction phase of the BHP hot briquetted plant at Port Hedland, and when that task completed there was no obligation on either party to continue the employment relationship.
3. The Commissioner erred in law in finding that the Appellant dismissed the Respondent (Applicant) from employment when he should have found that the Respondent's (Applicant's) employment with the Appellant ended by effluxion of time or the completion of the specific task.
4. The Commissioner erred in fact and in law in finding that the Respondent (Applicant) was dismissed when such a finding was against the weight of the evidence that showed—
   - 4.1 no other employees were dismissed as a result of their involvement in negotiations for a workplace agreement or enterprise bargaining agreement;
   - 4.2 other employees had their rostered hours reduced as a result of the shift from construction phase to commissioning phase of the BHP plant;
   - 4.3 the Respondent (Applicant) had been actively seeking alternate employment prior to leaving the Appellant's employ;
   - 4.4 the Respondent (Applicant) failed to participate in pre-employment interviews with BHP which were a prerequisite for employment on the commissioning phase;
   - 4.5 the Respondent (Applicant) failed to formally advise the Appellant of his intention in respect of continuing his employment after the construction phase was complete;
   - 4.6 the Respondent's (Applicant's) girlfriend had left Port Hedland prior to him resigning;
   - 4.7 the Respondent's (Applicant's) resignation coincided with the completion of the construction phase and the consequent drop in income;
   - 4.8 the Respondent (Applicant) did not intend to continue working for the Appellant once the construction phase was complete;
   - 4.9 the Appellant's witnesses, Vuckovich, McKenzie and McNamara all gave evidence that the Respondent (Applicant) intended to leave Port Hedland;
   - 4.10 at the time of the Respondent's (Applicant's) resignation neither workplace agreements nor an enterprise bargaining agreement was in place.
5. The Commissioner erred in law by not drawing an adverse inference from the Respondent's (Applicant's) failure to call witnesses regarding the Appellant's alleged animosity to him.
6. The Commissioner erred in fact by preferring the evidence of the Respondent (Applicant) to that of Vuckovich, McKenzie and McNamara.
7. The Commissioner erred in law and in fact in applying the correct principles to the assessment of compensation and in failing to have regard, or sufficient regard, to relevant factors including—
   - 7.1 that the Respondent's (Applicant's) contract of employment came to an end by effluxion of time or by the completion the specified task;
   - 7.2 the likelihood that the Respondent (Applicant) would secure alternate employment;
   - 7.3 the likelihood that the Respondent (Applicant) would have resigned in any event."

PRINCIPLES

10 The principles which apply to applications such as this are well known and I quote from the decision in *CSA v Director General, Department of Transport* 80 WAIG 2855 at 2856, which is a recent expression of those principles by me—

> "These principles have been laid down in a number of cases, including *Gawooleng Dawang Inc v Lupton and Others* 72 WAIG 1310, *Director General of the Ministry for Culture and the Arts v CSA and Others* 79 WAIG 670 and *City of Geraldton v Cooling* 80 WAIG 1751.
>
> It is for the applicant to establish that the stay should be granted. It is, of course, an underlying principle that the successful party is entitled to the fruits of her/his/its order, award or declaration.
>
> For the applicant to succeed, it must be established 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), s.26(1)(b) and/or s.26(1)(c) of the Act, if they exist, require that the application be granted.
>
> If these ingredients exist, then exceptional circumstances exist which warrant the granting of the application as a matter of equity, good conscience and the substantial merits of the case. (I say that to further explain the principles.)"

ISSUES AND CONCLUSIONS

Serious Issue to be Tried

Grounds 1, 2 and 3

11 There is an issue, open on the evidence, as to whether the respondent was employed by the applicant, pursuant to a single ongoing contract of employment, or was employed pursuant to a series of separate contracts of employment, one issue arising from that being whether it was open to find that there was an unfair dismissal and/or a dismissal following the expiry of a fixed term contract or a contract restricted to a single project. I am satisfied that such an issue constitutes a serious issue to be tried.

Ground 4

12 Ground 4 contains a number of allegations of factual error.

13 On the one hand, of course, it is submitted on behalf of the applicant that the evidence of Mr Vuckovich, Mr McKenzie and Mr McNamara was ignored and/or not taken account of as credible evidence. On the other hand, it is submitted that the Commissioner believed the respondent in a number of matters and Ms Marsh in others and that it was clear that he did not accept the evidence of Mr Vuckovich, Mr McKenzie and Mr McNamara in preference to that of the respondent (presumably applying the principle in *Abalos v Australian Postal Commission* [1990] 171 CLR 167).

14 Further, Ground 4 contains a number of allegations against the weight of the evidence which, if the argument were

accepted, particularly in relation to Grounds 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7 and 4.8, would enable inferences to be made, leading to a finding in the applicant's favour.

Ground 5

15 I am not persuaded, on the submissions of Mr Randles, on behalf of the applicant, that Ground 5, if made out, would be fatal to the claim.

Ground 6

16 I have already made comments about Ground 6 in connection with other grounds.

Ground 7

17 I now turn to the question of compensation raised by Ground 7. There is an allegation that the assessment of compensation was flawed in that the respondent's contract of employment came to an end by the effluxion of time and that would affect the amount of compensation payable, if that submission were correct.

18 There was also evidence that the respondent was to procure alternative employment and that the respondent would have resigned in any event. It is alleged those findings should have been made and, if they should have been made, it is strongly arguable that they might have reduced the loss found and the amount of compensation assessable.

19 I am satisfied that sufficient argument exists in relation to those grounds to raise a serious issue to be tried.

Balance of Convenience

20 I now come to the question of balance of convenience. The amount ordered to be paid is $28,000.00. The dismissal occurred over seventeen months ago. That delay militates in favour of the respondent. However, the amount of $28,000.00 is a large sum. It is quite irrelevant that the applicant may or may not be a large company with major resources.

21 There is undisputed evidence, too, which I accept, that Mr Danson is a person presently employed in a remote location, that he owns no real property, that there is no evidence that he has any other assets, and that, on his own admission, through his agent, Mr McCorry, he would apply the monies to pay for a course to learn to fly.

22 That means that he intends to spend the monies and that the monies or part of them would not be preserved for ready recovery. In addition, he has something of a peregrinating background in employment, as was conceded.

23 That evidence was not challenged. There was ample evidence to conclude that, since it was not denied, the respondent's ability to repay such a substantial sum, in terms of realisable assets, did not exist. I am therefore satisfied that the probability is that he might not be capable of repaying the monies, or a substantial part of them (an inference not refuted), if the applicant were to succeed upon appeal, or that the risk is so great, that the applicant's monies are at risk.

24 That, notwithstanding the substantial delay since he was dismissed, is sufficient for me to hold that the balance of convenience is served by the applicant obtaining an order for a stay and the respondent not receiving the fruits of his judgment for the time being. The interests of the applicant, therefore, are best served by such an order, and take priority over those of the respondent, for those reasons.

25 However, I am firmly of the view, and the applicant was willing to agree to such an order, that the monies should be placed in an account where interest can be accrued and where the monies can be readily dispersed, without delay, to the respondent in the event of the appeal failing. Such a condition on the order would be consistent with my finding as to the interests of the applicant and protect the interests of the respondent. If the appeal succeeds, of course, the monies can be readily dispersed also to the applicant. The balance of convenience lies with the applicant.

26 For those reasons, the equity, good conscience and the substantial merits of the case lie, as I find, with the applicant.

27 If there is any inordinate delay in bringing the appeal on, I might be, as always, persuaded to discharge the order or vary it.

28 I will issue a Minute of Proposed Order in terms which Mr McCorry and Mr Randles seem to be familiar with as having been used by this Commission. I take account of the fact that Mr McCorry advised me that a trustee on Mr Danson's behalf would probably be available.

2000 WAIRC 00603

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

APPLICANT	CHUBB SECURITY HOLDINGS AUSTRALIA LIMITED
RESPONDENT	PAUL RAYMOND DANSON
CORAM	HON PRESIDENT P J SHARKEY
DELIVERED	TUESDAY, 12 SEPTEMBER 2000
FILE NO/S	PRES 14/2000

Decision	Application granted.
Appearances	
Applicant	Mr A J Randles (of Counsel), by leave
Respondent	Mr G McCorry, as agent

Order.

This matter having come on for hearing before me on the 12th day of September 2000, and having heard Mr A J Randles (of Counsel), by leave on behalf of the applicant and Mr G McCorry, as agent, on behalf of the respondent, and I having reserved my decision on the matter, and my reasons for decision being delivered on the 12th day of September 2000, it is this day, the 12th day of September 2000, 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 FBA 43 of 2000 has been instituted within the meaning of s.49(11) of the Act.

(3) THAT the order made by the Commission on the 11th day of August 2000 in application No 635 of 1999 be and is hereby wholly stayed pending the hearing and determination of appeal No FBA 43 of 2000, 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 26th day of September 2000, pay the total of the amount of $28,000.00 ordered to be paid by the Commission in its said order of the 11th day of August 2000 in application No 635 of 1999 into a bank account offering the best obtainable interest rates.

(5)
THAT account shall be opened by agreement, by the person to be nominated in writing to the respondent by the applicant and by the respondent or his nominee on or before the 26th day of September 2000 aforesaid.

(6) THAT such account shall be in the joint names of and shall be jointly administered by the applicant and the respondent, or their nominees on behalf of the parties.

(7) 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 order (6) hereof.

(8) 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.

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

(10) 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.

(11) 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.

(12) 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.

(13) 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.

(14) 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.

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

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

2000 WAIRC 00728

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	UWE WILLIAM THIEL, SCOTT ANDREW BATTEN APPLICANTS *v.* WESTERN AUSTRALIAN PRISON OFFICERS' UNION OF WORKERS
RESPONDENT	
CORAM	HIS HONOUR THE PRESIDENT P J SHARKEY
DELIVERED	TUESDAY, 26 SEPTEMBER 2000
FILE NO/S	PRES 13 OF 2000
CITATION NO.	2000 WAIRC 00728

Decision	Application dismissed.
Appearances	
Applicants	Mr U W Thiel and Mr S A Batten
Respondent	Mr J A Long (of Counsel), by leave

Reasons for Decision.

THE PRESIDENT—

1 This is an application by the applicants who assert that they are members of the respondent. That they are members is not admitted in the answer. However, it was not required to decide that issue before other questions were required to be decided.

2 The respondent is an organisation of employees, registered under the *Industrial Relations Act* 1979 (as amended) (hereinafter referred to as "the Act"). The application is brought pursuant to s.66 of the Act.

3 By the application, the applicants allege that the respondent organisation acted in breach of or failed to observe its rules, namely Rule 11—Consent to Awards, in that "the union along with the Ministry of Justice amended the Award (Order No C121 of 2000 dated 27.6.00) without proper consultation with union members".

4 The applicants allege that this action was taken in breach of Rule 11 in that consent of the members to an award must be obtained by general meeting, by special general meeting of the respondent, or by a ballot of the members.

5 It was alleged that none of the above methods was "applied" before the *Gaol Officers Award* 1998 (hereinafter referred to as "the award") was varied by an order of the Commission, made in matter No C121 of 2000 on 27 June 2000.

6 Rule 11 of the respondent's rules reads as follows—

> "All agreements, Consent Awards or other deeds or instruments made by or on behalf of this Union shall be drawn up in accordance with the "INDUSTRIAL ARBITRATION ACT, 1979" and a duplicate original of every such Consent Award shall be filed with the Registrar of Industrial Unions, provided that no Consent Award shall be entered into unless its contents have been approved by a General or Special General Meeting of the Union or by a ballot of the members. Copies of all Consent Awards shall be supplied to the members of the Union.
>
> Consent Awards and all deeds and instruments on behalf of the Union shall be executed as follows—
>
> (a) Consent Award or instrument not required by law to be under seal, shall be executed by the President and Secretary.
>
> (b) An instrument or deed which is required by law to be under seal, shall be executed under the seal of the Union and endorsed by the President and Secretary."

7 The orders sought are as follows—

"That the Union be ordered—

1) To negotiate with the Ministry of Justice the return of the 4.8% reduction in ordinary earnings.

2) That the Union abide by the rules in all award modifications."

8 The respondent opposed the application in its answer and, in particular, denied the allegation of breach, saying that it consulted with its members.

9 The respondent organisation of employees is a party to the award referred to above. The employer of gaol officers is the Honourable Minister for Justice, who is a party to the award. The respondent organisation has constitutional coverage of prison officers.

10 It is common ground, at least as I understand it, that the applicants are prison officers. It is also common ground that there have been negotiations directed to achieving an enterprise bargaining agreement between the parties. These negotiations have given rise to a degree of disputation which resulted in an application by the respondent to the Commission for a s.44 conference in matter No C121 of 2000, on the grounds that it was in dispute with the Attorney General "over (sic) the operation of Clause 11 Prepaid hours/shifts of the [award] and over (sic) the achievement of an enterprise bargaining agreement."

11 At the heart of this matter were two orders, exhibits 2A and 2B. The first order was one dated 27 June 2000 made by Commissioner Gregor which, in the form in which it was before me, bears no notation that it was deposited in the Registry. The parties to the s.44 proceedings are identified as the respondent organisation and the Honourable Attorney General. The order is one which expressly purports to vary the award using powers said to be conferred by s.44(6)(a) of the Act.

12 What is complained of is that a provision was deleted, which deletion has effected a 4.8% reduction in the

earnings of prison officers amounting to about $2,000.00 per annum. That the variation had that effect was not denied. It is that variation which is of serious concern to the applicants. It was asserted in these proceedings, where all of the evidence was documentary, uncontested or asserted from the bar table, that there had been no consultation with members by the respondent.

13 By order made on 30 August 2000, the Commission, by consent, varied the order of the Commission of 27 June 2000 previously referred to, so as to give effect, at least according to Mr Long's assertion from the bar table on behalf of the respondent, to an increase in wage or salary for prison officers. The processes leading to the consent to the making of that order are not complained about in these proceedings.

14 However, before proceedings commenced, Mr Long submitted that there was no jurisdiction in the Commission to make the orders sought, no power to do so and/or that the applications should be dismissed pursuant to s.27 of the Act.

JURISDICTION

15 It is trite to observe, as the section provides, that the President has power to make only those orders prescribed by s.66(2) of the Act and that his jurisdiction is confined to an application for and the making of such orders.

16 The President's jurisdiction is to make orders for or give directions relating to the rules of an organisation, their observance or non-observance, either generally or in the particular case, as he considers to be appropriate, including those orders identified in s.2(a) to (f) of the Act.

17 It is submitted by the respondent that the orders sought in paragraph 10 of the application are not orders which the Commission, constituted by the President, can make within jurisdiction pursuant to s.66 of the Act. The first order, it is submitted, is not an order relating to the rules of the organisation, or to their observance or non-observance or the manner of their observance.

18 This, it was submitted, was because there was a complaint about orders made by the Commission whereby the Commission made an order varying Clause 11 of the award by deleting the prepaid overtime hours in favour of another arrangement.

19 It is clear that both orders were issued, firstly to aid the dispute and, secondly, to aid the resolution of the dispute between the respondent and the Attorney General about the negotiation of an enterprise bargaining agreement, and for the purposes of preserving the agreement reached to that point until the enterprise bargaining agreement was completed.

20 I am not at all certain that, whilst the order is in place, I can make orders. It was semi-conceded that the order to negotiate the 4.8% was not within jurisdiction. However, it is arguable that such an order could be made, having regard to Rule 3(a) and (d), Rule 13 or Rule 21.

21 Next, it was submitted by the respondent that, in any event, even if the Commission were to find that it had jurisdiction in relation to the order sought by the applicants, then the Commission is prohibited from making orders which would have the effect of calling into question, quashing or reviewing the earlier order of Commissioner Gregor. Taking this course, it was submitted, was prevented by s.34(4) of the Act, which reads as follows—

> "Except as provided by this Act, no award, order, declaration, finding, or proceeding of the President, the Full Bench, or the Commission shall be liable to be challenged, appealed against, reviewed, quashed, or called in question by any court on any account whatsoever."

22 Further and alternatively, it was submitted that the Commission should decline to issue an order where the order would not have the effect of remedying any breach or would otherwise produce a futile result. For the applicants, it was submitted that the President was being asked to review the actions of the respondent and not the order of the Commissioner.

23 Next, it was submitted that the applicants' seeking an order that the respondent abide by the rules and all award modifications was not an order within jurisdiction because the order has no meaning within the context of s.66 of the Act in that it is not directed to any past or future conduct of the respondent or its officers, which would necessitate such an order being made.

24 It was also submitted on behalf of the respondent that there is no requirement for the respondent to conduct a general meeting, a special meeting or a ballot of members before the respondent consented to the variation of the award contained in the order made on 27 June 2000 under the rules. It was also submitted on behalf of the respondent that it was not alleged by the applicants that there was no consultation with the members but merely that the rule was not followed.

25 Significantly, what was submitted was that Rule 11 was not applicable to the situation.

26 It is trite to observe that the rules of a registered organisation should be construed as any other legal document would. However, there is some liberality of interpretation required (see *R v Aird; Ex parte AWU* [1973] 129 CLR 654 at 659 per Barwick CJ, *HSOA v The Honourable Minister for Health* 61 WAIG 616 at 618 (IAC) per Brinsden J—

> "In construing a union rule, it is necessary not to place too literal adherence to the strict technical meaning of words, but to view the matter broadly in an endeavour to give it a meaning consistent with the intention of the draftsman of the rule."

27 The rule requires the consent of the membership to be obtained to agreements, consent awards, deeds and instruments. The phrase "consent award" is not defined in the rules.

28 It is quite plain that no consent award shall be "entered into"; that is, that the respondent's consent is prohibited from being given unless the contents of the award have been approved in the manner prescribed, that is, by a Special General Meeting, a General Meeting (under the rules) or a ballot of members. Further, copies of all awards shall be supplied to the members of the respondent.

29 It was submitted by the respondent that Rule 11 should be interpreted, having regard to the provisions of Rule 11 itself, in the context of the rules as a whole and the relevant provisions of the Act.

30 There is much in the submission that the draftsman would not be taken to have intended that any and every variation to an existing award would require the respondent to refer the proposed amendment for approval to a general meeting, a special meeting or a ballot of members. Such an interpretation would lead to an absurd result, it was submitted, because it would require all award variation applications, even new and formal variations, to be subject to a general meeting, special meeting or ballot of the respondent's members each time.

31 It was also submitted that, similarly, in this case, it could not be the intention of the draftsman that the requirements of Rule 11 apply where there was not a consent award which issued, but an application to the Commission to resolve a dispute about prepaid overtime hours and a proposed enterprise bargaining agreement.

32 In my opinion, a variation by consent to a consent award must be read as having been intended to be covered by the phrase "consent award". It would lead to absurdity to interpret it otherwise. To interpret Rule 11 in that manner is to reflect the interpretation of the draftsperson without adhering too much to the strict words (see *HSOA v The Honourable Minister for Health* (IAC)(op cit). Some variations might be as important or almost as important as the original award. For example, pay increases and/or reductions or improvements in important conditions of employment might also be made without consent. Further, taking a purposive approach, the purpose of the rule is to ensure that members are not only consulted, but indeed give their approval to matters of import affecting their conditions of employment. There is little more important, in that regard, than the making of an award and, in some

cases, a variation to an award, so far as terms and conditions of employment are concerned.

33 It was not contested, and I find, that the variation sought was a matter of importance, if it were necessary to so find. Prima facie, because it reduced annual income by $2,000.00 per year. It was, in addition, not denied that it was important. The variation then came within the term "consent award" in Rule 11, for those reasons. Primarily, however, I am satisfied that, for those reasons, the term "consent award" in Clause 11 means a consent to the variation of the award. However, in this case, the variation consented to was important, substantial or significant. It probably also means a consent to a substantial variation of the award. Some confirmation that this was, in any event, the right course to take was afforded by the fact that the respondent has undertaken to put any enterprise bargaining agreement to secret ballot by the members so as to determine whether they wish it to be entered into or not.

34 It is not to the point, however, to submit that the variation was arrived at by consent and included in a s.44(6)(ba) order. It attracted Rule 11 and should have been put to the members pursuant to Rule 11. It is not to the point, either, to submit that any further variations made in the order of 30 August 2000 were not complained of. Nor is it relevant that there is no complaint about this because, it is submitted, such action resulted in a wage or salary increase. If there was a breach in relation to the consent to the order of 27 June 2000, then there was a breach.

35 The interesting question as to whether the orders varying the award are or were within power does not and, I think, on present submissions, cannot arise in these proceedings. The power to issue orders on the part of the Commission, pursuant to s.44 of the Act, is not curtailed by making orders pursuant to s.66 of the Act. The giving of consent by the respondent must be achieved by a proper process. It is not to the point either, as the respondent complained, that there are proceedings on foot in the Industrial Magistrate's Court which might, if that is the case, provide a remedy to the applicants in relation to these proceedings. I would also add that the order was made pursuant to s.44 of the Act is not to the point (even given that the order was valid). The reality at law was that the order was a consent variation of the award and, therefore, "a consent award", within the meaning of Rule 11.

36 The applicants have complained in this case to the President that there has been a breach of the rules. On the face of it, there would seem to have been.

37 However, now that an order has been made, I do not intend to interfere in the process.

38 Having regard to all of those circumstances, I am not going to make an order that the reduction of the 4.8% be renegotiated. Further, an order has been made by the Commission, based on a consent already given. It is a matter which can be remedied, too, by an adjustment suitable to the members in the enterprise bargaining agreement and it is somewhat premature to make such an order. However, were the deletion of the prepaid overtime provision not a matter able to be voted on in the course of the ballot to approve or disapprove an enterprise bargaining agreement, then it is open to the applicants to make further application which can then be heard and determined on the facts peculiar to it.

39 I make that finding on the clear undertaking, given for the respondent from the bar table, that no enterprise bargaining agreement will be entered into without the approval of the members by ballot. Nor is it necessary or desirable to make the order as sought that there be future compliance with Rule 11 in relation to "award modifications" because there is a s.61 requirement that the rules be complied with. That requirement is enforceable, too, under s.84A of the Act and there are remedies for breaches or to prevent breaches available under s.66 of the Act.

40 I would hope that the respondent and its officers would now be fully aware of its obligations under the rules. Rules 10(e), 11, 13, 15, 19, 21 and 21A are some rules relating to the government of the respondent organisation and the responsibilities therefor.

CONCLUSIONS

41 For those reasons—

1. I am satisfied and find that the Commission, constituted by the President, has jurisdiction and power to make the first order sought.
2. I am satisfied and find that the Commission, constituted by the President, has jurisdiction and power to make the second order sought.
3. I am satisfied that, by failing to put the matter of the variation of the award by deleting the entitlement to prepaid overtime, without complying with Rule 11, there was a breach of the Rules.
4. I am satisfied that such a breach could be remedied if the matter is a live issue in the ballot to approve the enterprise bargaining agreement being negotiated.
5. For that reason, I find that it would be premature to make any order and would not serve the interests of the respondent or its members.
6. If the matter were not able to be raised and voted upon in the ballot for the enterprise bargaining agreement, then I would entertain a further application. (It is not inconceivable that the issue could be subsumed into a weighing of detriments and benefits conferred on members by the enterprise bargaining agreement.)
7. However, the President is in particular not prevented by s.37 of the Act from making orders under s.66 upon this application.
8. I would not make a general order to comply with Rule 11 in all consent award matters because that is a general order which would order the respondent organisation to do what its rules and s.61 of the Act require it to do. I would need more cogent persuasion than was the subject of submissions in these proceedings to persuade me that I should make such an order.

42 Accordingly, having regard to s.26(1)(a) and (c) of the Act, for those reasons, I dismissed the application. I did so because I had concluded that further proceedings are not necessary or desirable in the public interest, and that, as a matter of merit, for the reasons which I expressed, such an order would be premature and not in the interests of the respondent and its members on this application at this time.

43 For those reasons, the application was dismissed.

2000 WAIRC 00728

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

APPLICANTS:	UWE WILLIAM THIEL AND SCOTT ANDREW BATTEN
RESPONDENT:	WESTERN AUSTRALIAN PRISON OFFICERS' UNION OF WORKERS
CORAM	HON PRESIDENT P J SHARKEY
DELIVERED	FRIDAY, 1 SEPTEMBER 2000
FILE NO/S	PRES 13/2000

Appearances	
Applicants	Mr U W Thiel and Mr S A Batten
Respondent	Mr J A Long (of Counsel) by leave

Orders And Directions.

This matter having come on for a directions hearing before me on the 1st day of September 2000, and having heard Mr U W Thiel and Mr S A Batten on their own behalf as applicants and Mr J A Long (of Counsel), by leave, on behalf of the

respondent, and having made such orders and given such directions as are necessary or expedient for the expeditious and just hearing and determination of this matter, and the parties herein having consented to the waiving of the requirements of s.35 of the Industrial Relations Act 1979 (as amended) and the Commission having waived said requirements therefore as unnecessary, it is this day, the 1st day of September 2000, ordered and directed as follows—

(1) THAT the respondent herein do file and serve forthwith its answer and any counter proposal to and better particulars of the application within 14 days of the 1st day of September 2000.

(2) THAT the parties provide discovery, in writing, and inspection of all relevant documents to each other within 14 days of the 1st day of September 2000.

(3) THAT the application herein be and is hereby adjourned for hearing and determination to 10.00 am on Tuesday, the 19th day of September, Wednesday, the 20th day of September, Thursday, the 21st day of September and Monday, the 25th day of September 2000, subject to any other orders and directions I may so make from time to time.

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

2000 WAIRC 00632

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

APPLICANTS	UWE WILLIAM THIEL AND SCOTT ANDREW BATTEN
RESPONDENT	WESTERN AUSTRALIAN PRISON OFFICERS' UNION OF WORKERS
CORAM	HON PRESIDENT P J SHARKEY
DELIVERED	TUESDAY, 19 SEPTEMBER 2000
FILE NO/S	PRES 13/2000

Decision	Application dismissed.
Appearances	
Applicants	Mr U W Thiel and Mr S A Batten
Respondent	Mr J A Long (of Counsel), by leave

Order.

This matter having come on for hearing before me on the 19th day of September 2000, and having heard Mr U W Thiel and Mr S A Batten on their own behalf as applicants, and Mr J A Long (of Counsel), by leave, on behalf of the respondent, and Counsel for the respondent having made a preliminary application to dismiss the application and I, having determined that there is no jurisdiction in the Commission, constituted by the President, to hear and determine application No PRES 13 of 2000 and to dismiss the application, and reasons for decision being delivered at a future date, it is this day, the 19th day of September 2000, ordered that the application No PRES 13 of 2000 be and is hereby dismissed.

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

AWARDS/AGREEMENTS— Application for—

BARNEY MAC PLASTERING/BLPPU AND THE CMETU COLLECTIVE AGREEMENT 2000. No. AG 208 of 2000.

2000 WAIRC 00609

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	THE WESTERN AUSTRALIAN BUILDERS' LABOURERS, PAINTERS & PLASTERERS UNION OF WORKERS V BERNARD MCGORRIGAN AND SHEILA MCGORRIGAN TRADING AS BARNEY MAC PLASTERING
CORAM	CHIEF COMMISSIONER W S COLEMAN
DELIVERED	MONDAY, 11 SEPTEMBER 2000
FILE NO.	AG 208/2000

Result	Agreement registered
Representation	
Applicant	Mr P Joyce on behalf of the Union
Respondent	No appearance

Order.

HAVING heard Mr P Joyce on behalf of The Western Australian Builders' Labourers, Painters & Plasterers Union of Workers and there being no appearance by the Respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Barney Mac Plastering/BLPPU Collective Agreement 2000 in the terms of the following schedule be registered on the 11th day of September, 2000. This Agreement replaces AG 90 of 1999 entitled Barney Mac Plastering Industrial Agreement which is hereby cancelled.

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

1.—TITLE

This agreement shall be known as the Barney Mac Plastering/ BLPPU and the CMETU Collective Agreement 2000.

2.—ARRANGEMENT

	Clause No.
Title	1
Arrangement	2
Parties and Persons Bound	3
Application	4
Relationship to Parent Award	5
Period of Operation	6
Classification Structures & Rates of Pay	7
Industry Standards	8
Sick Leave	9
Negotiation of a Subsequent Agreement	10
Application of Project Agreements	11
Fares and Travelling Allowance	12
Seniority	13
All In Payments	14
Pyramid Sub-Contracting	15
Dispute Settlement Procedure	16
Safety Dispute Resolution	17
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Training and Related Matters	19
Drug & Alcohol, Safety & Rehabilitation Program	20
Clothing & Safety Footwear	21
Income Protection	22
Accident Pay	23
Union Membership	24

Y2K 25
Signatories to the Agreement 26
Appendix A—Drug & Alcohol, Safety and Rehabilitation
Appendix B—Site Allowance

3.—PARTIES AND PERSONS BOUND

This agreement shall be binding on Bernard McGorrigan & Sheila McGorrigan trading as Barney Mac Plastering (hereinafter referred to as "the company"), the Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and the Construction Mining Energy Timberyards Sawmills and Woodworkers Union of Australia—WA Branch (hereinafter referred to as "the unions") and all employees of the company eligible to be members of the unions.

4.—APPLICATION

This agreement shall apply to all employees of the company engaged on work in or in connection with construction, alteration, maintenance, repair or demolition of buildings or other structures of any kind whatsoever.

This agreement shall apply in Western Australia only. There are approximately 5 employees covered by this agreement.

5.—RELATIONSHIP TO PARENT AWARD

1. This agreement is supplementary to, and shall be read and interpreted wholly in conjunction with, the Building Trades (Construction) Award 1987, Award No. R14 of 1978 (hereinafter referred to as "the award").

2. In the event of any inconsistency between the award and an express provision of this agreement, the terms of this agreement shall prevail to the extent of such inconsistency, unless the express provision of the agreement provides otherwise.

6.—PERIOD OF OPERATION

This agreement shall come into force from the first pay period commencing on or after November 1st 1999 and shall remain in force until the 1st of November, 2002.

7.—CLASSIFICATION STRUCTURE & RATES OF PAY

1. All employees working under this agreement shall be paid according to the wage rates set out below.

2. Wage Rates (per hour at ordinary time)

	Previous EBA Rate Hourly Rate $	1st November 1999 Hourly Rate $	1st November 2000 Hourly Rate $	1st November 2001 Hourly Rate $
Labourer Group 1	17.15	18.01	18.91	19.86
Labourer Group 2	16.56	17.39	18.26	19.17
Labourer Group 3	16.12	16.93	17.78	18.67
Plaster, Fixer	17.82	18.71	19.65	20.63
Painter, Glazier	17.42	18.29	19.20	20.16
Signwriter	17.80	18.69	19.62	20.63
Carpenter/Roofer	17.93	18.85	19.79	20.78
Bricklayer	17.75	18.63	19.61	20.59
Refractory Bricklayer	20.38	21.40	22.47	25.59
Stonemason	17.93	18.82	19.76	20.75
Rooftiler	17.62	18.50	19.43	20.40
Marker/Setter Out	18.46	19.38	20.35	21.37
Special Class T	18.69	19.62	20.61	21.64

APPRENTICE RATES

	Previous EBA Rate Hourly Rate $	1st November 1999 Hourly Rate $	1st November 2000 Hourly Rate $	1st November 2001 Hourly Rate $
Plasterer, Fixer				
Year 1	7.48	7.86	8.25	8.66
Year 2 (1/3)	9.81	10.29	10.81	11.35
Year 3 (2/3)	13.37	14.03	14.74	15.47
Year 4 (3/3)	15.69	16.46	17.29	18.15
Painter. Glazier				
Year 1 (.5/3/5)	7.32	7.68	8.06	8.47
Year 2 (1/3), (1.5/3.5)	9.58	10.06	10.56	11.09
Year 3 (2/3), (2.5/3.5)	13.06	13.72	14.40	15.12
Year 4 (3/3), (3.5/3.5)	15.33	16.10	16.90	17.74
Signwriter				
Year 1 (.5/3.5)	7.48	7.85	8.24	8.66
Year 2 (1/3, 1.5/3.5)	9.78	10.28	10.79	11.35
Year 3 (2/3. 2.5/3.5)	13.35	14.02	14.72	15.47
Year 4 (3/3, 3/5/3.5)	15.66	16.45	17.27	18.15
Carpenter/Roofer				
Year 1	7.54	7.92	8.31	8.73
Year 2 (1/3)	9.86	10.37	10.88	11.43
Year 3 (2/3)	13.45	14.14	14.84	15.59
Year 4 (3/3)	15.78	16.59	17.42	18.29
Bricklayer				
Year 1	7.46	7.82	8.24	8.65
Year 2 (1/3)	9.76	10.25	10.79	11.32
Year 3 (2/3)	13.31	13.97	14.71	15.44
Year 4 (3/3)	15.62	16.39	17.26	18.12
Stonemason				
Year 1	7.54	7.92	8.31	8.73
Year 2 (1/3)	9.86	10.37	10.88	11.43
Year 3 (2/3)	13.45	14.14	14.84	15.59
Year 4 (3/3)	15.78	16.59	17.42	18.29
Rooftiler				
6 months	10.04	10.54	11.07	11.62
2nd 6 months	11.04	11.59	12.17	12.78
Year 2	12.90	13.55	14.23	14.94
Year 3	15.14	15.90	16.70	17.54

3. All expense related allowances not specifically mentioned in this agreement will be paid as per the award as varied from time to time.

4. Site allowances relating to particular sites shall be paid in accordance with Appendix B of this Agreement.

5. An additional payment will be made to compensate for the impact of the Goods and Services Tax on the Consumer Price Index. In the circumstance that the CPI limit below is exceeded the appropriate additional payment will be made to the wage rates. The CPI figure for the applicable dates will be the official figure released by the ABS for the preceding year.

Date	CPI Limit	Additional Payment
June 2001	5%	1% (paid 1/9/2001)
June 2001	6%	2% (paid 1/9/2001)
June 2002	5%	1% (paid 1/9/2002)
June 2002	6%	2% (paid 1/9/2002)

8.—INDUSTRY STANDARDS

Redundancy

The company shall increase redundancy contributions on behalf of each employee to the following sums on a weekly basis—

Rate on signing	$50
Rate as of 1/05/2001	$60

Superannuation

(i) The Company will make a payment of $75 per week per employee or the percentage rate that is prescribed under the Superannuation Guarantee Charge, whichever is the greater. On 1st July 2002 the Company will make a payment of $90 per week per employee.

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

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

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

In the event that the employee and the Company reach an agreement pursuant to section 49C(2)(d) of the Act to change

the complying superannuation fund or scheme the Company will, within seven days of the employee and the Company reaching such an agreement, advise the Union in writing of the agreement. The employer 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.

9.—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.

(c) Where the Company has signed a previous Agreement with the Union that also allowed for the conversion to cash payment on termination for accrued sick leave, that accrued sick leave will be treated as if is accrued under this agreement.

(d) Sick leave shall accrue, for the purposes of this clause, at the rate of one day at the beginning of each of the first ten calendar months of each year.

(e) Employees shall have the option of converting to a cash payment all sick leave entitlements over 5 days. Payment shall be made on the last pay period prior to the Christmas closedown.

10.—NEGOTIATION OF A SUBSEQUENT AGREEMENT

The parties agree to commence negotiations for a new collective agreement to succeed this agreement at least 3 months before the nominal expiry date. The parties intend to conclude these negotiations prior to the nominal expiry date. These negotiations shall be conducted on a collective basis between all of the parties with the negotiated outcome being subject to approval of a vote of the employees collectively.

11.—APPLICATION OF PROJECT AGREEMENTS

1. This agreement shall apply to all persons employed in the employer's business and every part thereof throughout Western Australia until **1st November 2002** except where the company commences work on a project where a site agreement to which the union is a party exists that provides for higher rates of pay and conditions.

2. The conditions contained in any such site agreement will take precedence over this agreement for the duration of the project.

12.—FARES AND TRAVELLING ALLOWANCE

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.

13.—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 Company 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 16—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.

14.—ALL IN PAYMENTS

1. All-in payments to employees will not be made. All-in payments are defined as an hourly rate or piece work rate which is meant to cover wages and all allowances, such as annual leave, sick leave, etc., on which tax is being paid using the Prescribed Payments System.

2. It is agreed that where a breach of this clause is discovered, the employer shall continue paying the "all-in" rate as the employees hourly rate, but shall pay all award and other entitlements on top of this amount, back-dated to the commencement of the all-in rate arrangement. The company shall not be entitled to offset any amount in excess of the ordinary hourly rate against any other entitlement in this agreement.

3. This clause shall not be applied to prevent the employer subletting specialised work outside of the normal scope of work which the employer performs. The union shall be notified when specialist sub-contractors are to be engaged.

15.—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.

16.—DISPUTE SETTLEMENT PROCEDURE

1. Disputes over any work related or industrial matter should be dealt with as close to its source as possible.

2. An employee or the union delegate should initially submit any work related grievance and/or industrial matter to the site foreperson, supervisor or other appropriate site representative of the company.

3. If the matter remains unresolved the union delegate may then submit the matter to the appropriate senior management person.

4. If still not resolved the delegate shall refer the matter to an appropriate official of the union, who shall discuss the matter with the nominated representative of the employer.

5. Whilst the above procedures are being followed work should continue as normal.

6. This procedure is to be followed in good faith and without unreasonable delay by any party.

7. Should the matter remain unresolved it shall be dealt with in one of the following ways as agreed to between the parties—

- referred to the Western Australian Industrial Relations Commission for conciliation and if required arbitration. The Commissions decision will be accepted by all parties subject to legal rights of appeal; or

- referred to a disputes board for determination; or
- referred to a private arbitrator agreed to between the parties, for determination.

8. This dispute settlement procedure does not apply to health and safety issues.

17.—SAFETY DISPUTE RESOLUTION

1. The parties to this agreement are committed to the safe operation of plant and equipment, to the observance of safe working practices, and the provision by the employer and correct use of all personal protective equipment. The company recognises its responsibilities to provide a safe and healthy workplace.

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 safety officer or workers' safety representative to be dealt with in accordance with the following procedures—

(i) Where any employee becomes aware of an unsafe situation, that employee will immediately notify the company safety officer or the workers' safety representative.

(ii) The company safety officer and the workers' safety representative will take immediate action to have the unsafe situation rectified.

(iii) Should the company safety officer consider that no safety precautions are necessary, he/she will notify the workers' safety representative accordingly as soon as possible.

(iv) While there is disagreement on the ruling of the company safety officer, the company safety officer will arrange for the immediate transfer of all employees from the disputed area.

(v) Should the company safety officer be of the opinion that no action is necessary and the worker's safety representative disagrees, an appropriate inspector from Worksafe/Workcover will be requested to undertake an inspection of the disputed area for the purpose of resolving any such matter.

(vi) If disagreement still exists the chief inspector or his/her nominee will be called in to assist in the resolution of the dispute.

(vii) If no agreement can be reached between the parties the matter will be dealt with in accordance with the dispute resolution procedure of this agreement.

(viii) 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.

(ix) 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.

18.—AMENITIES

1. The parties agree that it is the responsibility of the company to ensure that the amenities prescribed by the Award are provided as a minimum. Where, however, that standard is not maintained due to an action or event beyond the control of the company, the union agrees that the company should be allowed reasonable time in which to rectify the problem. If the company acts promptly to rectify the problem, there should be no interruption to work from industrial stoppages, bans and limitations.

2. In all instances, the following procedure shall be observed—

3. A uniformly high standard of amenities and facilities such as ablution blocks, change rooms, crib sheds, etc. shall be provided.

4. All Sheds shall be weatherproof and soundly constructed to an approved standard with sufficient windows and doors, adequate ventilation and lighting. They must have a floor above ground level and be lined on ceilings and walls.

5. Mess Shed/s fitted with fly screens are provided for exclusive use of workers and not for the storage of employers' equipment, tools and materials.

6. Shed/s shall provide not less that 0.75 square metres of floor space per person employed at any one time, provided that the area be not less than 4.65 square metres. Fixtures, other than tables and chairs, shall not be included when calculating floor space.

7. Where 5 or more persons are employed at one time, the floor area shall not be less than 9 square metres.

8. Adequate facilities are to be provided for warmth and for drying clothes eg. strip heaters.

9. Provided that 20 or more persons are employed on the site at any one time, the employer shall provide a separate shed or sheds for messing, which shall be of such dimension as to provide not less than 0.75 square metres of floor space per person.

10. Where less than 20 persons are employed on site, Regulation 3.20—Workplace Facilities of the Occupational Safety and Health Regulations 1996 shall apply to provisions of messing and changing facilities.

11. In the changing facilities, separate clothes-hanging facilities for each person employed are to be provided (coat hooks only to be used).

12. In the changing facilities, sufficient seating accommodation for the changing of work apparel is to be provided.

13. In the messing facilities, sufficient tables with fixed washable laminated or vinyl surface, and seating for the taking of meals, are to be provided.

14. Food warming facilities to be supplied, together with a supply of cool, clean water conveniently accessible, as well as boiling water at meal/rest breaks.

15. Receptacle for garbage with bin liner and rat and fly proof is to be supplied in mess area, and emptied regularly.

16. A washable vinyl floor surface in all facilities is to be provided.

17. Shelving is to be supplied in the mess shed for storage (cups, lunch bags, etc).

18. All facilities are to be cleaned and disinfected on a regular basis.

19. All mess sheds shall be supplied with reverse cycle air-conditioning.

20. Toilet blocks shall be soundly constructed and roofed with weatherproof material. The floor of each toilet shall be well-drained and constructed of concrete, bricks and cement, or other approved materials which shall be impervious to water. Every toilet shall be well lighted by natural or artificial light and shall be ventilated. Each toilet shall have a hinged door, capable of being fastened on the inside, lift seats/flaps and toilet paper.

21. Where practicable, toilets to be connected to sewerage before commencement of the job.

22. Toilet/urinal location to be conveniently accessible to employees, but not so close as to cause a nuisance to those persons.

23. Where necessary, portable water seal toilets of an approved standard are to be provided and regularly serviced.

24. Conveniently accessible toilets and urinals are to be distributed every 5th floor on multi-storey constructions.

25. Toilets and urinals are to be washed daily with disinfectant and kept in clean, hygienic condition.

26. Adequate washing facilities, suitably drained, and was basins/troughs are to be supplied with running water.

27. Soap and towels are to be supplied.

28. The following toilet/urinal ratio shall be applied in respect to all employees—

Employees	Toilets	Urinals
1-5	1	Nil
6-10	1	1
11-20	2	2
21-35	3	4
36-50	4	6
51-75	5	7
76-100	6	8

NB. For each additional 20 persons or part thereof up to 200 persons or part thereof up to 200 persons, one additional urinal and one additional toilet is required. For each additional 35 persons or part thereof in excess of 200 persons, one additional urinal and one additional toilet is required. If a slab urinal is provided, each 600mm shall be regarded as one urinal.

19.—TRAINING AND RELATED MATTERS

1. A training allowance of $13.00 per week per worker shall be paid by the employer to the Union Education and Training Fund. This shall increase to $14.00 per week on 1 November 2000 and a further increase to $15.00 per week on 1 November 2001.

2. Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calender year pro-rata to attend courses conducted or approved by the NBCITC. The employers approval shall not be unreasonably withheld.

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

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

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

20.—DRUG & ALCOHOL, SAFETY & 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.

21.—CLOTHING AND SAFETY 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, to 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.

22.—INCOME PROTECTION

The Company agrees to insure employees covered by this Agreement for injury and sickness. The scheme is to be negotiated between the parties

23.—ACCIDENT PAY

1. The Company agrees to pay each employee accident pay where the employee receives an injury for which weekly payments or compensation are payable by or on behalf of the Company pursuant to the provisions of the Workers' Compensation and Rehabilitation Act 1981, as amended.

2. "Accident Pay" means a weekly payment of an amount being the difference between the weekly amount of compensation paid to the employee pursuant to the Workers Compensation and Rehabilitation Act and the employee's ordinary wage under this Agreement.

3. The Company shall pay accident pay during the incapacity of the employee arising from any one injury for a total of 39 weeks whether the incapacity is in one continuous period or not.

24.—UNION MEMBERSHIP

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

25.—Y2K

On the following key dates the Company will issue written records of accrued entitlements to each employee. The accrued entitlements will include annual leave, sick leave, any accruing productivity bonuses, redundancy payments and Superannuation payments and also on each employees anniversary date—

- 31 December 1999
- 28 February 2000
- 31 December 2000
- 28 February 2001

26.—SIGNATORIES

BLPPU .....
Date: / /

CMETU .....
Date: / /

The Company: .....
Signature

Company Seal .....
Print Name

APPENDIX A—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

1. PRINCIPLE

People dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

2. FOCUS

- Site safety and the involvement of the site safety committee
- Peer intervention and support
- Rehabilitation

3. WORKPLACE POLICY

a) A person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.

b) The decision on a persons ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/employer representatives.

c) There will be no payment of lost time to a person unable to work in a safe manner.

d) If this happens 3 times the worker shall be given a written warning and made aware of the availability of treatment/counselling. If the worker refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.

e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.

f) A worker having problems with alcohol and or other drugs—

- Will not be sacked if he/she is willing to get help.
- Must undertake and continue with the recommended treatment to maintain the protection of this program.
- Will be entitled to sick leave or leave without pay while attending treatment.

4. IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will—

a) Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.

b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Program to address a meeting of employees to discuss and endorse the program.

c) Authorise the attendance of appropriate company personnel eg. Safety delegate/officer, safety committee members, union delegate, consultative committee members(s) at the two hour BTG Drug and Safety in the Workplace training course.

APPENDIX B—SITE ALLOWANCE

1. This agreement is between the parties referred to in Schedule A and shall apply to construction work undertaken by principal contractors who are members of CCA and 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 relevant building construction awards as nominated in schedule 'B' as well as any industrial or certified agreements made in conjunction with those awards which do 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 $2.17 m	$1.95
Above	$2.17m to $4.55m	$2.30
Over	$4.55m	$2.90

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17 m	$1.75
Above	$2.17m to $4.55m	$1.95
Over	$4.55m	$2.50

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 $2.17 m	$1.75
Above	$2.17m to $4.55m	$1.95
Over	$4.55m	$2.50

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17 m	$1.65
Above	$2.17m to $4.55m	$1.85
Over	$4.55m	$2.10

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

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

Project Contractual Value		Site Allowance
Up to	$1 m	NIL
Above	$1 m to $2.17 m	$1.35
Above	$2.17m to 6m	$1.65
Above	$6m to $11.98m	$1.90
Above	$11.98m to $24.43m	$2.10
Above	$24.43m to $60.5m	$2.40
Over	$60.5m	$2.60

"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. (Refer attached Map 1).

"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. (Refer attached Map 2).

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

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

5. The site/project allowance and project contractual value detailed in this agreement shall be adjusted on 1 January each year by the total C.P.I. movements for Perth during the preceding four quarters ending 30 September and accordingly, the site allowance amounts shall be adjusted up or down to the nearest five cents. Provided that where adjustment equates to less than two cents, existing allowance levels shall be maintained.

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 September. 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 BTA 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 contractor and the building trades group of unions for that project that may include matters regularly addressed within the industry, such as, but not limited to, the following—

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

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

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

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

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

12. It is agreed between the parties that this agreement will operate for a period of 12 months from the date the agreement is signed. However, the agreement will continue to operate beyond this date unless either party gives the other three (3) months written notice of intention to withdraw therefrom.

13. 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.

14. This agreement shall only apply to building contracts entered into on or tendered for on or after 1 January 2000.

15. **Application to Apprentices**

a) The rates prescribed in clause 4 of this agreement shall apply to **all** apprentices commencing employment after 31 December 1998 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%

b) Fares and Travel Allowances—Apprentices shall receive 100% of all fares and travel allowances paid.

16. **Provision of Canteen**

It is agreed that a staffed canteen 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. The Canteen shall come into operation when on site worker levels exceed 50 and to cease when the worker levels reduce to below 50.

17. **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 notwithstanding that forecasts may have been below that level. The nurse shall commence duties when staffing levels reach 50 (fifty) and shall terminate when levels reduce to 50 (fifty). The requirement for the provision of a nurse shall be waived if the project is adjacent to a hospital with a public emergency department.

18. **Apprentice Ratio to Tradespersons**

There shall be at least one apprentice employed on site to every 6 tradespersons employed on site.

B & N UPTON/BLPPU AND THE CMETU COLLECTIVE AGREEMENT 2000.
No. AG 211 of 2000.

2000 WAIRC 00607

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	THE WESTERN AUSTRALIAN BUILDERS' LABOURERS, PAINTERS & PLASTERERS UNION OF WORKERS, CONSTRUCTION, MINING, ENERGY, TIMBERYARDS, SAWMILLS AND WOODWORKERS UNION OF AUSTRALIA—WESTERN AUSTRALIAN BRANCH V B & N UPTONS ROOF PLUMBING AND MAINTENANCE PTY LTD
CORAM	CHIEF COMMISSIONER W S COLEMAN
DELIVERED	MONDAY, 11 SEPTEMBER 2000
FILE NO.	AG 211/2000

Result	Agreement registered
Representation	
Applicant	Mr P Joyce on behalf of the Unions
Respondent	No appearance

Order.

HAVING heard Mr P Joyce on behalf of The Western Australian Builders' Labourers, Painters & Plasterers Union of Workers and Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers' Union of Australia—Western Australian branch and there being no appearance by the Respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the B & N Upton/BLPPU and the CMETU Collective Agreement 2000 in the terms of the following schedule be registered on the 11th day of September, 2000.

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

1.—TITLE

This agreement shall be known as the B & N Upton / BLPPU and the CMETU Collective Agreement 2000.

2.—ARRANGEMENT

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3.—PARTIES AND PERSONS BOUND

This agreement shall be binding on B & N Uptons Roof Plumbing and Maintenance Pty Ltd (hereinafter referred to as "the company"), the Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and the Construction Mining Energy Timberyards Sawmills and Woodworkers Union of Australia—WA Branch (hereinafter referred to as "the unions") and all employees of the company eligible to be members of the unions.

4.—APPLICATION

This agreement shall apply to all employees of the company engaged on work with a minimum contract value of $200,000 or where the Principal Contractor has a current Industrial Agreement with the BLPPU or CMETU.

This agreement shall apply in Western Australia only. There are approximately 6 employees covered by this agreement.

5.—RELATIONSHIP TO PARENT AWARD

1. This agreement is supplementary to, and shall be read and interpreted wholly in conjunction with, the Building Trades (Construction) Award 1987, Award No. R14 of 1978 (hereinafter referred to as "the award").

2. In the event of any inconsistency between the award and an express provision of this agreement, the terms of this agreement shall prevail to the extent of such inconsistency, unless the express provision of the agreement provides otherwise.

6.—PERIOD OF OPERATION

This agreement shall come into force from the first pay period commencing on or after November 1st 1999 and shall remain in force until the 1st of November, 2002.

7.—CLASSIFICATION STRUCTURE & RATES OF PAY

1. All employees working under this agreement shall be paid according to the wage rates set out below.

2. Wage Rates (per hour at ordinary time)

	Previous EBA Rate	1st November 1999	1st November 2000	1st November 2001
	Hourly Rate $	Hourly Rate $	Hourly Rate $	Hourly Rate $
Labourer Group 1	17.15	18.01	18.91	19.86
Labourer Group 2	16.56	17.39	18.26	19.17
Labourer Group 3	16.12	16.93	17.78	18.67
Plaster, Fixer	17.82	18.71	19.65	20.63
Painter, Glazier	17.42	18.29	19.20	20.16
Signwriter	17.80	18.69	19.62	20.63
Carpenter/Roofer	17.93	18.85	19.79	20.78
Bricklayer	17.75	18.63	19.61	20.59
Refractory Bricklayer	20.38	21.40	22.47	25.59
Stonemason	17.93	18.82	19.76	20.75
Rooftiler	17.62	18.50	19.43	20.40
Marker/Setter Out	18.46	19.38	20.35	21.37
Special Class T	18.69	19.62	20.61	21.64

APPRENTICE RATES

	Previous EBA Rate	1st November 1999	1st November 2000	1st November 2001
	Hourly Rate $	Hourly Rate $	Hourly Rate $	Hourly Rate $
Plasterer, Fixer				
Year 1	7.48	7.86	8.25	8.66
Year 2 (1/3)	9.81	10.29	10.81	11.35
Year 3 (2/3)	13.37	14.03	14.74	15.47
Year 4 (3/3)	15.69	16.46	17.29	18.15
Painter. Glazier				
Year 1 (.5/3/5)	7.32	7.68	8.06	8.47
Year 2 (1/3), (1.5/3.5)	9.58	10.06	10.56	11.09
Year 3 (2/3), (2.5/3.5)	13.06	13.72	14.40	15.12
Year 4 (3/3), (3.5/3.5)	15.33	16.10	16.90	17.74
Signwriter				
Year 1 (.5/3.5)	7.48	7.85	8.24	8.66
Year 2 (1/3, 1.5/3.5)	9.78	10.28	10.79	11.35
Year 3 (2/3. 2.5/3.5)	13.35	14.02	14.72	15.47
Year 4 (3/3, 3/5/3.5)	15.66	16.45	17.27	18.15
Carpenter/Roofer				
Year 1	7.54	7.92	8.31	8.73
Year 2 (1/3)	9.86	10.37	10.88	11.43
Year 3 (2/3)	13.45	14.14	14.84	15.59
Year 4 (3/3)	15.78	16.59	17.42	18.29
Bricklayer				
Year 1	7.46	7.82	8.24	8.65
Year 2 (1/3)	9.76	10.25	10.79	11.32
Year 3 (2/3)	13.31	13.97	14.71	15.44
Year 4 (3/3)	15.62	16.39	17.26	18.12
Stonemason				
Year 1	7.54	7.92	8.31	8.73
Year 2 (1/3)	9.86	10.37	10.88	11.43
Year 3 (2/3)	13.45	14.14	14.84	15.59
Year 4 (3/3)	15.78	16.59	17.42	18.29
Rooftiler				
6 months	10.04	10.54	11.07	11.62
2nd 6 months	11.04	11.59	12.17	12.78
Year 2	12.90	13.55	14.23	14.94
Year 3	15.14	15.90	16.70	17.54

3. All expense related allowances not specifically mentioned in this agreement will be paid as per the award as varied from time to time.

4. Site allowances relating to particular sites shall be paid in accordance with Appendix B of this Agreement.

5. An additional payment will be made to compensate for the impact of the Goods and Services Tax on the Consumer Price Index. In the circumstance that the CPI limit below is exceeded the appropriate additional payment will be made to the wage rates. The CPI figure for the applicable dates will be the official figure released by the ABS for the preceding year.

Date	**CPI Limit**	**Additional Payment**
June 2001	5%	1% (paid 1/9/2001)
June 2001	6%	2% (paid 1/9/2001)
June 2002	5%	1% (paid 1/9/2002)
June 2002	6%	2% (paid 1/9/2002)

8.—INDUSTRY STANDARDS

Redundancy

The company shall increase redundancy contributions on behalf of each employee to the following sums on a weekly basis—

Rate on signing	$50
Rate as of 1/05/2001	$60

Superannuation

(i) The Company will make a payment of $75 per week per employee or the percentage rate that is prescribed under the Superannuation Guarantee Charge, whichever is the greater. On 1st July 2002 the Company will make a payment of $90 per week per employee.

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

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

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

In the event that the employee and the Company reach an agreement pursuant to section 49C(2)(d) of the Act to change the complying superannuation fund or scheme the Company will, within seven days of the employee and the Company reaching such an agreement, advise the Union in writing of the agreement. The employer 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.

9.—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.

(c) Where the Company has signed a previous Agreement with the Union that also allowed for the conversion to cash payment on termination for accrued sick leave, that accrued sick leave will be treated as if is accrued under this agreement.

(d) Sick leave shall accrue, for the purposes of this clause, at the rate of one day at the beginning of each of the first ten calendar months of each year.

(e) Employees shall have the option of converting to a cash payment all sick leave entitlements over 5 days. Payment shall be made on the last pay period prior to the Christmas closedown.

10.—NEGOTIATION OF A SUBSEQUENT AGREEMENT

The parties agree to commence negotiations for a new collective agreement to succeed this agreement at least 3 months before the nominal expiry date. The parties intend to conclude these negotiations prior to the nominal expiry date. These negotiations shall be conducted on a collective basis between all of the parties with the negotiated outcome being subject to approval of a vote of the employees collectively.

11.—APPLICATION OF PROJECT AGREEMENTS

1. This agreement shall apply to all persons employed in the employer's business and every part thereof throughout Western Australia until **1st November 2002** except where the company commences work on a project where a site agreement to which the union is a party exists that provides for higher rates of pay and conditions.

2. The conditions contained in any such site agreement will take precedence over this agreement for the duration of the project.

12.—FARES AND TRAVELLING ALLOWANCE

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.

13.—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 Company 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 16—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.

14.—ALL IN PAYMENTS

1. All-in payments to employees will not be made. All-in payments are defined as an hourly rate or piece work rate which is meant to cover wages and all allowances, such as annual leave, sick leave, etc., on which tax is being paid using the Prescribed Payments System.

2. It is agreed that where a breach of this clause is discovered, the employer shall continue paying the "all-in" rate as the employees hourly rate, but shall pay all award and other entitlements on top of this amount, back-dated to the commencement of the all-in rate arrangement. The company shall not be entitled to offset any amount in excess of the ordinary hourly rate against any other entitlement in this agreement.

3. This clause shall not be applied to prevent the employer subletting specialised work outside of the normal scope of work which the employer performs. The union shall be notified when specialist sub-contractors are to be engaged.

15.—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.

16.—DISPUTE SETTLEMENT PROCEDURE

1. Disputes over any work related or industrial matter should be dealt with as close to its source as possible.

2. An employee or the union delegate should initially submit any work related grievance and/or industrial matter to the site foreperson, supervisor or other appropriate site representative of the company.

3. If the matter remains unresolved the union delegate may then submit the matter to the appropriate senior management person.

4. If still not resolved the delegate shall refer the matter to an appropriate official of the union, who shall discuss the matter with the nominated representative of the employer.

5. Whilst the above procedures are being followed work should continue as normal.

6. This procedure is to be followed in good faith and without unreasonable delay by any party.

7. Should the matter remain unresolved it shall be dealt with in one of the following ways as agreed to between the parties—

- referred to the Western Australian Industrial Relations Commission for conciliation and if required arbitration. The Commissions decision will be accepted by all parties subject to legal rights of appeal; or
- referred to a disputes board for determination; or
- referred to a private arbitrator agreed to between the parties, for determination.

8. This dispute settlement procedure does not apply to health and safety issues.

17.—SAFETY DISPUTE RESOLUTION

1. The parties to this agreement are committed to the safe operation of plant and equipment, to the observance of safe working practices, and the provision by the employer and correct use of all personal protective equipment. The company recognises its responsibilities to provide a safe and healthy workplace.

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 safety officer or workers' safety representative to be dealt with in accordance with the following procedures—

(i) Where any employee becomes aware of an unsafe situation, that employee will immediately notify the company safety officer or the workers' safety representative.

(ii) The company safety officer and the workers' safety representative will take immediate action to have the unsafe situation rectified.

(iii) Should the company safety officer consider that no safety precautions are necessary, he/she will notify the workers' safety representative accordingly as soon as possible.

(iv) While there is disagreement on the ruling of the company safety officer, the company safety officer will arrange for the immediate transfer of all employees from the disputed area.

(v) Should the company safety officer be of the opinion that no action is necessary and the worker's safety representative disagrees, an appropriate inspector from Worksafe/Workcover will be requested to undertake an inspection of the disputed area for the purpose of resolving any such matter.

(vi) If disagreement still exists the chief inspector or his/her nominee will be called in to assist in the resolution of the dispute.

(vii) If no agreement can be reached between the parties the matter will be dealt with in accordance with the dispute resolution procedure of this agreement.

(viii) 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.

(ix) 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.

18.—AMENITIES

1. The parties agree that it is the responsibility of the company to ensure that the amenities prescribed by the Award are provided as a minimum. Where, however, that standard is not maintained due to an action or event beyond the control of the company, the union agrees that the company should be allowed reasonable time in which to rectify the problem. If the company acts promptly to rectify the problem, there should be no interruption to work from industrial stoppages, bans and limitations.

2. In all instances, the following procedure shall be observed—

3. A uniformly high standard of amenities and facilities such as ablution blocks, change rooms, crib sheds, etc. shall be provided.

4. All Sheds shall be weatherproof and soundly constructed to an approved standard with sufficient windows and doors, adequate ventilation and lighting. They must have a floor above ground level and be lined on ceilings and walls.

5. Mess Shed/s fitted with fly screens are provided for exclusive use of workers and not for the storage of employers' equipment, tools and materials.

6. Shed/s shall provide not less that 0.75 square metres of floor space per person employed at any one time, provided that the area be not less than 4.65 square metres. Fixtures, other than tables and chairs, shall not be included when calculating floor space.

7. Where 5 or more persons are employed at one time, the floor area shall not be less than 9 square metres.

8. Adequate facilities are to be provided for warmth and for drying clothes eg. strip heaters.

9. Provided that 20 or more persons are employed on the site at any one time, the employer shall provide a separate shed or sheds for messing, which shall be of such dimension as to provide not less than 0.75 square metres of floor space per person.

10. Where less than 20 persons are employed on site, Regulation 3.20—Workplace Facilities of the Occupational Safety and Health Regulations 1996 shall apply to provisions of messing and changing facilities.

11. In the changing facilities, separate clothes-hanging facilities for each person employed are to be provided (coat hooks only to be used).

12. In the changing facilities, sufficient seating accommodation for the changing of work apparel is to be provided.

13. In the messing facilities, sufficient tables with fixed washable laminated or vinyl surface, and seating for the taking of meals, are to be provided.

14. Food warming facilities to be supplied, together with a supply of cool, clean water conveniently accessible, as well as boiling water at meal/rest breaks.

15. Receptacle for garbage with bin liner and rat and fly proof is to be supplied in mess area, and emptied regularly.

16. A washable vinyl floor surface in all facilities is to be provided.

17. Shelving is to be supplied in the mess shed for storage (cups, lunch bags, etc).

18. All facilities are to be cleaned and disinfected on a regular basis.

19. All mess sheds shall be supplied with reverse cycle air-conditioning.

20. Toilet blocks shall be soundly constructed and roofed with weatherproof material. The floor of each toilet shall be well-drained and constructed of concrete, bricks and cement, or other approved materials which shall be impervious to water. Every toilet shall be well lighted by natural or artificial light and shall be ventilated. Each toilet shall have a hinged door, capable of being fastened on the inside, lift seats/flaps and toilet paper.

21. Where practicable, toilets to be connected to sewerage before commencement of the job.

22. Toilet/urinal location to be conveniently accessible to employees, but not so close as to cause a nuisance to those persons.

23. Where necessary, portable water seal toilets of an approved standard are to be provided and regularly serviced.

24. Conveniently accessible toilets and urinals are to be distributed every 5th floor on multi-storey constructions.

25. Toilets and urinals are to be washed daily with disinfectant and kept in clean, hygienic condition.

26. Adequate washing facilities, suitably drained, and was basins/troughs are to be supplied with running water.

27. Soap and towels are to be supplied.

28. The following toilet/urinal ratio shall be applied in respect to all employees—

Employees	Toilets	Urinals
1-5	1	Nil
6-10	1	1
11-20	2	2
21-35	3	4
36-50	4	6
51-75	5	7
76-100	6	8

NB. For each additional 20 persons or part thereof up to 200 persons or part thereof up to 200 persons, one additional urinal and one additional toilet is required. For each additional 35 persons or part thereof in excess of 200 persons, one additional urinal and one additional toilet is required. If a slab urinal is provided, each 600mm shall be regarded as one urinal.

19.—TRAINING AND RELATED MATTERS

1. A training allowance of $13.00 per week per worker shall be paid by the employer to the Union Education and Training Fund. This shall increase to $14.00 per week on 1 November 2000 and a further increase to $15.00 per week on 1 November 2001.

2. Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calender year pro-rata to attend courses conducted or approved by the NBCITC. The employers approval shall not be unreasonably withheld.

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

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

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

20.—DRUG & ALCOHOL, SAFETY & 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.

21.—CLOTHING AND SAFETY 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, to 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.

22.—INCOME PROTECTION

The Company agrees to insure employees covered by this Agreement for injury and sickness. The scheme is to be negotiated between the parties

23.—ACCIDENT PAY

1. The Company agrees to pay each employee accident pay where the employee receives an injury for which weekly payments or compensation are payable by or on behalf of the Company pursuant to the provisions of the Workers' Compensation and Rehabilitation Act 1981, as amended.

2. "Accident Pay" means a weekly payment of an amount being the difference between the weekly amount of compensation paid to the employee pursuant to the Workers Compensation and Rehabilitation Act and the employee's ordinary wage under this Agreement.

3. The Company shall pay accident pay during the incapacity of the employee arising from any one injury for a total of 39 weeks whether the incapacity is in one continuous period or not.

24.—UNION MEMBERSHIP

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

25.—Y2K

On the following key dates the Company will issue written records of accrued entitlements to each employee. The accrued entitlements will include annual leave, sick leave, any accruing productivity bonuses, redundancy payments and Superannuation payments and also on each employees anniversary date—

- 31 December 1999
- 28 February 2000
- 31 December 2000
- 28 February 2001

26.—SIGNATORIES

BLPPU .....
Date: / /

CMETU .....
Date: / /

The Company: .....
Signature

Company Seal .....
Print Name

APPENDIX A—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

1. PRINCIPLE

People dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

2. FOCUS

- Site safety and the involvement of the site safety committee
- Peer intervention and support
- Rehabilitation

3. WORKPLACE POLICY

a) A person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.

b) The decision on a persons ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/employer representatives.

c) There will be no payment of lost time to a person unable to work in a safe manner.

d) If this happens 3 times the worker shall be given a written warning and made aware of the availability of treatment/counselling. If the worker refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.

e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.

f) A worker having problems with alcohol and or other drugs—

- Will not be sacked if he/she is willing to get help.
- Must undertake and continue with the recommended treatment to maintain the protection of this program.
- Will be entitled to sick leave or leave without pay while attending treatment.

4. IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will—

a) Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.

b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Program to address a meeting of employees to discuss and endorse the program.

c) Authorise the attendance of appropriate company personnel eg. Safety delegate/officer, safety committee members, union delegate, consultative committee members(s) at the two hour BTG Drug and Safety in the Workplace training course.

APPENDIX B—SITE ALLOWANCE

1. This agreement is between the parties referred to in Schedule A and shall apply to construction work undertaken by principal contractors who are members of CCA and 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 relevant building construction awards as nominated in schedule 'B' as well as any industrial or certified agreements made in conjunction with those awards which do 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 $2.17 m	$1.95
Above	$2.17m to $4.55m	$2.30
Over	$4.55m	$2.90

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17 m	$1.75
Above	$2.17m to $4.55m	$1.95
Over	$4.55m	$2.50

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 $2.17 m	$1.75
Above	$2.17m to $4.55m	$1.95
Over	$4.55m	$2.50

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17 m	$1.65
Above	$2.17m to $4.55m	$1.85
Over	$4.55m	$2.10

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

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

Project Contractual Value		Site Allowance
Up to	$1 m	NIL
Above	$1 m to $2.17 m	$1.35
Above	$2.17m to 6m	$1.65
Above	$6m to $11.98m	$1.90
Above	$11.98m to $24.43m	$2.10
Above	$24.43m to $60.5m	$2.40
Over	$60.5m	$2.60

"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. (Refer attached Map 1).

"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. (Refer attached Map 2).

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

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

5. The site/project allowance and project contractual value detailed in this agreement shall be adjusted on 1 January each year by the total C.P.I. movements for Perth during the preceding four quarters ending 30 September and accordingly, the site allowance amounts shall be adjusted up or down to the nearest five cents. Provided that where adjustment equates to less than two cents, existing allowance levels shall be maintained.

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 September. 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 BTA 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 contractor and the building trades group of unions for that project that may include matters regularly addressed within the industry, such as, but not limited to, the following—

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

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

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

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

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

12. It is agreed between the parties that this agreement will operate for a period of 12 months from the date the agreement is signed. However, the agreement will continue to operate beyond this date unless either party gives the other three (3) months written notice of intention to withdraw therefrom.

13. 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.

14. This agreement shall only apply to building contracts entered into on or tendered for on or after 1 January 2000.

15. **Application to Apprentices**

a) The rates prescribed in clause 4 of this agreement shall apply to **all** apprentices commencing employment after 31 December 1998 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%

b) Fares and Travel Allowances—Apprentices shall receive 100% of all fares and travel allowances paid.

16. **Provision of Canteen**

It is agreed that a staffed canteen 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. The Canteen shall come into operation when on site worker levels exceed 50 and to cease when the worker levels reduce to below 50.

17. **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 notwithstanding that forecasts may have been below that level. The nurse shall commence duties when staffing levels reach 50 (fifty) and shall terminate when levels reduce to 50 (fifty). The requirement for the provision of a nurse shall be waived if the project is adjacent to a hospital with a public emergency department.

18. **Apprentice Ratio to Tradespersons**

There shall be at least one apprentice employed on site to every 6 tradespersons employed on site.

CAPRICORN CONC PTY/BLPPU AND THE CMETU COLLECTIVE AGREEMENT 2000.
No. AG 206 of 2000.

2000 WAIRC 00595

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	THE WESTERN AUSTRALIAN BUILDERS' LABOURERS, PAINTERS & PLASTERERS UNION OF WORKERS, CONSTRUCTION, MINING, ENERGY, TIMBERYARDS, SAWMILLS AND WOODWORKERS UNION OF AUSTRALIA—WESTERN AUSTRALIAN BRANCH V CAPRICORN CONCRETE PTY LTD
CORAM	CHIEF COMMISSIONER W S COLEMAN
DELIVERED	MONDAY, 11 SEPTEMBER 2000
FILE NO/S	AG 206/2000

Result	Agreement registered
Representation	
Applicant	Mr P Joyce on behalf of the Unions
Respondent	No appearance

Order.

HAVING heard Mr P Joyce on behalf of the Western Australian Builders' Labourers, Painters and Plasterers Union of Workers & Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia, Western Australian Branch and there being no appearance by the other party to the Agreement, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

1. THAT the Capricorn Conc Pty/BLPPU and the CMETU Collective Agreement 2000 in the terms of the following schedule be registered on the 11th day of September, 2000. This Agreement replaces AG 216 of 1997 entitled 'Capricorn Concrete Industrial Agreement' which is hereby cancelled.

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

1.—TITLE

This agreement shall be known as the Capricorn Conc Pty/BLPPU and the CMETU Collective Agreement 2000.

2.—ARRANGEMENT

	Clause No.
Title	1
Arrangement	2
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Period of Operation	6
Classification Structures & Rates of Pay	7
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3.—PARTIES AND PERSONS BOUND

This agreement shall be binding on Capricorn Concrete Pty Ltd (hereinafter referred to as "the company"), the Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and the Construction Mining Energy Timberyards Sawmills and Woodworkers Union of Australia—WA Branch (hereinafter referred to as "the unions") and all employees of the company eligible to be members of the unions.

4.—APPLICATION

This agreement shall apply to all employees of the company engaged on work in or in connection with construction, alteration, maintenance, repair or demolition of buildings or other structures of any kind whatsoever where the principal contract as a contract value of more than $200,000.00.

This agreement shall apply in Western Australia only. There are approximately 15 employees covered by this agreement.

5.—RELATIONSHIP TO PARENT AWARD

1. This agreement is supplementary to, and shall be read and interpreted wholly in conjunction with, the Building Trades (Construction) Award 1987, Award No. R14 of 1978 (hereinafter referred to as "the award").

2. In the event of any inconsistency between the award and an express provision of this agreement, the terms of this agreement shall prevail to the extent of such inconsistency, unless the express provision of the agreement provides otherwise.

6.—PERIOD OF OPERATION

This agreement shall come into force from the first pay period commencing on or after November 1st 1999 and shall remain in force until the 1st of November, 2002.

7.—CLASSIFICATION STRUCTURE & RATES OF PAY

1. All employees working under this agreement shall be paid according to the wage rates set out below.

2. Wage Rates (per hour at ordinary time)

	Previous EBA Rate	1st November 1999	1st November 2000	1st November 2001
	Hourly Rate $	Hourly Rate $	Hourly Rate $	Hourly Rate $
Labourer Group 1	17.15	18.01	18.91	19.86
Labourer Group 2	16.56	17.39	18.26	19.17
Labourer Group 3	16.12	16.93	17.78	18.67
Plaster, Fixer	17.82	18.71	19.65	20.63
Painter, Glazier	17.42	18.29	19.20	20.16
Signwriter	17.80	18.69	19.62	20.63
Carpenter/Roofer	17.93	18.85	19.79	20.78
Bricklayer	17.75	18.63	19.61	20.59
Refractory Bricklayer	20.38	21.40	22.47	25.59
Stonemason	17.93	18.82	19.76	20.75
Rooftiler	17.62	18.50	19.43	20.40
Marker/Setter Out	18.46	19.38	20.35	21.37
Special Class T	18.69	19.62	20.61	21.64

APPRENTICE RATES

	Previous EBA Rate	1st November 1999	1st November 2000	1st November 2001
	Hourly Rate $	Hourly Rate $	Hourly Rate $	Hourly Rate $
Plasterer, Fixer				
Year 1	7.48	7.86	8.25	8.66
Year 2 (1/3)	9.81	10.29	10.81	11.35
Year 3 (2/3)	13.37	14.03	14.74	15.47
Year 4 (3/3)	15.69	16.46	17.29	18.15
Painter. Glazier				
Year 1 (.5/3/5)	7.32	7.68	8.06	8.47
Year 2 (1/3), (1.5/3.5)	9.58	10.06	10.56	11.09
Year 3 (2/3), (2.5/3.5)	13.06	13.72	14.40	15.12
Year 4 (3/3), (3.5/3.5)	15.33	16.10	16.90	17.74

	Previous EBA Rate Hourly Rate $	1st November 1999 Hourly Rate $	1st November 2000 Hourly Rate $	1st November 2001 Hourly Rate $
Signwriter				
Year 1 (.5/3.5)	7.48	7.85	8.24	8.66
Year 2 (1/3, 1.5/3.5)	9.78	10.28	10.79	11.35
Year 3 (2/3. 2.5/3.5)	13.35	14.02	14.72	15.47
Year 4 (3/3, 3/5/3.5)	15.66	16.45	17.27	18.15
Carpenter/Roofer				
Year 1	7.54	7.92	8.31	8.73
Year 2 (1/3)	9.86	10.37	10.88	11.43
Year 3 (2/3)	13.45	14.14	14.84	15.59
Year 4 (3/3)	15.78	16.59	17.42	18.29
Bricklayer				
Year 1	7.46	7.82	8.24	8.65
Year 2 (1/3)	9.76	10.25	10.79	11.32
Year 3 (2/3)	13.31	13.97	14.71	15.44
Year 4 (3/3)	15.62	16.39	17.26	18.12
Stonemason				
Year 1	7.54	7.92	8.31	8.73
Year 2 (1/3)	9.86	10.37	10.88	11.43
Year 3 (2/3)	13.45	14.14	14.84	15.59
Year 4 (3/3)	15.78	16.59	17.42	18.29
Rooftiler				
6 months	10.04	10.54	11.07	11.62
2nd 6 months	11.04	11.59	12.17	12.78
Year 2	12.90	13.55	14.23	14.94
Year 3	15.14	15.90	16.70	17.54

3. All expense related allowances not specifically mentioned in this agreement will be paid as per the award as varied from time to time.

4. Site allowances relating to particular sites shall be paid in accordance with Appendix B of this Agreement.

5. An additional payment will be made to compensate for the impact of the Goods and Services Tax on the Consumer Price Index. In the circumstance that the CPI limit below is exceeded the appropriate additional payment will be made to the wage rates. The CPI figure for the applicable dates will be the official figure released by the ABS for the preceding year.

Date	CPI Limit	Additional Payment
June 2001	5%	1% (paid 1/9/2001)
June 2001	6%	2% (paid 1/9/2001)
June 2002	5%	1% (paid 1/9/2002)
June 2002	6%	2% (paid 1/9/2002)

8.—INDUSTRY STANDARDS

Redundancy

The company shall increase redundancy contributions on behalf of each employee to the following sums on a weekly basis—

Rate on signing	$50
Rate as of 1/05/2001	$60

Superannuation

(i) The Company will make a payment of $75 per week per employee or the percentage rate that is prescribed under the Superannuation Guarantee Charge, whichever is the greater. On 1st July 2002 the Company will make a payment of $90 per week per employee.

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

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

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

In the event that the employee and the Company reach an agreement pursuant to section 49C(2)(d) of the Act to change the complying superannuation fund or scheme the Company will, within seven days of the employee and the Company reaching such an agreement, advise the Union in writing of the agreement. The employer 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.

9.—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.

(c) Where the Company has signed a previous Agreement with the Union that also allowed for the conversion to cash payment on termination for accrued sick leave, that accrued sick leave will be treated as if is accrued under this agreement.

(d) Sick leave shall accrue, for the purposes of this clause, at the rate of one day at the beginning of each of the first ten calendar months of each year.

(e) Employees shall have the option of converting to a cash payment all sick leave entitlements over 5 days. Payment shall be made on the last pay period prior to the Christmas closedown.

10.—NEGOTIATION OF A SUBSEQUENT AGREEMENT

The parties agree to commence negotiations for a new collective agreement to succeed this agreement at least 3 months before the nominal expiry date. The parties intend to conclude these negotiations prior to the nominal expiry date. These negotiations shall be conducted on a collective basis between all of the parties with the negotiated outcome being subject to approval of a vote of the employees collectively.

11.—APPLICATION OF PROJECT AGREEMENTS

1. This agreement shall apply to all persons employed in the employer's business and every part thereof throughout Western Australia until **1st November 2002** except where the company commences work on a project where a site agreement to which the union is a party exists that provides for higher rates of pay and conditions.

2. The conditions contained in any such site agreement will take precedence over this agreement for the duration of the project.

12.—FARES AND TRAVELLING ALLOWANCE

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.

13.—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 Company 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 16—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.

14.—ALL IN PAYMENTS

1. All-in payments to employees will not be made. All-in payments are defined as an hourly rate or piece work rate which is meant to cover wages and all allowances, such as annual leave, sick leave, etc., on which tax is being paid using the Prescribed Payments System.

2. It is agreed that where a breach of this clause is discovered, the employer shall continue paying the "all-in" rate as the employees hourly rate, but shall pay all award and other entitlements on top of this amount, back-dated to the commencement of the all-in rate arrangement. The company shall not be entitled to offset any amount in excess of the ordinary hourly rate against any other entitlement in this agreement.

3. This clause shall not be applied to prevent the employer subletting specialised work outside of the normal scope of work which the employer performs. The union shall be notified when specialist sub-contractors are to be engaged.

15.—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.

16.—DISPUTE SETTLEMENT PROCEDURE

1. Disputes over any work related or industrial matter should be dealt with as close to its source as possible.

2. An employee or the union delegate should initially submit any work related grievance and/or industrial matter to the site foreperson, supervisor or other appropriate site representative of the company.

3. If the matter remains unresolved the union delegate may then submit the matter to the appropriate senior management person.

4. If still not resolved the delegate shall refer the matter to an appropriate official of the union, who shall discuss the matter with the nominated representative of the employer.

5. Whilst the above procedures are being followed work should continue as normal.

6. This procedure is to be followed in good faith and without unreasonable delay by any party.

7. Should the matter remain unresolved it shall be dealt with in one of the following ways as agreed to between the parties—

- referred to the Western Australian Industrial Relations Commission for conciliation and if required arbitration. The Commissions decision will be accepted by all parties subject to legal rights of appeal; or
- referred to a disputes board for determination; or
- referred to a private arbitrator agreed to between the parties, for determination.

8. This dispute settlement procedure does not apply to health and safety issues.

17.—SAFETY DISPUTE RESOLUTION

1. The parties to this agreement are committed to the safe operation of plant and equipment, to the observance of safe working practices, and the provision by the employer and correct use of all personal protective equipment. The company recognises its responsibilities to provide a safe and healthy workplace.

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 safety officer or workers' safety representative to be dealt with in accordance with the following procedures—

(i) Where any employee becomes aware of an unsafe situation, that employee will immediately notify the company safety officer or the workers' safety representative.

(ii) The company safety officer and the workers' safety representative will take immediate action to have the unsafe situation rectified.

(iii) Should the company safety officer consider that no safety precautions are necessary, he/she will notify the workers' safety representative accordingly as soon as possible.

(iv) While there is disagreement on the ruling of the company safety officer, the company safety officer will arrange for the immediate transfer of all employees from the disputed area.

(v) Should the company safety officer be of the opinion that no action is necessary and the worker's safety representative disagrees, an appropriate inspector from Worksafe/Workcover will be requested to undertake an inspection of the disputed area for the purpose of resolving any such matter.

(vi) If disagreement still exists the chief inspector or his/her nominee will be called in to assist in the resolution of the dispute.

(vii) If no agreement can be reached between the parties the matter will be dealt with in accordance with the dispute resolution procedure of this agreement.

(viii) 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.

(ix) 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.

18.—AMENITIES

1. The parties agree that it is the responsibility of the company to ensure that the amenities prescribed by the Award are provided as a minimum. Where, however, that standard is not maintained due to an action or event beyond the control of the company, the union agrees that the company should be allowed reasonable time in which to rectify the problem. If the company acts promptly to rectify the problem, there should be no interruption to work from industrial stoppages, bans and limitations.

2. In all instances, the following procedure shall be observed—

3. A uniformly high standard of amenities and facilities such as ablution blocks, change rooms, crib sheds, etc. shall be provided.

4. All Sheds shall be weatherproof and soundly constructed to an approved standard with sufficient windows and doors, adequate ventilation and lighting. They must have a floor above ground level and be lined on ceilings and walls.

5. Mess Shed/s fitted with fly screens are provided for exclusive use of workers and not for the storage of employers' equipment, tools and materials.

6. Shed/s shall provide not less that 0.75 square metres of floor space per person employed at any one time, provided that the area be not less than 4.65 square metres. Fixtures, other than tables and chairs, shall not be included when calculating floor space.

7. Where 5 or more persons are employed at one time, the floor area shall not be less than 9 square metres.

8. Adequate facilities are to be provided for warmth and for drying clothes eg. strip heaters.

9. Provided that 20 or more persons are employed on the site at any one time, the employer shall provide a separate shed or sheds for messing, which shall be of such dimension as to provide not less than 0.75 square metres of floor space per person.

10. Where less than 20 persons are employed on site, Regulation 3.20—Workplace Facilities of the Occupational Safety and Health Regulations 1996 shall apply to provisions of messing and changing facilities.

11. In the changing facilities, separate clothes-hanging facilities for each person employed are to be provided (coat hooks only to be used).

12. In the changing facilities, sufficient seating accommodation for the changing of work apparel is to be provided.

13. In the messing facilities, sufficient tables with fixed washable laminated or vinyl surface, and seating for the taking of meals, are to be provided.

14. Food warming facilities to be supplied, together with a supply of cool, clean water conveniently accessible, as well as boiling water at meal/rest breaks.

15. Receptacle for garbage with bin liner and rat and fly proof is to be supplied in mess area, and emptied regularly.

16. A washable vinyl floor surface in all facilities is to be provided.

17. Shelving is to be supplied in the mess shed for storage (cups, lunch bags, etc).

18. All facilities are to be cleaned and disinfected on a regular basis.

19. All mess sheds shall be supplied with reverse cycle air-conditioning.

20. Toilet blocks shall be soundly constructed and roofed with weatherproof material. The floor of each toilet shall be well-drained and constructed of concrete, bricks and cement, or other approved materials which shall be impervious to water. Every toilet shall be well lighted by natural or artificial light and shall be ventilated. Each toilet shall have a hinged door, capable of being fastened on the inside, lift seats/flaps and toilet paper.

21. Where practicable, toilets to be connected to sewerage before commencement of the job.

22. Toilet/urinal location to be conveniently accessible to employees, but not so close as to cause a nuisance to those persons.

23. Where necessary, portable water seal toilets of an approved standard are to be provided and regularly serviced.

24. Conveniently accessible toilets and urinals are to be distributed every 5th floor on multi-storey constructions.

25. Toilets and urinals are to be washed daily with disinfectant and kept in clean, hygienic condition.

26. Adequate washing facilities, suitably drained, and was basins/troughs are to be supplied with running water.

27. Soap and towels are to be supplied.

28. The following toilet/urinal ratio shall be applied in respect to all employees—

Employees	Toilets	Urinals
1-5	1	Nil
6-10	1	1
11-20	2	2
21-35	3	4
36-50	4	6
51-75	5	7
76-100	6	8

NB. For each additional 20 persons or part thereof up to 200 persons or part thereof up to 200 persons, one additional urinal and one additional toilet is required. For each additional 35 persons or part thereof in excess of 200 persons, one additional urinal and one additional toilet is required. If a slab urinal is provided, each 600mm shall be regarded as one urinal.

19.—TRAINING AND RELATED MATTERS

1. A training allowance of $13.00 per week per worker shall be paid by the employer to the Union Education and Training Fund. This shall increase to $14.00 per week on 1 November 2000 and a further increase to $15.00 per week on 1 November 2001.

2. Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calender year pro-rata to attend courses conducted or approved by the NBCITC. The employers approval shall not be unreasonably withheld.

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

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

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

20.—DRUG & ALCOHOL, SAFETY & 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.

21.—CLOTHING AND SAFETY 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, to 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.

22.—INCOME PROTECTION

The Company agrees to insure employees covered by this Agreement for injury and sickness. The scheme is to be negotiated between the parties

23.—ACCIDENT PAY

1. The Company agrees to pay each employee accident pay where the employee receives an injury for which weekly payments or compensation are payable by or on behalf of the Company pursuant to the provisions of the Workers' Compensation and Rehabilitation Act 1981, as amended.

2. "Accident Pay" means a weekly payment of an amount being the difference between the weekly amount of compensation paid to the employee pursuant to the Workers Compensation and Rehabilitation Act and the employee's ordinary wage under this Agreement.

3. The Company shall pay accident pay during the incapacity of the employee arising from any one injury for a total of 39 weeks whether the incapacity is in one continuous period or not.

24.—UNION MEMBERSHIP

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

25.—Y2K

On the following key dates the Company will issue written records of accrued entitlements to each employee. The accrued entitlements will include annual leave, sick leave, any accruing productivity bonuses, redundancy payments and Superannuation payments and also on each employees anniversary date—

- 31 December 1999
- 28 February 2000
- 31 December 2000
- 28 February 2001

26.—SIGNATORIES

BLPPU .....
Date: 24/8/00

CMETU .....
Date: 25/8/00

The Company: .....
Signature
Date: 23/8/00

Company Seal .....
Print Name

APPENDIX A—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

1. PRINCIPLE

People dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

2. FOCUS

- Site safety and the involvement of the site safety committee
- Peer intervention and support
- Rehabilitation

3. WORKPLACE POLICY

a) A person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.

b) The decision on a persons ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/employer representatives.

c) There will be no payment of lost time to a person unable to work in a safe manner.

d) If this happens 3 times the worker shall be given a written warning and made aware of the availability of treatment/counselling. If the worker refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.

e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.

f) A worker having problems with alcohol and or other drugs—

- Will not be sacked if he/she is willing to get help.
- Must undertake and continue with the recommended treatment to maintain the protection of this program.
- Will be entitled to sick leave or leave without pay while attending treatment.

4. IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will—

a) Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.

b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Program to address a meeting of employees to discuss and endorse the program.

c) Authorise the attendance of appropriate company personnel eg. Safety delegate/officer, safety committee members, union delegate, consultative committee members(s) at the two hour BTG Drug and Safety in the Workplace training course.

APPENDIX B—SITE ALLOWANCE

1. This agreement is between the parties referred to in Schedule A and shall apply to construction work undertaken by principal contractors who are members of CCA and 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 relevant building construction awards as nominated in schedule 'B' as well as any industrial or certified agreements made in conjunction with those awards which do 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 $2.17 m	$1.95
Above	$2.17m to $4.55m	$2.30
Over	$4.55m	$2.90

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17 m	$1.75
Above	$2.17m to $4.55m	$1.95
Over	$4.55m	$2.50

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 $2.17 m	$1.75
Above	$2.17m to $4.55m	$1.95
Over	$4.55m	$2.50

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17 m	$1.65
Above	$2.17m to $4.55m	$1.85
Over	$4.55m	$2.10

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

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

Project Contractual Value		Site Allowance
Up to	$1 m	NIL
Above	$1 m to $2.17 m	$1.35
Above	$2.17m to 6m	$1.65

Project Contractual Value		Site Allowance
Above	$6m to $11.98m	$1.90
Above	$11.98m to $24.43m	$2.10
Above	$24.43m to $60.5m	$2.40
Over	$60.5m	$2.60

"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. (Refer attached Map 1).

"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. (Refer attached Map 2).

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

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

5. The site/project allowance and project contractual value detailed in this agreement shall be adjusted on 1 January each year by the total C.P.I. movements for Perth during the preceding four quarters ending 30 September and accordingly, the site allowance amounts shall be adjusted up or down to the nearest five cents. Provided that where adjustment equates to less than two cents, existing allowance levels shall be maintained.

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 September. 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 BTA 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 contractor and the building trades group of unions for that project that may include matters regularly addressed within the industry, such as, but not limited to, the following—

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

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

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

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

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

12. It is agreed between the parties that this agreement will operate for a period of 12 months from the date the agreement is signed. However, the agreement will continue to operate beyond this date unless either party gives the other three (3) months written notice of intention to withdraw therefrom.

13. 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.

14. This agreement shall only apply to building contracts entered into on or tendered for on or after 1 January 2000.

15. **Application to Apprentices**

a) The rates prescribed in clause 4 of this agreement shall apply to **all** apprentices commencing employment after 31 December 1998 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%

b) Fares and Travel Allowances—Apprentices shall receive 100% of all fares and travel allowances paid.

16. **Provision of Canteen**

It is agreed that a staffed canteen 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. The Canteen shall come into operation when on site worker levels exceed 50 and to cease when the worker levels reduce to below 50.

17. **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 notwithstanding that forecasts may have been below that level. The nurse shall commence duties when staffing levels reach 50 (fifty) and shall terminate when levels reduce to 50 (fifty). The requirement for the provision of a nurse shall be waived if the project is adjacent to a hospital with a public emergency department.

18. **Apprentice Ratio to Tradespersons**

There shall be at least one apprentice employed on site to every 6 tradespersons employed on site.

CHARACTER ROOFING/BLPPU AND THE CMETU COLLECTIVE AGREEMENT 2000.
No. AG 212 of 2000.

2000 WAIRC 00612

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	THE WESTERN AUSTRALIAN BUILDERS' LABOURERS, PAINTERS & PLASTERERS UNION OF WORKERS, CONSTRUCTION, MINING, ENERGY, TIMBERYARDS, SAWMILLS AND WOODWORKERS UNION OF AUSTRALIA—WESTERN AUSTRALIAN BRANCH V REBOUND ENTERPRISES PTY LTD TRADIND AS CHARACTER ROOFING
CORAM	CHIEF COMMISSIONER W S COLEMAN
DELIVERED	MONDAY, 11 SEPTEMBER 2000
FILE NO.	AG 212/2000

Result	Agreement registered
Representation	
Applicant	Mr P Joyce on behalf of the Unions
Respondent	No appearance

Order.

HAVING heard Mr P Joyce on behalf of The Western Australian Builders' Labourers, Painters & Plasterers Union

of Workers and Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia, Western Australian branch and there being no appearance by the other party to the Agreement, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Character Roofing/BLPPU and the CMETU Collective Agreement 2000 in the terms of the following schedule be registered on the 11th day of September, 2000.

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

1.—TITLE

This agreement shall be known as the Character Roofing/ BLPPU and the CMETU Collective Agreement 2000.

2.—ARRANGEMENT

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3.—PARTIES AND PERSONS BOUND

This agreement shall be binding on Rebound Enterprises Pty Ltd trading as Character Roofing (hereinafter referred to as "the company"), the Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and the Construction Mining Energy Timberyards Sawmills and Woodworkers Union of Australia—WA Branch (hereinafter referred to as "the unions") and all employees of the company eligible to be members of the unions.

4.—APPLICATION

This agreement shall apply to all employees of the company engaged on work with a minimum contract value of $190,000 or where the Principal Contractor has a current Industrial Agreement with the BLPPU or CMETU.

This agreement shall apply in Western Australia only. There are approximately 12 employees covered by this agreement.

5.—RELATIONSHIP TO PARENT AWARD

1. This agreement is supplementary to, and shall be read and interpreted wholly in conjunction with, the Building Trades (Construction) Award 1987, Award No. R14 of 1978 (hereinafter referred to as "the award").

2. In the event of any inconsistency between the award and an express provision of this agreement, the terms of this agreement shall prevail to the extent of such inconsistency, unless the express provision of the agreement provides otherwise.

6.—PERIOD OF OPERATION

This agreement shall come into force from the first pay period commencing on or after November 1st 1999 and shall remain in force until the 1st of November, 2002.

7.—CLASSIFICATION STRUCTURE & RATES OF PAY

1. All employees working under this agreement shall be paid according to the wage rates set out below.

2. Wage Rates (per hour at ordinary time)

	Previous EBA Rate Hourly Rate $	1st November 1999 Hourly Rate $	1st November 2000 Hourly Rate $	1st November 2001 Hourly Rate $
Labourer Group 1	17.15	18.01	18.91	19.86
Labourer Group 2	16.56	17.39	18.26	19.17
Labourer Group 3	16.12	16.93	17.78	18.67
Plaster, Fixer	17.82	18.71	19.65	20.63
Painter, Glazier	17.42	18.29	19.20	20.16
Signwriter	17.80	18.69	19.62	20.63
Carpenter/Roofer	17.93	18.85	19.79	20.78
Bricklayer	17.75	18.63	19.61	20.59
Refractory Bricklayer	20.38	21.40	22.47	25.59
Stonemason	17.93	18.82	19.76	20.75
Rooftiler	17.62	18.50	19.43	20.40
Marker/Setter Out	18.46	19.38	20.35	21.37
Special Class T	18.69	19.62	20.61	21.64

APPRENTICE RATES

	Previous EBA Rate Hourly Rate $	1st November 1999 Hourly Rate $	1st November 2000 Hourly Rate $	1st November 2001 Hourly Rate $
Plasterer, Fixer				
Year 1	7.48	7.86	8.25	8.66
Year 2 (1/3)	9.81	10.29	10.81	11.35
Year 3 (2/3)	13.37	14.03	14.74	15.47
Year 4 (3/3)	15.69	16.46	17.29	18.15
Painter. Glazier				
Year 1 (.5/3/5)	7.32	7.68	8.06	8.47
Year 2 (1/3), (1.5/3.5)	9.58	10.06	10.56	11.09
Year 3 (2/3), (2.5/3.5)	13.06	13.72	14.40	15.12
Year 4 (3/3), (3.5/3.5)	15.33	16.10	16.90	17.74
Signwriter				
Year 1 (.5/3.5)	7.48	7.85	8.24	8.66
Year 2 (1/3, 1.5/3.5)	9.78	10.28	10.79	11.35
Year 3 (2/3. 2.5/3.5)	13.35	14.02	14.72	15.47
Year 4 (3/3, 3/5/3.5)	15.66	16.45	17.27	18.15
Carpenter/Roofer				
Year 1	7.54	7.92	8.31	8.73
Year 2 (1/3)	9.86	10.37	10.88	11.43
Year 3 (2/3)	13.45	14.14	14.84	15.59
Year 4 (3/3)	15.78	16.59	17.42	18.29
Bricklayer				
Year 1	7.46	7.82	8.24	8.65
Year 2 (1/3)	9.76	10.25	10.79	11.32
Year 3 (2/3)	13.31	13.97	14.71	15.44
Year 4 (3/3)	15.62	16.39	17.26	18.12
Stonemason				
Year 1	7.54	7.92	8.31	8.73
Year 2 (1/3)	9.86	10.37	10.88	11.43
Year 3 (2/3)	13.45	14.14	14.84	15.59
Year 4 (3/3)	15.78	16.59	17.42	18.29
Rooftiler				
6 months	10.04	10.54	11.07	11.62
2nd 6 months	11.04	11.59	12.17	12.78
Year 2	12.90	13.55	14.23	14.94
Year 3	15.14	15.90	16.70	17.54

3. All expense related allowances not specifically mentioned in this agreement will be paid as per the award as varied from time to time.

4. Site allowances relating to particular sites shall be paid in accordance with Appendix B of this Agreement.

5. An additional payment will be made to compensate for the impact of the Goods and Services Tax on the Consumer Price Index. In the circumstance that the CPI limit below is exceeded the appropriate additional payment will be made to the wage rates. The CPI figure for the applicable dates will be the official figure released by the ABS for the preceding year.

Date	CPI Limit	Additional Payment
June 2001	5%	1% (paid 1/9/2001)
June 2001	6%	2% (paid 1/9/2001)
June 2002	5%	1% (paid 1/9/2002)
June 2002	6%	2% (paid 1/9/2002)

8.—INDUSTRY STANDARDS

Redundancy

The company shall increase redundancy contributions on behalf of each employee to the following sums on a weekly basis—

Rate on signing	$50
Rate as of 1/05/2001	$60

Superannuation

(i) The Company will make a payment of $75 per week per employee or the percentage rate that is prescribed under the Superannuation Guarantee Charge, whichever is the greater. On 1st July 2002 the Company will make a payment of $90 per week per employee.

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

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

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

In the event that the employee and the Company reach an agreement pursuant to section 49C(2)(d) of the Act to change the complying superannuation fund or scheme the Company will, within seven days of the employee and the Company reaching such an agreement, advise the Union in writing of the agreement. The employer 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.

9.—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.

(c) Where the Company has signed a previous Agreement with the Union that also allowed for the conversion to cash payment on termination for accrued sick leave, that accrued sick leave will be treated as if is accrued under this agreement.

(d) Sick leave shall accrue, for the purposes of this clause, at the rate of one day at the beginning of each of the first ten calendar months of each year.

(e) Employees shall have the option of converting to a cash payment all sick leave entitlements over 5 days. Payment shall be made on the last pay period prior to the Christmas closedown.

10.—NEGOTIATION OF A SUBSEQUENT AGREEMENT

The parties agree to commence negotiations for a new collective agreement to succeed this agreement at least 3 months before the nominal expiry date. The parties intend to conclude these negotiations prior to the nominal expiry date. These negotiations shall be conducted on a collective basis between all of the parties with the negotiated outcome being subject to approval of a vote of the employees collectively.

11.—APPLICATION OF PROJECT AGREEMENTS

1. This agreement shall apply to all persons employed in the employer's business and every part thereof throughout Western Australia until **1st November 2002** except where the company commences work on a project where a site agreement to which the union is a party exists that provides for higher rates of pay and conditions.

2. The conditions contained in any such site agreement will take precedence over this agreement for the duration of the project.

12.—FARES AND TRAVELLING ALLOWANCE

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.

13.—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 Company 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 16—Dispute Settlement Procedure.

4. An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—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.

16.—DISPUTE SETTLEMENT PROCEDURE

1. Disputes over any work related or industrial matter should be dealt with as close to its source as possible.

2. An employee or the union delegate should initially submit any work related grievance and/or industrial matter to the site foreperson, supervisor or other appropriate site representative of the company.

3. If the matter remains unresolved the union delegate may then submit the matter to the appropriate senior management person.

4. If still not resolved the delegate shall refer the matter to an appropriate official of the union, who shall discuss the matter with the nominated representative of the employer.

5. Whilst the above procedures are being followed work should continue as normal.

6. This procedure is to be followed in good faith and without unreasonable delay by any party.

7. Should the matter remain unresolved it shall be dealt with in one of the following ways as agreed to between the parties—

- referred to the Western Australian Industrial Relations Commission for conciliation and if required arbitration. The Commissions decision will be accepted by all parties subject to legal rights of appeal; or
- referred to a disputes board for determination; or
- referred to a private arbitrator agreed to between the parties, for determination.

8. This dispute settlement procedure does not apply to health and safety issues.

17.—SAFETY DISPUTE RESOLUTION

1. The parties to this agreement are committed to the safe operation of plant and equipment, to the observance of safe working practices, and the provision by the employer and correct use of all personal protective equipment. The company recognises its responsibilities to provide a safe and healthy workplace.

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 safety officer or workers' safety representative to be dealt with in accordance with the following procedures—

(i) Where any employee becomes aware of an unsafe situation, that employee will immediately notify the company safety officer or the workers' safety representative.

(ii) The company safety officer and the workers' safety representative will take immediate action to have the unsafe situation rectified.

(iii) Should the company safety officer consider that no safety precautions are necessary, he/she will notify the workers' safety representative accordingly as soon as possible.

(iv) While there is disagreement on the ruling of the company safety officer, the company safety officer will arrange for the immediate transfer of all employees from the disputed area.

(v) Should the company safety officer be of the opinion that no action is necessary and the worker's safety representative disagrees, an appropriate inspector from Worksafe/Workcover will be requested to undertake an inspection of the disputed area for the purpose of resolving any such matter.

(vi) If disagreement still exists the chief inspector or his/her nominee will be called in to assist in the resolution of the dispute.

(vii) If no agreement can be reached between the parties the matter will be dealt with in accordance with the dispute resolution procedure of this agreement.

(viii) 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.

(ix) 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.

18.—AMENITIES

1. The parties agree that it is the responsibility of the company to ensure that the amenities prescribed by the Award are provided as a minimum. Where, however, that standard is not maintained due to an action or event beyond the control of the company, the union agrees that the company should be allowed reasonable time in which to rectify the problem. If the company acts promptly to rectify the problem, there should be no interruption to work from industrial stoppages, bans and limitations.

2. In all instances, the following procedure shall be observed—

3. A uniformly high standard of amenities and facilities such as ablution blocks, change rooms, crib sheds, etc. shall be provided.

4. All Sheds shall be weatherproof and soundly constructed to an approved standard with sufficient windows and doors, adequate ventilation and lighting. They must have a floor above ground level and be lined on ceilings and walls.

5. Mess Shed/s fitted with fly screens are provided for exclusive use of workers and not for the storage of employers' equipment, tools and materials.

6. Shed/s shall provide not less that 0.75 square metres of floor space per person employed at any one time, provided that the area be not less than 4.65 square metres. Fixtures, other than tables and chairs, shall not be included when calculating floor space.

7. Where 5 or more persons are employed at one time, the floor area shall not be less than 9 square metres.

8. Adequate facilities are to be provided for warmth and for drying clothes eg. strip heaters.

9. Provided that 20 or more persons are employed on the site at any one time, the employer shall provide a separate shed or sheds for messing, which shall be of such dimension as to provide not less than 0.75 square metres of floor space per person.

10. Where less than 20 persons are employed on site, Regulation 3.20—Workplace Facilities of the Occupational Safety and Health Regulations 1996 shall apply to provisions of messing and changing facilities.

11. In the changing facilities, separate clothes-hanging facilities for each person employed are to be provided (coat hooks only to be used).

12. In the changing facilities, sufficient seating accommodation for the changing of work apparel is to be provided.

13. In the messing facilities, sufficient tables with fixed washable laminated or vinyl surface, and seating for the taking of meals, are to be provided.

14. Food warming facilities to be supplied, together with a supply of cool, clean water conveniently accessible, as well as boiling water at meal/rest breaks.

15. Receptacle for garbage with bin liner and rat and fly proof is to be supplied in mess area, and emptied regularly.

16. A washable vinyl floor surface in all facilities is to be provided.

17. Shelving is to be supplied in the mess shed for storage (cups, lunch bags, etc).

18. All facilities are to be cleaned and disinfected on a regular basis.

19. All mess sheds shall be supplied with reverse cycle air-conditioning.

20. Toilet blocks shall be soundly constructed and roofed with weatherproof material. The floor of each toilet shall be well-drained and constructed of concrete, bricks and cement, or other approved materials which shall be impervious to water. Every toilet shall be well lighted by natural or artificial light and shall be ventilated. Each toilet shall have a hinged door, capable of being fastened on the inside, lift seats/flaps and toilet paper.

21. Where practicable, toilets to be connected to sewerage before commencement of the job.

22. Toilet/urinal location to be conveniently accessible to employees, but not so close as to cause a nuisance to those persons.

23. Where necessary, portable water seal toilets of an approved standard are to be provided and regularly serviced.

24. Conveniently accessible toilets and urinals are to be distributed every 5th floor on multi-storey constructions.

25. Toilets and urinals are to be washed daily with disinfectant and kept in clean, hygienic condition.

26. Adequate washing facilities, suitably drained, and was basins/troughs are to be supplied with running water.

27. Soap and towels are to be supplied.

28. The following toilet/urinal ratio shall be applied in respect to all employees—

Employees	Toilets	Urinals
1-5	1	Nil
6-10	1	1
11-20	2	2
21-35	3	4
36-50	4	6
51-75	5	7
76-100	6	8

NB. For each additional 20 persons or part thereof up to 200 persons or part thereof up to 200 persons, one additional urinal and one additional toilet is required. For each additional 35 persons or part thereof in excess of 200 persons, one additional urinal and one additional toilet is required. If a slab urinal is provided, each 600mm shall be regarded as one urinal.

19.—TRAINING AND RELATED MATTERS

1. A training allowance of $13.00 per week per worker shall be paid by the employer to the Union Education and Training Fund. This shall increase to $14.00 per week on 1 November 2000 and a further increase to $15.00 per week on 1 November 2001.

2. Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calender year pro-rata to attend courses conducted or approved by the NBCITC. The employers approval shall not be unreasonably withheld.

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

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

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

20.—DRUG & ALCOHOL, SAFETY & 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.

21.—CLOTHING AND SAFETY 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, to 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.

22.—INCOME PROTECTION

The Company agrees to insure employees covered by this Agreement for injury and sickness. The scheme is to be negotiated between the parties

23.—ACCIDENT PAY

1. The Company agrees to pay each employee accident pay where the employee receives an injury for which weekly payments or compensation are payable by or on behalf of the Company pursuant to the provisions of the Workers' Compensation and Rehabilitation Act 1981, as amended.

2. "Accident Pay" means a weekly payment of an amount being the difference between the weekly amount of compensation paid to the employee pursuant to the Workers Compensation and Rehabilitation Act and the employee's ordinary wage under this Agreement.

3. The Company shall pay accident pay during the incapacity of the employee arising from any one injury for a total of 39 weeks whether the incapacity is in one continuous period or not.

24.—UNION MEMBERSHIP

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

25.—Y2K

On the following key dates the Company will issue written records of accrued entitlements to each employee. The accrued entitlements will include annual leave, sick leave, any accruing productivity bonuses, redundancy payments and Superannuation payments and also on each employees anniversary date—

- 31 December 1999
- 28 February 2000
- 31 December 2000
- 28 February 2001

26.—SIGNATORIES

BLPPU .....
Date: / /

CMETU .....
Date: / /

The Company: .....
Signature

Company Seal .....
Print Name

APPENDIX A—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

1. PRINCIPLE

People dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

2. FOCUS

- Site safety and the involvement of the site safety committee
- Peer intervention and support
- Rehabilitation

3. WORKPLACE POLICY

a) A person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.

b) The decision on a persons ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/employer representatives.

c) There will be no payment of lost time to a person unable to work in a safe manner.

d) If this happens 3 times the worker shall be given a written warning and made aware of the availability of treatment/counselling. If the worker refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.

e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.

f) A worker having problems with alcohol and or other drugs—

- Will not be sacked if he/she is willing to get help.
- Must undertake and continue with the recommended treatment to maintain the protection of this program.
- Will be entitled to sick leave or leave without pay while attending treatment.

4. IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will—

a) Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.

b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Program to address a meeting of employees to discuss and endorse the program.

c) Authorise the attendance of appropriate company personnel eg. Safety delegate/officer, safety committee members, union delegate, consultative committee members(s) at the two hour BTG Drug and Safety in the Workplace training course.

APPENDIX B—SITE ALLOWANCE

1. This agreement is between the parties referred to in Schedule A and shall apply to construction work undertaken by principal contractors who are members of CCA and 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 relevant building construction awards as nominated in schedule 'B' as well as any industrial or certified agreements made in conjunction with those awards which do 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 $2.17 m	$1.95
Above	$2.17m to $4.55m	$2.30
Over	$4.55m	$2.90

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17 m	$1.75
Above	$2.17m to $4.55m	$1.95
Over	$4.55m	$2.50

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 $2.17 m	$1.75
Above	$2.17m to $4.55m	$1.95
Over	$4.55m	$2.50

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17 m	$1.65
Above	$2.17m to $4.55m	$1.85
Over	$4.55m	$2.10

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

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

Project Contractual Value		Site Allowance
Up to	$1 m	NIL
Above	$1 m to $2.17 m	$1.35
Above	$2.17m to 6m	$1.65
Above	$6m to $11.98m	$1.90
Above	$11.98m to $24.43m	$2.10
Above	$24.43m to $60.5m	$2.40
Over	$60.5m	$2.60

"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. (Refer attached Map 1).

"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. (Refer attached Map 2).

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

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

5. The site/project allowance and project contractual value detailed in this agreement shall be adjusted on 1 January each year by the total C.P.I. movements for Perth during the preceding four quarters ending 30 September and accordingly, the site allowance amounts shall be adjusted up or down to the nearest five cents. Provided that where adjustment equates to less than two cents, existing allowance levels shall be maintained.

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 September. 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 BTA 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 contractor and the building trades group of unions for that project that

may include matters regularly addressed within the industry, such as, but not limited to, the following—

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

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

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

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

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

12. It is agreed between the parties that this agreement will operate for a period of 12 months from the date the agreement is signed. However, the agreement will continue to operate beyond this date unless either party gives the other three (3) months written notice of intention to withdraw therefrom.

13. 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.

14. This agreement shall only apply to building contracts entered into on or tendered for on or after 1 January 2000.

15. **Application to Apprentices**

a) The rates prescribed in clause 4 of this agreement shall apply to **all** apprentices commencing employment after 31 December 1998 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%

b) Fares and Travel Allowances—Apprentices shall receive 100% of all fares and travel allowances paid.

16. **Provision of Canteen**

It is agreed that a staffed canteen 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. The Canteen shall come into operation when on site worker levels exceed 50 and to cease when the worker levels reduce to below 50.

17. **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 notwithstanding that forecasts may have been below that level. The nurse shall commence duties when staffing levels reach 50 (fifty) and shall terminate when levels reduce to 50 (fifty). The requirement for the provision of a nurse shall be waived if the project is adjacent to a hospital with a public emergency department.

18. **Apprentice Ratio to Tradespersons**

There shall be at least one apprentice employed on site to every 6 tradespersons employed on site.

CROWN ROOFING/BLPPU AND THE CMETU COLLECTIVE AGREEMENT 2000.
No. AG 210 of 2000.

2000 WAIRC 00604

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	THE WESTERN AUSTRALIAN BUILDERS' LABOURERS, PAINTERS & PLASTERERS UNION OF WORKERS, CONSTRUCTION, MINING, ENERGY, TIMBERYARDS, SAWMILLS AND WOODWORKERS UNION OF AUSTRALIA—WESTERN AUSTRALIAN BRANCH V STRATTON CREEK PTY LTD TRADING AS CROWN ROOFING
CORAM	CHIEF COMMISSIONER W S COLEMAN
DELIVERED	MONDAY, 11 SEPTEMBER 2000
FILE NO/S	AG 210/2000

Result	Agreement registered
Representation	
Applicant	Mr P Joyce on behalf of the Unions
Respondent	No appearance

Order.

HAVING heard Mr P Joyce on behalf of The Western Australian Builders' Labourers, Painters & Plasterers Union of Workers and Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia, Western Australian branch and there being no appearance by the other party to the Agreement, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Crown Roofing/BLPPU and the CMETU Collective Agreement 2000 in the terms of the following schedule be registered on the 11th day of September, 2000.

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

1.—TITLE

This agreement shall be known as the Crown Roofing/ BLPPU and the CMETU Collective Agreement 2000.

2.—ARRANGEMENT

	Clause No.
Title	1
Arrangement	2
Parties and Persons Bound	3
Application	4
Relationship to Parent Award	5
Period of Operation	6
Classification Structures & Rates of Pay	7
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Signatories to the Agreement 26
Appendix A—Drug & Alcohol, Safety and Rehabilitation
Appendix B—Site Allowance

3.—PARTIES AND PERSONS BOUND

This agreement shall be binding on Stratton Creek Pty Ltd trading as Crown Roofing (hereinafter referred to as "the company"), the Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and the Construction Mining Energy Timberyards Sawmills and Woodworkers Union of Australia—WA Branch (hereinafter referred to as "the unions") and all employees of the company eligible to be members of the unions.

4.—APPLICATION

This agreement shall apply to all employees of the company engaged on work in or in connection with construction, alteration, maintenance, repair or demolition of buildings or other structures of any kind whatsoever where the principal contract as a contract value of more than $200,000.00.

This agreement shall apply in Western Australia only. There are approximately 5 employees covered by this agreement.

5.—RELATIONSHIP TO PARENT AWARD

1. This agreement is supplementary to, and shall be read and interpreted wholly in conjunction with, the Building Trades (Construction) Award 1987, Award No. R14 of 1978 (hereinafter referred to as "the award").

2. In the event of any inconsistency between the award and an express provision of this agreement, the terms of this agreement shall prevail to the extent of such inconsistency, unless the express provision of the agreement provides otherwise.

6.—PERIOD OF OPERATION

This agreement shall come into force from the first pay period commencing on or after the date of signing and shall remain in force until the 1st of November, 2002.

7.—CLASSIFICATION STRUCTURE & RATES OF PAY

1. All employees working under this agreement shall be paid according to the wage rates set out below.

2. Wage Rates (per hour at ordinary time)

	Previous EBA Rate Hourly Rate $	1st November 1999 Hourly Rate $	1st November 2000 Hourly Rate $	1st November 2001 Hourly Rate $
Labourer Group 1	17.15	18.01	18.91	19.86
Labourer Group 2	16.56	17.39	18.26	19.17
Labourer Group 3	16.12	16.93	17.78	18.67
Plaster, Fixer	17.82	18.71	19.65	20.63
Painter, Glazier	17.42	18.29	19.20	20.16
Signwriter	17.80	18.69	19.62	20.63
Carpenter/Roofer	17.93	18.85	19.79	20.78
Bricklayer	17.75	18.63	19.61	20.59
Refractory Bricklayer	20.38	21.40	22.47	25.59
Stonemason	17.93	18.82	19.76	20.75
Rooftiler	17.62	18.50	19.43	20.40
Marker/Setter Out	18.46	19.38	20.35	21.37
Special Class T	18.69	19.62	20.61	21.64

APPRENTICE RATES

	Previous EBA Rate Hourly Rate $	1st November 1999 Hourly Rate $	1st November 2000 Hourly Rate $	1st November 2001 Hourly Rate $
Plasterer, Fixer				
Year 1	7.48	7.86	8.25	8.66
Year 2 (1/3)	9.81	10.29	10.81	11.35
Year 3 (2/3)	13.37	14.03	14.74	15.47
Year 4 (3/3)	15.69	16.46	17.29	18.15
Painter. Glazier				
Year 1 (.5/3/5)	7.32	7.68	8.06	8.47
Year 2 (1/3), (1.5/3.5)	9.58	10.06	10.56	11.09
Year 3 (2/3), (2.5/3.5)	13.06	13.72	14.40	15.12
Year 4 (3/3), (3.5/3.5)	15.33	16.10	16.90	17.74
Signwriter				
Year 1 (.5/3.5)	7.48	7.85	8.24	8.66
Year 2 (1/3, 1.5/3.5)	9.78	10.28	10.79	11.35
Year 3 (2/3. 2.5/3.5)	13.35	14.02	14.72	15.47
Year 4 (3/3, 3/5/3.5)	15.66	16.45	17.27	18.15
Carpenter/Roofer				
Year 1	7.54	7.92	8.31	8.73
Year 2 (1/3)	9.86	10.37	10.88	11.43
Year 3 (2/3)	13.45	14.14	14.84	15.59
Year 4 (3/3)	15.78	16.59	17.42	18.29
Bricklayer				
Year 1	7.46	7.82	8.24	8.65
Year 2 (1/3)	9.76	10.25	10.79	11.32
Year 3 (2/3)	13.31	13.97	14.71	15.44
Year 4 (3/3)	15.62	16.39	17.26	18.12
Stonemason				
Year 1	7.54	7.92	8.31	8.73
Year 2 (1/3)	9.86	10.37	10.88	11.43
Year 3 (2/3)	13.45	14.14	14.84	15.59
Year 4 (3/3)	15.78	16.59	17.42	18.29
Rooftiler				
6 months	10.04	10.54	11.07	11.62
2nd 6 months	11.04	11.59	12.17	12.78
Year 2	12.90	13.55	14.23	14.94
Year 3	15.14	15.90	16.70	17.54

3. All expense related allowances not specifically mentioned in this agreement will be paid as per the award as varied from time to time.

4. Site allowances relating to particular sites shall be paid in accordance with Appendix B of this Agreement.

5. An additional payment will be made to compensate for the impact of the Goods and Services Tax on the Consumer Price Index. In the circumstance that the CPI limit below is exceeded the appropriate additional payment will be made to the wage rates. The CPI figure for the applicable dates will be the official figure released by the ABS for the preceding year.

Date	CPI Limit	Additional Payment
June 2001	5%	1% (paid 1/9/2001)
June 2001	6%	2% (paid 1/9/2001)
June 2002	5%	1% (paid 1/9/2002)
June 2002	6%	2% (paid 1/9/2002)

8.—INDUSTRY STANDARDS

Redundancy

The company shall increase redundancy contributions on behalf of each employee to the following sums on a weekly basis—

Rate on signing	$50
Rate as of 1/05/2001	$60

Superannuation

(i) The Company will make a payment of $75 per week per employee or the percentage rate that is prescribed under the Superannuation Guarantee Charge, whichever is the greater. On 1st July 2002 the Company will make a payment of $90 per week per employee.

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

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

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

In the event that the employee and the Company reach an agreement pursuant to section 49C(2)(d) of the Act to change

the complying superannuation fund or scheme the Company will, within seven days of the employee and the Company reaching such an agreement, advise the Union in writing of the agreement. The employer 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.

9.—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.

(c) Where the Company has signed a previous Agreement with the Union that also allowed for the conversion to cash payment on termination for accrued sick leave, that accrued sick leave will be treated as if is accrued under this agreement.

(d) Sick leave shall accrue, for the purposes of this clause, at the rate of one day at the beginning of each of the first ten calendar months of each year.

(e) Employees shall have the option of converting to a cash payment all sick leave entitlements over 5 days. Payment shall be made on the last pay period prior to the Christmas closedown.

10.—NEGOTIATION OF A SUBSEQUENT AGREEMENT

The parties agree to commence negotiations for a new collective agreement to succeed this agreement at least 3 months before the nominal expiry date. The parties intend to conclude these negotiations prior to the nominal expiry date. These negotiations shall be conducted on a collective basis between all of the parties with the negotiated outcome being subject to approval of a vote of the employees collectively.

11.—APPLICATION OF PROJECT AGREEMENTS

1. This agreement shall apply to all persons employed in the employer's business and every part thereof throughout Western Australia until **1st November 2002** except where the company commences work on a project where a site agreement to which the union is a party exists that provides for higher rates of pay and conditions.

2. The conditions contained in any such site agreement will take precedence over this agreement for the duration of the project.

12.—FARES AND TRAVELLING ALLOWANCE

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.

13.—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 Company 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 16—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.

14.—ALL IN PAYMENTS

1. All-in payments to employees will not be made. All-in payments are defined as an hourly rate or piece work rate which is meant to cover wages and all allowances, such as annual leave, sick leave, etc., on which tax is being paid using the Prescribed Payments System.

2. It is agreed that where a breach of this clause is discovered, the employer shall continue paying the "all-in" rate as the employees hourly rate, but shall pay all award and other entitlements on top of this amount, back-dated to the commencement of the all-in rate arrangement. The company shall not be entitled to offset any amount in excess of the ordinary hourly rate against any other entitlement in this agreement.

3. This clause shall not be applied to prevent the employer subletting specialised work outside of the normal scope of work which the employer performs. The union shall be notified when specialist sub-contractors are to be engaged.

15.—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.

16.—DISPUTE SETTLEMENT PROCEDURE

1. Disputes over any work related or industrial matter should be dealt with as close to its source as possible.

2. An employee or the union delegate should initially submit any work related grievance and/or industrial matter to the site foreperson, supervisor or other appropriate site representative of the company.

3. If the matter remains unresolved the union delegate may then submit the matter to the appropriate senior management person.

4. If still not resolved the delegate shall refer the matter to an appropriate official of the union, who shall discuss the matter with the nominated representative of the employer.

5. Whilst the above procedures are being followed work should continue as normal.

6. This procedure is to be followed in good faith and without unreasonable delay by any party.

7. Should the matter remain unresolved it shall be dealt with in one of the following ways as agreed to between the parties—

- referred to the Western Australian Industrial Relations Commission for conciliation and if required arbitration. The Commissions decision will be accepted by all parties subject to legal rights of appeal; or

- referred to a disputes board for determination; or
- referred to a private arbitrator agreed to between the parties, for determination.

8. This dispute settlement procedure does not apply to health and safety issues.

17.—SAFETY DISPUTE RESOLUTION

1. The parties to this agreement are committed to the safe operation of plant and equipment, to the observance of safe working practices, and the provision by the employer and correct use of all personal protective equipment. The company recognises its responsibilities to provide a safe and healthy workplace.

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 safety officer or workers' safety representative to be dealt with in accordance with the following procedures—

(i) Where any employee becomes aware of an unsafe situation, that employee will immediately notify the company safety officer or the workers' safety representative.

(ii) The company safety officer and the workers' safety representative will take immediate action to have the unsafe situation rectified.

(iii) Should the company safety officer consider that no safety precautions are necessary, he/she will notify the workers' safety representative accordingly as soon as possible.

(iv) While there is disagreement on the ruling of the company safety officer, the company safety officer will arrange for the immediate transfer of all employees from the disputed area.

(v) Should the company safety officer be of the opinion that no action is necessary and the worker's safety representative disagrees, an appropriate inspector from Worksafe/Workcover will be requested to undertake an inspection of the disputed area for the purpose of resolving any such matter.

(vi) If disagreement still exists the chief inspector or his/her nominee will be called in to assist in the resolution of the dispute.

(vii) If no agreement can be reached between the parties the matter will be dealt with in accordance with the dispute resolution procedure of this agreement.

(viii) 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.

(ix) 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.

18.—AMENITIES

1. The parties agree that it is the responsibility of the company to ensure that the amenities prescribed by the Award are provided as a minimum. Where, however, that standard is not maintained due to an action or event beyond the control of the company, the union agrees that the company should be allowed reasonable time in which to rectify the problem. If the company acts promptly to rectify the problem, there should be no interruption to work from industrial stoppages, bans and limitations.

2. In all instances, the following procedure shall be observed—

3. A uniformly high standard of amenities and facilities such as ablution blocks, change rooms, crib sheds, etc. shall be provided.

4. All Sheds shall be weatherproof and soundly constructed to an approved standard with sufficient windows and doors, adequate ventilation and lighting. They must have a floor above ground level and be lined on ceilings and walls.

5. Mess Shed/s fitted with fly screens are provided for exclusive use of workers and not for the storage of employers' equipment, tools and materials.

6. Shed/s shall provide not less that 0.75 square metres of floor space per person employed at any one time, provided that the area be not less than 4.65 square metres. Fixtures, other than tables and chairs, shall not be included when calculating floor space.

7. Where 5 or more persons are employed at one time, the floor area shall not be less than 9 square metres.

8. Adequate facilities are to be provided for warmth and for drying clothes eg. strip heaters.

9. Provided that 20 or more persons are employed on the site at any one time, the employer shall provide a separate shed or sheds for messing, which shall be of such dimension as to provide not less than 0.75 square metres of floor space per person.

10. Where less than 20 persons are employed on site, Regulation 3.20—Workplace Facilities of the Occupational Safety and Health Regulations 1996 shall apply to provisions of messing and changing facilities.

11. In the changing facilities, separate clothes-hanging facilities for each person employed are to be provided (coat hooks only to be used).

12. In the changing facilities, sufficient seating accommodation for the changing of work apparel is to be provided.

13. In the messing facilities, sufficient tables with fixed washable laminated or vinyl surface, and seating for the taking of meals, are to be provided.

14. Food warming facilities to be supplied, together with a supply of cool, clean water conveniently accessible, as well as boiling water at meal/rest breaks.

15. Receptacle for garbage with bin liner and rat and fly proof is to be supplied in mess area, and emptied regularly.

16. A washable vinyl floor surface in all facilities is to be provided.

17. Shelving is to be supplied in the mess shed for storage (cups, lunch bags, etc).

18. All facilities are to be cleaned and disinfected on a regular basis.

19. All mess sheds shall be supplied with reverse cycle air-conditioning.

20. Toilet blocks shall be soundly constructed and roofed with weatherproof material. The floor of each toilet shall be well-drained and constructed of concrete, bricks and cement, or other approved materials which shall be impervious to water. Every toilet shall be well lighted by natural or artificial light and shall be ventilated. Each toilet shall have a hinged door, capable of being fastened on the inside, lift seats/flaps and toilet paper.

21. Where practicable, toilets to be connected to sewerage before commencement of the job.

22. Toilet/urinal location to be conveniently accessible to employees, but not so close as to cause a nuisance to those persons.

23. Where necessary, portable water seal toilets of an approved standard are to be provided and regularly serviced.

24. Conveniently accessible toilets and urinals are to be distributed every 5th floor on multi-storey constructions.

25. Toilets and urinals are to be washed daily with disinfectant and kept in clean, hygienic condition.

26. Adequate washing facilities, suitably drained, and was basins/troughs are to be supplied with running water.

27. Soap and towels are to be supplied.

28. The following toilet/urinal ratio shall be applied in respect to all employees—

Employees	Toilets	Urinals
1-5	1	Nil
6-10	1	1
11-20	2	2
21-35	3	4
36-50	4	6
51-75	5	7
76-100	6	8

NB. For each additional 20 persons or part thereof up to 200 persons or part thereof up to 200 persons, one additional urinal and one additional toilet is required. For each additional 35 persons or part thereof in excess of 200 persons, one additional urinal and one additional toilet is required. If a slab urinal is provided, each 600mm shall be regarded as one urinal.

19.—TRAINING AND RELATED MATTERS

1. A training allowance of $13.00 per week per worker shall be paid by the employer to the Union Education and Training Fund. This shall increase to $14.00 per week on 1 November 2000 and a further increase to $15.00 per week on 1 November 2001.

2. Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calender year pro-rata to attend courses conducted or approved by the NBCITC. The employers approval shall not be unreasonably withheld.

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

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

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

20.—DRUG & ALCOHOL, SAFETY & 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.

21.—CLOTHING AND SAFETY 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, to 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.

22.—INCOME PROTECTION

The Company agrees to insure employees covered by this Agreement for injury and sickness. The scheme is to be negotiated between the parties

23.—ACCIDENT PAY

1. The Company agrees to pay each employee accident pay where the employee receives an injury for which weekly payments or compensation are payable by or on behalf of the Company pursuant to the provisions of the Workers' Compensation and Rehabilitation Act 1981, as amended.

2. "Accident Pay" means a weekly payment of an amount being the difference between the weekly amount of compensation paid to the employee pursuant to the Workers Compensation and Rehabilitation Act and the employee's ordinary wage under this Agreement.

3. The Company shall pay accident pay during the incapacity of the employee arising from any one injury for a total of 39 weeks whether the incapacity is in one continuous period or not.

24.—UNION MEMBERSHIP

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

25.—Y2K

On the following key dates the Company will issue written records of accrued entitlements to each employee. The accrued entitlements will include annual leave, sick leave, any accruing productivity bonuses, redundancy payments and Superannuation payments and also on each employees anniversary date—

- 31 December 1999
- 28 February 2000
- 31 December 2000
- 28 February 2001

26.—SIGNATORIES

BLPPU .....
Date: / /

CMETU .....
Date: / /

The Company: .....
Signature

Company Seal .....
Print Name

APPENDIX A—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

1. PRINCIPLE

People dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

2. FOCUS

- Site safety and the involvement of the site safety committee
- Peer intervention and support
- Rehabilitation

3. WORKPLACE POLICY

a) A person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.

b) The decision on a persons ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/employer representatives.

c) There will be no payment of lost time to a person unable to work in a safe manner.

d) If this happens 3 times the worker shall be given a written warning and made aware of the availability of treatment/counselling. If the worker refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.

e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.

f) A worker having problems with alcohol and or other drugs—

- Will not be sacked if he/she is willing to get help.
- Must undertake and continue with the recommended treatment to maintain the protection of this program.
- Will be entitled to sick leave or leave without pay while attending treatment.

4. IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will—

a) Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.

b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Program to address a meeting of employees to discuss and endorse the program.

c) Authorise the attendance of appropriate company personnel eg. Safety delegate/officer, safety committee members, union delegate, consultative committee members(s) at the two hour BTG Drug and Safety in the Workplace training course.

APPENDIX B—SITE ALLOWANCE

1. This agreement is between the parties referred to in Schedule A and shall apply to construction work undertaken by principal contractors who are members of CCA and 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 relevant building construction awards as nominated in schedule 'B' as well as any industrial or certified agreements made in conjunction with those awards which do 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 $2.17 m	$1.95
Above	$2.17m to $4.55m	$2.30
Over	$4.55m	$2.90

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17 m	$1.75
Above	$2.17m to $4.55m	$1.95
Over	$4.55m	$2.50

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 $2.17 m	$1.75
Above	$2.17m to $4.55m	$1.95
Over	$4.55m	$2.50

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17 m	$1.65
Above	$2.17m to $4.55m	$1.85
Over	$4.55m	$2.10

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

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

Project Contractual Value		Site Allowance
Up to	$1 m	NIL
Above	$1 m to $2.17 m	$1.35
Above	$2.17m to 6m	$1.65
Above	$6m to $11.98m	$1.90
Above	$11.98m to $24.43m	$2.10
Above	$24.43m to $60.5m	$2.40
Over	$60.5m	$2.60

"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. (Refer attached Map 1).

"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. (Refer attached Map 2).

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

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

5. The site/project allowance and project contractual value detailed in this agreement shall be adjusted on 1 January each year by the total C.P.I. movements for Perth during the preceding four quarters ending 30 September and accordingly, the site allowance amounts shall be adjusted up or down to the nearest five cents. Provided that where adjustment equates to less than two cents, existing allowance levels shall be maintained.

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 September. 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 BTA 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 contractor and the building trades group of unions for that project that may include matters regularly addressed within the industry, such as, but not limited to, the following—

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

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

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

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

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

12. It is agreed between the parties that this agreement will operate for a period of 12 months from the date the agreement is signed. However, the agreement will continue to operate beyond this date unless either party gives the other three (3) months written notice of intention to withdraw therefrom.

13. 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.

14. This agreement shall only apply to building contracts entered into on or tendered for on or after 1 January 2000.

15. **Application to Apprentices**

a) The rates prescribed in clause 4 of this agreement shall apply to **all** apprentices commencing employment after 31 December 1998 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%

b) Fares and Travel Allowances—Apprentices shall receive 100% of all fares and travel allowances paid.

16. **Provision of Canteen**

It is agreed that a staffed canteen 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. The Canteen shall come into operation when on site worker levels exceed 50 and to cease when the worker levels reduce to below 50.

17. **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 notwithstanding that forecasts may have been below that level. The nurse shall commence duties when staffing levels reach 50 (fifty) and shall terminate when levels reduce to 50 (fifty). The requirement for the provision of a nurse shall be waived if the project is adjacent to a hospital with a public emergency department.

18. **Apprentice Ratio to Tradespersons**

There shall be at least one apprentice employed on site to every 6 tradespersons employed on site.

DEPARTMENT OF MINERALS AND ENERGY AND CHEMISTRY CENTRE OF WA ENTERPRISE AGREEMENT 2000-2002.

No. PSG AG 4 of 2000.

2000 WAIRC 00768

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED AND AUSTRALIAN LIQUOR, HOSPITALITY AND MISCELLANEOUS WORKERS UNION, WESTERN AUSTRALIAN BRANCH, APPLICANTS
	v.
	DIRECTOR GENERAL, DEPARTMENT OF MINERALS AND ENERGY, RESPONDENT
CORAM	SENIOR COMMISSIONER G L FIELDING
DELIVERED	FRIDAY, 29 SEPTEMBER 2000
FILE NO/S	PSGAG 4 OF 2000
CITATION NO.	2000 WAIRC 00768

Result	Agreement registered
Representation	
Applicants	Ms SK Newby as agent
Respondent	Mr JC Phillips as agent

Order.

HAVING heard Ms SK Newby as agent on behalf of the Applicants and Mr JC Phillips as agent on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, and by consent, hereby orders—

THAT the agreement made between the parties lodged in the Commission on 21 September 2000 entitled Department of Minerals and Energy and Chemistry Centre of WA Enterprise Agreement 2000-2002 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 Department of Minerals and Energy Enterprise Bargaining Agreement 1997-2000 PSG AG 2 of 1998 which is hereby cancelled.

(Sgd.) G. L. FIELDING,
[L.S.] Senior Commissioner/
Public Service Arbitrator.

Schedule.

1.—TITLE

This Agreement shall be known as the "Department of Minerals and Energy and Chemistry Centre of WA Enterprise Agreement 2000-2002, PSG AG 4 of 2000" and shall replace the Department of Minerals and Energy Enterprise Bargaining Agreement 1997-2000, PSG AG 2 of 1998.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Definitions
4. Purpose of the Agreement
5. Scope of the Agreement
6. Parties to the Agreement
7. Date And Operation of Agreement
8. Relationship to Parent Awards
9. Single Bargaining Unit
10. Consultation
11. No Further Claims
12. Re-open Negotiations
13. Number of Employees Covered
14. Availability of Agreement
15. Objectives and Principles
16. Measurement of Performance
17. Implementation of EBA Initiatives—Peak Forum
18. Salary Increases
19. Personal Effectiveness Review
20. Deferred Salary Scheme
21. Level 1 Classification
22. Option to Change Hours of Duty
23. Prescribed Hours
24. Home Based Work
25. Short Leave
26. Option For 48 Weeks Pay Over 52 Weeks
27. Parental Leave
28. Paid Parental Leave
29. Carers Leave
30. Long Service Leave
31. Emergency Services Leave
32. Ceremonial/Cultural Leave
33. Banking of RDO's to be Used for Emergencies
34. Annual Leave Travel Payment
35. Effect Of Sick Leave On Other Leave Entitlements
36. Additional Vehicle Transfer Cost
37. Casual Employment for up to Three Months
38. Dispute Avoidance and Settlement Procedures

Schedule A—Salaries
Schedule B—Measurement of Milestones
Schedule C—Individual Reward Model
Schedule D—Dispute Avoidance and Settlement Procedures
Schedule E—Signatories

3.—DEFINITIONS

For the purposes of the Department of Minerals and Energy Enterprise Bargaining Agreement 2000—2002 the following definitions shall apply—

"Agreement" means Department of Minerals and Energy and Chemistry Centre of WA Enterprise Bargaining Agreement 2000-2002.

"CC(G)A" means Cleaners and Caretakers (Government) Award, 1975.

"CETA(G)A" means Catering Employees and Tea Attendants (Government) Award 1982.

"Department" means the Department of Minerals and Energy and includes the Chemistry Centre of Western Australia.

"Employee" means for the purposes of this Agreement, someone who is referred to at Clause 5.—Scope of the Agreement.

"Employer" means Director General of the Department of Minerals and Energy.

"G(G)A" means Gardeners (Government) Award 1986 No. 16 of 1983.

"Government" means the State Government of Western Australia.

"GOSAC" means Government Officers Salaries, Allowances and Conditions Award 1989.

"Minister" means the Minister or the Ministers of the Crown responsible for the administration of the Department of Minerals and Energy.

"PSA" means Public Service Award 1992.

"Unions" means the Civil Service Association of Western Australia Inc., and the Australian Liquor, Hospitality and Miscellaneous Workers Union.

"WAIRC" means the Western Australian Industrial Relations Commission.

4.—PURPOSE OF THE AGREEMENT

(1) This Agreement will advance the Department's aim of working to achieve its mission and provide a quality service to its customers, the community and the Government.

(2) The Department of Minerals and Energy's Mission is to provide a legislative framework, information systems and administrative processes for the mineral, petroleum and dangerous goods industries in order to—

- Promote the potential for resource exploration;
- Facilitate access to land and provide secure title for resource exploration and development;
- Meet community standards for environmental management and health and safety; and,
- Ensure the community receives appropriate resource royalties.

5.—SCOPE OF THE AGREEMENT

This Agreement shall apply to all employees of the Department of Minerals and Energy, including those of the Chemistry Centre of Western Australia and those Senior Executive Service employees in the Department, who are members of or eligible to be members of the Unions party to this Agreement.

6.—PARTIES TO THE AGREEMENT

This Agreement applies to the parties as shown below and no other parties shall be able to be joined to this Agreement during its term.

- Employer party—The Director General of the Department of Minerals and Energy.
- Union parties—Civil Service Association of Western Australia Incorporated.

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

7.—DATE AND OPERATION OF AGREEMENT

(1) This Agreement shall operate from the date of registration in the WAIRC and shall remain in force for a period of 2 years.

(2) During the life of the Agreement the parties will continue to address a range of issues and reforms specifically aimed at increasing productivity. The parties agree that these issues will continue as an element of future negotiations.

(3) The pay quantum achieved as a result of this Agreement will remain and form the new base pay rates for the next Agreement or continue to apply in the absence of a further agreement, except where the relevant award pay rate is higher in which case the award shall apply.

(4) The Agreement will continue in force after the expiry of the term until such time as any of the parties withdraws from the agreement by notification in writing to the other parties and to the WAIRC, or the parties agree to replace this Agreement with a subsequent agreement.

8.—RELATIONSHIP TO PARENT AWARDS

(1) This Agreement shall be read in conjunction with the existing awards and agreements that apply to the parties. In the case of any inconsistencies, this Agreement shall have precedence to the extent of any inconsistencies.

(2) The relevant awards are—

- Public Service Award 1992
- Government Officers Salaries, Allowances and Conditions Award 1989
- Gardeners (Government) Award 1986 No. 16 of 1983
- Catering Employees and Tea Attendants (Government) Award 1982
- Cleaners and Caretakers (Government) Award, 1975

9.—SINGLE BARGAINING UNIT

This Agreement has been negotiated through a Single Bargaining Unit. Each of the parties referred to in Clause 6.—Parties to the Agreement, have participated or have been offered representation in the enterprise agreement negotiations.

10.—CONSULTATION

This clause shall be read in conjunction with Clause 46.—Notification of Change of PSA and with Clause 46.—Notification of Change of GOSAC.

The parties are committed to working together to improve the business performance and working environment in the Department. Whilst it is acknowledged by the parties that decisions will continue to be made by the Department, which is responsible and accountable to Government by statute for the effective and efficient operation of its business, the parties are committed to effective communication and agree, in particular, that—

(1) Employees will be involved in contributing to the efficiency and effectiveness of their workplace within policies and guidelines and will be consulted about major changes likely to effect existing practices, working conditions or their employment prospects.

(2) In the context of this clause consultation shall mean information sharing and discussion on matters relevant to the decision making processes which shall be conducted in such a way as to enable the parties to contribute to the decision making process.

11.—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.

12.—RE-OPEN NEGOTIATIONS

(1) The parties agree to commence negotiations at least six (6) months prior to the expiration of the period of this Agreement to negotiate a replacement Agreement.

(2) The parties may agree to reopen negotiations prior to the expiration of the period of this Agreement to negotiate issues which may result from investigations, surveys or policy changes.

13.—NUMBER OF EMPLOYEES COVERED

As at the date of registration the approximate number of employees covered by this Agreement is 150.

14.—AVAILABILITY OF AGREEMENT

Every employee will be entitled on request to a copy of this Agreement. This Agreement will be kept in an easily accessible place in each Division of the Department, and this place will be communicated to all employees.

15.—OBJECTIVES AND PRINCIPLES

The shared objectives of the parties are—

(1) To satisfy the requirements of clients and customers through the provision of reliable, efficient and competitive services;

(2) To achieve the defined Missions of both the Department of Minerals and Energy and the Chemistry Centre of Western Australia and to improve productivity and efficiency in the Department and the Centre through ongoing improvements;

(3) To promote the development of trust and motivation and to continue to foster enhanced employee relations;

(4) To facilitate greater flexibility in decision making and allocation of human and other resources;

(5) To promote increased satisfaction from jobs and secure employment opportunities;

(6) To develop and pursue changes on a co-operative basis by using participative practices

16.—MEASUREMENT OF PERFORMANCE

(1) The parties agree that the measurement and monitoring of productivity improvements provides critical feedback on the performance of the Department to management, employees and other relevant stakeholders.

(2) The parties agree to assess organisational performance according to the extent to which the objectives of the Department of Minerals and Energy and the Chemistry Centre of W.A. are achieved. The parties agree that performance indicators assist in the attainment of corporate goals in the interests of clients, employees, the Department and the government on behalf of the community.

(3) The parties are committed to the continued development and implementation of a broad agenda of initiatives designed to increase the efficiency and effectiveness of the program and service delivery of the Department.

(4) In recognition of this fact, a series of Departmental milestones (See Schedule B. Measurement of Milestones) have been developed which will be used to chart the progress of the Department during the period of the Agreement.

(5) The milestones have been developed from a comprehensive analysis of the Department's Mission Statement and by setting out, at a Divisional level, the objectives, goals and targets of the Department.

(6) At the conclusion of the measurement periods, 30 June 2000 and 30 June 2001, the Department's performance shall be measured against the stated milestones. A report on the results of this analysis shall be prepared and presented to the relevant bodies for approval.

(7) The report will detail the extent to which the Department has achieved the targets specified.

(8) A potential salary increase of up to 3.0% per year will be paid effective from the end of each financial period, dependent on—

(a) the milestones gaining government approval, and

(b) the Department as a whole achieving an increase in productivity during the 1999/2000 and 2000/01 financial years, as demonstrated through the audited results of its milestone targets.

(9) The manner in which and extent to which salary increase amounts will vary with milestone achievement, is set out in Schedule B. Measurement of Milestones.

(10) Any salary increase awarded to the employee based on Departmental performance will be paid as an increase to his or her base rate of pay as of 30 June 2000 and 30 June 2001.

(11) Unless other wise agreed, at the conclusion of this Agreement, a salary increase representing an appropriate percentage reflected in the achievement of productivity in 2001/2002 as described in the formula at Schedule B. Measurement of Milestones, will be determined, and will be carried forward to the next Agreement for payment at an appropriate point in time.

17.—IMPLEMENTATION OF EBA—PEAK FORUM

(1) The parties agree to establish a Peak Forum to monitor, review and have input into the progress of the implementation of the Agreement.

(2) The parties will develop an agreed process for the implementation of the initiatives outlined in this Agreement.

(3) The parties agree to conduct a study of the benefits to the department of increasing the available period of paid parental leave for consideration in the next Enterprise Agreement.

(4) The parties to the Peak Forum will meet at least monthly and will consist of senior management, a union official from one of the unions party to the Agreement and/or an employee representative from one of the unions party to this Agreement.

(5) Review of Performance Enhancement Program (PEP).

The parties are committed to improving the effectiveness of the department's Performance Enhancement Program (PEP) and will constitute a joint working party to undertake a review of the system in accordance with the following terms of reference—

(a) The review is to include, but not be limited to, enhancing the method of assessment of PEP performance ratings, training managers to identify and deal appropriately with different levels of performance, feedback and communication methods, grievance mechanisms and reporting requirements.

(b) The working party will comprise the General Manager Employee Relations and Services Branch (and/or his/her deputy), 3 Union nominees and 3 other Departmental employees, nominated by the Director General. The parties will commit to working towards retaining the same members for the duration of the review, but retain the right to substitute as logistical demands dictate.

(c) The working party will undertake a review of the operation of the existing system (including the PEP Rating Review Panel), research into potential improvements and the preparation of recommendations to stakeholders regarding appropriate strategies to achieve improvement by 31 December 2000.

(d) The working party will consult with a broad range of DME employees during the course of the review.

(e) The parties commit to the full implementation of all unanimously agreed recommendations of the review group by 1 July 2001. Where there are conflicting recommendations the parties will meet to attempt to resolve the conflict.

(f) The Department and the Union will be responsible for the cost of their own administrative costs and activities although it is agreed that any members of the working party who are also Departmental employees shall attend joint meetings on Departmental time (i.e. salaries paid by the employer).

18.—SALARY INCREASES

(1) Employees will receive the salary as contained in Schedule A—Salaries of this Agreement.

(2) Employees will receive an increase to their base salary effective from the first pay period following registration of this Agreement, based on the audited productivity outcome determined in accordance with Schedule B of the 1997—2000 Agreement. Employees will also receive a potential salary increase the first pay day in July 2001 of up to 3.0% following the measurement of the milestones at the end of the 2000/2001 financial year. The milestones to be achieved are detailed in Schedule B. Measurement of Milestones of this Agreement (2000—2002), as is the method of calculating salary increases based on milestone performance.

(3) In addition, employees may receive a bonus payment after September of each year of the Agreement as a one off performance payment. The exact amount of this latter increase will be dependent on the individual employee's effectiveness during the 1999/2000 financial year and 2000/01 financial year (See Schedule C—Individual Reward Model).

(4) Employees who, with the approval of their managers, alter their working hours from 37.5 to 40 during the life of this Agreement will receive a 5.5% salary increase for the period the increased hours are worked, as prescribed in the relevant table within Schedule A. Similarly, employees who nominate 40 hours as their working week at the commencement of this Agreement and then, with the approval of their managers, alter their working hours to 37.5 hours per week will have their salary reduced to the appropriate rate, as prescribed in the relevant table within Schedule A.

19.—PERSONAL EFFECTIVENESS REVIEW

(1) At the conclusion of the financial year, a bonus payment, dependent upon the results of the employee's effectiveness review, will be available to the employee.

(2) The employee will be subject to a formal review of his or her effectiveness at the conclusion of the 2000/01 and 2001/2002 financial years. (See Schedule C. Individual Reward Model for further details.)

(3) After the review the employer shall prepare and discuss with the employee a statement that sets out—

(a) the employer's conclusions about the employee's effectiveness during the period covered by the review,

(b) any directions or recommendations made by the employer to the employee in relation to the employee's future performance of the duties of the position, and,

(c) if relevant, the amount of the employee's effectiveness bonus.

(4) Any increase awarded to the employee based on the effectiveness review will be paid as a one off bonus payment after 30 September 2000 and after 30 September 2001.

(5) Rating Review Panel. The parties agree that a process which will allow for employees who are not satisfied with their PEP rating to have the matter reviewed will be fully implemented as of 1 July 2000. Panels will be constituted as needed in accordance with Part 4 of SCHEDULE C—INDIVIDUAL REWARD MODEL.

20.—DEFERRED SALARY SCHEME

(1) With the written agreement of the employer, an employee may elect to receive, over a four year period, 80% of the salary they would otherwise be entitled to receive in accordance with this Agreement.

(2) On completion of the fourth year, the employee will be entitled to 12 months leave and will receive an amount equal to 80% of the salary they were entitled to in the fourth year of deferment.

(3) The scheme will be administered in accordance with Human Resource Policies in the same manner as leave without pay.

21.—LEVEL 1 CLASSIFICATION

The Department will maintain the seven level increment range, in accordance with the attached Schedule A.

22.—OPTION TO CHANGE HOURS OF DUTY

This clause shall be read in conjunction with Clause 16. Hours of the PSA and of GOSAC, Clause 7. Hours and Clause 8 Rostered Day Off (38 Hour Week) of G(G)A, Clause 8. Hours of CETA(G)A, Clause 7. Hours and Clause 22 Rostered Day Off (38 Hour Week) of CC(G)A.

Hours worked

(1) At the commencement of this Agreement, and for a thirty day period after that date, employees covered by this Agreement who have not previously been refused permission may elect to work either a 37.5 hour or a 40 hour week.

(2) Once that period of thirty days has passed, employees covered by this Agreement who wish to vary their hours of duty (other than via the flexitime provisions currently operating in this Department) must gain approval from their manager.

(3) All leave entitlements accrued by employees electing to work a forty hour week shall be credited at the rate of eight hours per day for the period worked under those arrangements.

23.—PRESCRIBED HOURS

(1) This clause shall be read in conjunction with Clause 16. Hours of the PSA and of GOSAC, Clause 7. Hours and Clause 8. Rostered Day Off (38 Hour Week) of G(G)A, Clause 8. Hours of CETA(G)A, Clause 7. Hours and Clause 22. Rostered Day Off (38 Hour Week) of CC(G)A.

(2) Subject to the agreement of their supervisor or manager and taking into account the day to day requirements of the duties being performed within the work area, employees may select their own starting and finishing times. Overtime shall apply to time worked in excess of normal hours.

(3) The current Departmental flexitime and flexileave provisions will continue to apply.

24.—HOME BASED WORK

(1) For the purposes of this clause the following definitions shall apply—

"Home based site" means a private dwelling agreed between the Department and the employee

"Home based employee" means an employee at the home based site.

"Home based work" means regular performance of ordinary hours of duty at the home based site.

"Office based site" means the location where the employee would ordinarily work if there were no home based work arrangements.

(2) Terms and Conditions

(a) Terms and conditions contained in this clause will apply to an employee who is approved to perform his/her ordinary hours of duties or part thereof at a home based site.

(b) The employee's home based site will be deemed to be his/her headquarters for the purposes of payment of allowances and other arrangements.

(c) The status of the home based employee will be identical to that of an office based employee. All relevant awards, agreements, policies and legislation shall apply and be binding.

(d) The employee agrees to maintain an accurate record of hours worked including work carried out at the home based work site. The employee is to be contactable during periods in which home based work is carried out and available for communication with the employer.

(e) The home based work site may be used for overtime provided that separate written agreement is reached prior to the commencement of overtime. Overtime hours of work will be agreed in writing and paid in accordance with the overtime provisions of the relevant award. A copy of the written agreement will be held by both the employee and the employer for the period during which the overtime is carried out at the home based site.

(f) Home based work will be on the basis that the employee spends a designated period of time agreed between the employer and the employee of his/her usual weekly hours of duty at the office based site.

(g) Where equipment is provided by the Department it will be responsible for the maintenance of that equipment in a condition that complies with the Western Australian Occupational Health and Safety Act 1984 as amended and the provision of supplies as set out in subclause (3) of this clause. The Department and the employee may agree on any alternative arrangements if appropriate. Such alternative arrangements must be recorded.

(h) An employee in a home based work arrangement is prohibited from contracting out his/her work.

(i) The Department shall ensure home based employees have the same opportunities for career development and training as office based employees. In particular—

(i) a home based employee will carry out such duties as are within the limits of the employee's skill, competence and training and job description; and

(ii) an employee working at the home based site will be expected to undertake appropriate work-related training, occupational health and safety training and staff development and shall receive notification of career and training opportunities available.

such training may include change to work design, work organisation and technical developments in his/her field of employment: and

such training should occur in work time, at either the office based site or in a recognised training centre.

(3) The administration of this clause will be in accordance with Human Resource Policies.

25.—SHORT LEAVE

This clause supersedes Clause 26. Short Leave of the PSA and of GOSAC.

(1) The Employer 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 clause shall not exceed, in the aggregate, 3 days on full pay in any one calendar year.

(2) Part time employees are eligible for short leave in accordance with this clause, on a pro rata basis calculated in accordance with the following formula—

$$\frac{\text{hours worked per fortnight}}{\text{hours of a full time employee covered by the same agreement}} \times \frac{\text{hours worked for three days}}{1}$$

(3) An employee engaged on a fixed term contract of more than twelve months shall be eligible for short leave in accordance with this clause, and an employee engaged on a fixed term contract of less than twelve months shall be eligible for pro rata short leave in accordance with this clause.

(4) Employees located outside a radius of 100 kilometres from the Perth Railway Station shall be eligible for an additional five days leave without pay in any one calendar year.

26.—OPTION FOR 48 WEEKS PAY OVER 52 WEEKS

(1) Upon application, an employee shall be entitled to receive 48 weeks pay spread over the full 52 weeks of the year. The employee will be entitled to take 4 weeks extra leave in addition to their normal leave entitlements.

(2) The additional 4 weeks per year will not be able to be accrued. In the event that the employee cannot take the leave, his/her salary will be adjusted at the completion of the 12 month period to take account of the time worked during the year that was not included in salary.

(3) The additional 4 weeks per year will not attract leave loading.

(4) All other conditions relating to the option to take 48 weeks pay over 52 weeks shall be taken in accordance with the Human Resource Policies.

27.—PARENTAL LEAVE

This clauses supersedes Clause 26.—Maternity Leave of PSA, Clause 23.—Maternity Leave of GOSAC and Clause 17.—Maternity Leave of the CETA(G)A.

(1) Definitions applicable to this clause

"employee" includes full time, part time, permanent and fixed term contract employees.

"replacement employee" is an employee specifically engaged to replace an employee proceeding on parental leave.

(2) Eligibility for Parental Leave

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

(b) Where the employee applying for the leave is the partner of a pregnant spouse one weeks leave may be taken at the birth of the child concurrently with parental leave taken by the pregnant employee.

(c) Subject to subclause 2. b) of this clause where both partners are employed by the Department the leave shall not be taken concurrently except under special circumstances and with the approval of the Director General.

(d) An employee seeking to adopt a child under the age of five years shall be entitled to three weeks parental leave at the placement of the child and a further period of parental leave up to a maximum of 52 weeks. Where both partners are employed by the Department the three week period may be taken concurrently.

(e) An employee seeking to adopt a child shall be entitled to two days unpaid leave for the employee to attend interviews or examination required for the adoption procedure. Employees working or residing outside the Perth metropolitan area are entitled to an additional days leave. The employee may take any paid leave entitlement in lieu of this leave.

(3) Other Leave Entitlements

(a) An employee proceeding on parental leave may elect to substitute any part of that leave with accrued annual leave or long service leave for the whole or part of the period of parental leave.

(b) Subject to all other leave entitlements being exhausted employees shall be entitled to apply for leave without pay following parental leave.

(c) Any period of leave without pay must be applied for and approved in advance and will be granted on a year by year basis. Where both parents work for the Department the total period of leave without pay following parental leave will not exceed 2 years.

(d) An employee on parental leave is not entitled to paid sick leave.

(e) Should the birth or adoption result in other than the arrival of a child, the person concerned shall be entitled to such period of paid sick leave or unpaid leave for a period certified as necessary by a registered medical practitioner.

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

(4) Notice and Variation

(a) The employee shall give not less than four week's notice in writing to the Department of the date the employee proposes to commence parental leave stating the period of leave to be taken.

(b) An employee seeking to adopt a child shall not be in breach of subclause 4. a) by failing to give the required period of notice if such failure is due to the requirement of the adoption agency to accept earlier or later placement of a child, or other compelling circumstances.

(c) An employee proceeding on parental leave may elect to take a shorter period of parental leave and may at any time during that period of leave elect to reduce or extend the period stated in the original application, in accordance with 2 a) of this Clause, provided four weeks written notice is given.

(5) Transfer to a Safe Job

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

(6) Replacement Employee

Prior to engaging a replacement employee the Department shall inform the person of the temporary nature of the employment and the entitlements relating to the return to work of the employee on parental leave.

(7) Return to Work

(a) An employee shall confirm the intention to return to work by notice in writing to the employer not less than four weeks prior to the expiration of parental leave.

(b) An employee on return to work from parental leave shall be entitled to the position that the employee occupied immediately prior to proceeding on parental leave. Where the employee was transferred to a safe job the employee is entitled to return to the position occupied immediately prior to transfer.

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

(d) An employee may return on a part time basis to the same position occupied prior to the commencement of leave or to a different position at the same classification level in accordance with the part time provisions of the relevant Award or Agreement and in accordance with the Human Resource Policies.

(8) Effect of Leave on the Employment Contract

An employee employed for a fixed term contract shall have the same entitlement to parental leave, however the period of leave granted shall not extend beyond the term of that contract.

(9) Continuity of Service and Termination

(a) Absence on parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose under the relevant award or agreement.

(b) An employee on parental leave may terminate employment at any time during the period of leave by written notice in accordance with the relevant award or agreement.

(c) An employer shall not terminate the employment of an employee on the grounds of the employee's application for parental leave or absence on leave but otherwise the rights of the employer in respect of termination of employment are not affected.

28.—PAID PARENTAL LEAVE

(1) Subject to Government policy, a person who has completed 12 months service with the employer will be entitled to 6 weeks paid parental or adoption leave immediately following the birth or adoption of an infant.

(2) Paid leave will only be available to the primary care giver.

(3) No entitlements are accrued while the employee is on paid parental leave.

(4) All other conditions relating to parental leave apply as per this Agreement and in accordance with Human Resource Policies.

29.—CARER'S LEAVE

(1) An employee with responsibilities in relation to members of their household or immediate family shall be entitled to provide care and support for such persons when they are ill or otherwise attend to urgent family responsibilities.

(2) For the purposes of this clause, the definition of family shall be the definition contained in the Equal Opportunity Act 1986 as amended; that is, a person who is related to the employee by blood, marriage, affinity or adoption and includes a person who is wholly or mainly dependent on, or is a member of the household of, the employee.

(3) Carer's leave entitlements shall be deducted from annual leave, accrued sick leave of up to 5 days in any one calendar year, or short leave entitlements. The Employer may, on application by an employee, grant access to accrued sick leave credits for periods greater than 5 days in any one calendar year on the basis of compassionate grounds as follows—

(a) the employee provides evidence that they are the primary care giver to family members who require support and attention;

(b) extended leave is supplemented by the use of sick leave credits after the use of an agreed level of annual leave or long service leave credits;

(c) the granting of extended carer's leave can be managed within the Department's operational requirements and is approved by the Director General.

(4) The employee shall, wherever practical, give the employer notice of the intention to take carer's leave and the estimated length of absence. If it is not practicable to give prior notice of absence the employee shall notify the employer as soon as possible on the first day of absence.

(5) The employee shall provide, where required by the employer, evidence to establish the requirement to take carer's leave. In applicable cases, an application for sick leave exceeding two consecutive days work must be supported by a certificate from a registered medical provider or registered dentist.

(6) Carer's leave may be taken on an hourly basis or part thereof.

30.—LONG SERVICE LEAVE

This clause shall be read in conjunction with Clause 21.—Long Service Leave of PSA, Clause 21.—Long Service Leave of GOSAC, Clause 15.—Long Service Leave of G(G)A and of CC(G)A and Clause 20.—Long Service Leave of CETA(G)A.

In addition the employee may elect to take long service leave in periods of one week or more.

31.—EMERGENCY SERVICES LEAVE

Paid leave of absence shall be granted by the employer to an officer who is an active volunteer member of either the Western Australian State Emergency Service, Western Australian Volunteer Bush Fire Brigade or St John Ambulance Brigade, in order to allow for attendances at emergencies as declared by the recognised authority.

(1) The employer shall be advised as soon as possible by the employee, the emergency service, or such other person as to the absence and, where possible, the expected duration of the absence.

(2) The employee must complete a leave of absence form immediately upon return to work.

(3) The application form must be accompanied by a certificate from the emergency organisation certifying that the officer was required for the specified period.

(4) An employee, who during the course of an emergency, volunteers their services to an emergency organisation, shall comply with subclauses 1, 2 and 3 of this clause.

32.—CEREMONIAL/CULTURAL LEAVE

(1) An employee covered by this Agreement is entitled to time off without loss of pay for tribal, ceremonial and/or cultural purposes.

(2) Such leave shall include leave to meet the employees' customs, traditional law and to participate in ceremonial and cultural activities.

(3) Ceremonial and/or cultural leave may be taken as whole or part days off. Each day or part thereof, shall be deducted from existing annual leave, short leave, flexileave and/or 'day in lieu' entitlements.

(4) The employer may request reasonable evidence of the legitimate need for the employee to be allowed time off.

(5) Time off without pay may be granted by arrangement between the employer and employee for tribal/ceremonial/cultural purposes.

33.—BANKING OF RDO'S TO BE USED FOR EMERGENCIES

(1) This clause is to be read in conjunction with Clause 16.—Hours subclause (3) Flextime Arrangements of PSA and Clause 16.—Hours subclause (7) of GOSAC.

(2) Employees shall be able to carry forward from one accounting period to the next sufficient accumulated credit hours for 2 rostered days off (RDOs) one of which is to facilitate emergencies whilst the other is to be taken in the usual manner.

34.—ANNUAL LEAVE TRAVEL PAYMENT

This clause supersedes Clause 19.—Annual Leave subclause (10) Annual Leave Travel Concessions of the PSA and Clause 19.—Annual Leave subclause (7) of GOSAC.

(1) Employees stationed in remote areas

(a) Where an employee's headquarters is situated in District Allowance Areas 3, 5, 6 and in that portion of area 4 located north of 30° south Latitude, upon application the officer and his/her dependents, when proceeding on Annual Leave via an air journey, will be eligible for payment of the actual cost incurred of the airline ticket(s) up to the value of the Full Economy rate . Travel to locations other than Perth will be reimbursed up to, but not exceeding, the cost of a return airfare to Perth (at the Full Economy rate) upon proof of incurred expenditure.

(b) Officers travelling by motor vehicle when proceeding on Annual Leave will be eligible to claim a travel concession based on the rate set out in Schedule H (part 2)—Motor Vehicle Allowance, equivalent to the distance from the officer's headquarters to Perth. The maximum amount payable to the employee will be up to the value of (but not to exceed the cost of) a return airfare to Perth at the Full Economy rate.

(c) The officer and his/her dependants travelling by bus or any other means of transport are eligible to claim actual costs incurred in the purchase of travel tickets upon proof of purchase up to the value of (but not to exceed the cost of) return airfare ticket(s) to Perth at the Full Economy rate.

(d) An employee is required to serve 12 months in these areas before qualifying for travel concessions.

(e) Exceptions to the 12 month qualifying period are—

(i) where an employee is required to proceed on annual leave to suit Departmental convenience;

(ii) the employer may grant the concession where the employee returns to the area to complete the year's service at the expiration of the period of leave.

(f) Travel must be undertaken for the concession to be paid. Concessions not utilised within twelve months of becoming due will lapse.

(2) Travelling time

(a) An employee who elects to take Annual Leave outside the District Allowance Area in which their headquarters is located is entitled to the following travelling time—

	Approved Mode of Travel	Travelling Time
(i)	Air	Two days
(ii)	Road or Air and Road	North of 20º South Latitude— five days, Remainder—four days

(b) The mode of travel to be at the discretion of the Director General.

(3) Part-time employees are entitled to annual leave travel concessions and travelling time on a pro-rata basis according to the number of hours work.

(4) Employees whose headquarters are located 240 kilometres or more from Perth, other than those stationed in remote areas, who travel to Perth for their Annual Leave may be granted reasonable travelling time to enable them to complete the return journey.

35.—EFFECT OF SICK LEAVE ON OTHER LEAVE ENTITLEMENTS

Where an officer is ill during the period of annual or long service leave and produces at the time, or as soon as practicable thereafter, medical evidence to the satisfaction of the Director General that as a result of the illness the officer was confined to his/her place of residence or a hospital for a period of at least seven consecutive calendar days, the Director General may grant sick leave for the period during which the officer was so confined and reinstate leave equivalent to the period of confinement.

36.—ADDITIONAL VEHICLE TRANSFER COST

This clause shall be read in conjunction with Clause 39.—Removal Allowance of PSA and of GOSAC.

(1) Where an employee is required to relocate in the public interest, or in the ordinary course of promotion or transfer and his/her dependants regularly use more than one vehicle, and all the vehicles regularly used by the employee or dependants are to be relocated to the new residence, the cost of transporting or driving more than one vehicle (with a limit of two) shall be deemed to be part of the removal costs. Reimbursement shall not exceed the amount prescribed by subclause (3) of Clause 35.—Motor Vehicle Allowance of the PSA and GOSAC.

(2) Where only one vehicle is to be relocated to the new residence, the employee may choose to transport either a trailer, boat or caravan in lieu of the second vehicle. The employee may be required to show evidence of ownership of the trailer, boat or caravan to be transported.

(3) If the employee tows the caravan, trailer or boat to the new residence, the additional rate per kilometre is as per Clause 35.—Motor Vehicle Allowance of the PSA and GOSAC subclause (5) Allowance For Towing Departmental Caravan or Trailer.

37.—CASUAL EMPLOYMENT FOR UP TO THREE MONTHS

A Casual Employee —

- may be engaged by the hour for a period not exceeding three calendar months in any period of engagement, as determined by the Director General;
- will only be engaged where irregular hours make it difficult to provide a contract of employment or offer permanent employment.

38.—DISPUTE AVOIDANCE AND SETTLEMENT PROCEDURE

In the spirit of this Agreement the parties are committed to avoidance of disputes and grievances. In the event of a grievance or dispute, the parties agree to participate in consultation to resolve all matters relating to the operation of this Agreement and to matters of personal grievance in a timely and conciliatory manner.

(1) Principles

In dealing with grievances on general employment issues the Department will apply the general principles that support effective management of human resources including the application of the Principles of Natural Justice; that is—

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

(b) all parties to the grievance will have the opportunity to put their cases and have them considered;

(c) any allegation made against an employee will be made known to that employee;

(d) maintenance of appropriate confidentiality; and

(e) employees will not be subject to any discrimination as a result of using the grievance resolution process.

(2) EBA Dispute Settlement Procedure

The Department's grievance procedures should be used to resolve issues which cannot be resolved by informal means. If this is not successful the dispute resolution procedure set out in Schedule D. Dispute Avoidance and Settlement Procedures shall be used by the employer and the employee.

In the event of any disputes, questions or difficulties between the parties as to the interpretation and implementation of this Agreement, the following procedures shall apply—

(a) The union representative and/or the employee/s concerned shall discuss the matters with the member's manager in the first instance. An employee may be accompanied by a union representative or a person of the employees choosing. A representative nominated by the Director General may accompany the manager.

(b) If the matter is not resolved within five (5) working days following the discussion in accordance with para (a) above, the matter shall be referred by the union representative to the employee's manager-once-removed or his/her nominee for resolution.

(c) If the matter is not resolved within five (5) working days following the discussion in accordance with para (b) above, the union representative shall refer the matter to the Director General or his nominee for resolution.

(d) If the matter is not resolved within five (5) working days following the discussion in accordance with para (c) above, either party may refer the matter to the WAIRC.

SCHEDULE A—SALARIES

37.5 Hours Level	Year	Annual Salary	At Registration 3% Increase	July 2001 3% Potential Increase
1	u/17	12812	13196	13592
	17	14974	15423	15886
	18	17465	17989	18529
	19	20217	20824	21448
	20	22703	23384	24086
	1st	24939	25687	26458
	2nd	25977	26756	27559
	3rd	27014	27824	28659
	4th	28051	28893	29759
	5th	29088	29961	30859
	6th	30125	31029	31960
	7th	31167	32102	33065
2	1st	32247	33214	34211
	2nd	33076	34068	35090
	3rd	33947	34965	36014
	4th	34867	35913	36990
	5th	35829	36904	38011
3	1st	37153	38268	39416
	2nd	38184	39330	40509
	3rd	39248	40425	41638
	4th	40337	41547	42794
4	1st	41834	43089	44382
	2nd	43006	44296	45625
	3rd	44214	45540	46907
5	1st	46537	47933	49371
	2nd	48107	49550	51037
	3rd	49741	51233	52770
	4th	51432	52975	54564
6	1st	54157	55782	57455
	2nd	56007	57687	59418
	3rd	57923	59661	61451
	4th	59968	61767	63620
7	1st	63107	65000	66950
	2nd	65275	67233	69250
	3rd	67638	69667	71757
8	1st	71475	73619	75828
	2nd	74225	76452	78745
	3rd	77632	79961	82360
9	1st	81890	84347	86877
	2nd	84766	87309	89928
	3rd	88048	90689	93410
Class 1	—	93008	95798	98672
L 2/4	1	32247	33214	34211
	2	33947	34965	36014
	3	35829	36904	38011
	4	38184	39330	40509
	5	41834	43089	44382
	6	44214	45540	46907

* The salary rates set out in this schedule are only applicable to those employees who did not receive a Performance Enhancement Increase (PEI) in a previous round of Agreements. Those employees receiving a PEI will have a higher base rate of pay.

40 Hours Level	Year	Annual Salary	At Registration 3% Increase	July 2001 3% Potential Increase
1	u/17	13517	13923	14340
	17	15798	16272	16760
	18	18426	18979	19548
	19	21329	21969	22628
	20	23952	24671	25411
	1st	26310	27099	27912
	2nd	27405	28227	29074
	3rd	28500	29355	30236
	4th	29595	30483	31397
	5th	30690	31611	32559
	6th	31785	32739	33721
	7th	32882	33868	34885
2	1st	34021	35042	36093
	2nd	34895	35942	37020
	3rd	35814	36888	37995
	4th	36784	37888	39024
	5th	37800	38934	40102
3	1st	39196	40372	41583
	2nd	40284	41493	42737
	3rd	41406	42648	43928
	4th	42555	43832	45147
4	1st	44136	45460	46824
	2nd	45373	46734	48136
	3rd	46646	48045	49487
5	1st	49097	50570	52087
	2nd	50752	52275	53843
	3rd	52476	54050	55672
	4th	54262	55890	57567
6	1st	57136	58850	60616
	2nd	59087	60860	62685
	3rd	61109	62942	64831
	4th	63266	65164	67119
7	1st	66577	68574	70632
	2nd	68865	70931	73059
	3rd	71358	73499	75704
8	1st	75406	77668	79998
	2nd	78307	80656	83076
	3rd	81903	84360	86891
9	1st	86394	88986	91655
	2nd	89428	92111	94874
	3rd	92890	95677	98547
Class 1	—	98124	101068	104100
L 2/4	1	34021	35042	36093
	2	35814	36888	37995
	3	37800	38934	40102
	4	40284	41493	42737
	5	44136	45460	46824
	6	46646	48045	49487

* The salary rates set out in this schedule are only applicable to those employees who did not receive a Performance Enhancement Increase (PEI) in a previous round of Agreements. Those employees receiving a PEI will have a higher base rate of pay.

CLEANERS

	Annual Salary	At Registration 3% Increase	July 2001 3% Potential Increase
1st year	23733	24445	25178
2nd year	23979	24698	25439
3rd year	24237	24964	25713

GARDENERS

	Annual Salary	At Registration 3% Increase	July 2001 3% Potential Increase
1st year	23894	24611	25349
2nd year	24126	24850	25595
3rd year	24378	25109	25863

TEA ATTENDANTS

		Annual Salary	Fortnightly Base Rate	Service Pay per f/n	Part-time loading per f/n
1997/2000	1st year	18270	700.45	117.12	122.64
EBA	2nd year	18270	700.45	127.96	124.26
	3rd year	18270	700.45	137.39	125.68
At Registration	1st year	18818	721.46	120.63	126.32
	2nd year	18818	721.46	131.80	127.99
	3rd year	18818	721.46	141.51	129.45
July 2001	1st year	19383	743.11	124.25	130.11
	2nd year	19383	743.11	135.75	131.83
	3rd year	19383	743.11	145.76	133.33

The salary rates set out in this schedule are only applicable to those employees who did not receive a Performance Enhancement Increase (PEI) in a previous round of Agreements. Those employees receiving a PEI will have a higher base rate of pay.

SCHEDULE B—MEASUREMENT OF MILESTONES

DEPARTMENT OF MINERALS AND ENERGY PRODUCTIVITY MILESTONES FOR 2000/2002

RATIONALE FOR MINERALS TITLES DIVISION, EXPLOSIVES AND DANGEROUS GOODS DIVISION, PETROLEUM OPERATIONS DIVISION, GEOLOGICAL SURVEY DIVISION, MINING OPERATIONS DIVISION AND POLICY, PLANNING AND SERVICES DIVISION

The parties recognise that the nature, mix and weighting of outputs allow the milestones to reflect estimates as determined at the date of registration of this Agreement. Accordingly, the parties agree that during the term of the Agreement the quantities and mix of individual inputs and outputs may have to vary to reflect any changes in the department's program, budget and customer needs. In the event that any output is determined to be inappropriate or unachievable, the parties will consider substituting another productivity initiative, or variation to the existing initiative, which can be achieved in the same timeframe.

Determining a Weighted Multi-Factor Productivity Index for each Division

- The key measurable outputs are determined and listed under group headings in the left hand column of the proforma spreadsheets following. Measurable outputs identified represent between 70 and 100% of the total work done by the Division.
- The second column is the unit of measure considered appropriate for the item which is listed in column 1. For example it may be the number of maps produced, the meters of drilling done, the number of transactions processed (in straight numbers, thousands or millions), numbers of certificates or reports produced etc.
- The weighting column is determined on the basis of the amount of human resources consumed to produce a unit of output with a slightly heavier weighting given to more important outputs than those which are less important. Simply put, if output item 1 has a weighting of 10 and output item 2 has a weighting of 20, it takes twice the number of employees hours and/or resources to produce one unit of item 2 output as it does to produce one unit of item 1 output, with an adjustment made to reflect the relative importance of each.
- To determine the multi weighted productivity for each item of output for each year the number of units produced (or forecast to be produced) is multiplied by the weighting factor to give a weighted productivity figure.
- Weighted product output figures will be aggregated for each of the two years being compared. The totals for each year will be divided by the recurrent operating cash expenditure for the respective year expressed in the base year dollars. The Gross State Product Deflator provided by Treasury will be used to adjust expenditure back to real base year 1999/2000 dollars for comparison purposes.
- The result for the respective years is thus given as a level of production per million dollars spent. The difference between figures for two successive years is then expressed as the productivity increase during the year.

DETERMINATION OF AGGREGATED DEPARTMENTAL MILESTONE

Each Divisional increase in productivity, above 2.5% per annum, will be counted as a contribution towards an overall Departmental goal of 5% for the year.

Each Divisional productivity score equal to or below 2.5% per annum will not be counted as a contribution towards the overall Departmental productivity score for that year. However, it will contribute towards any carry-forward figure calculations.

The Divisional contributions above 2.5% per annum will be weighted by their respective recurrent operational expenditure divided by the total recurrent operational expenditure of the Department.

A combined departmental productivity increase—up to 5% per annum—will be apportioned 60% to salary increases and 40% to a productivity dividend for Government.

Any total annual departmental productivity increase exceeding 5% per annum will be carried forward to the following year or a new agreement and will be included in future productivity calculations.

Similarly, a decline in total annual departmental productivity that results in a negative carry forward percentage will included in future productivity calculations. This means that the negative carry forward figure must be eliminated by future productivity increases, before any future gains are applied to effect a related salary increase. Therefore departmental salary increases for each year may include positive and/or negative carry forward results from the previous year.

Where an excess of productivity increases is carried forward, its application to future periods and/or agreements will not increase the maximum amount of the aggregate percentage which may be applied to salary increases and a productivity dividend in any one year.

Therefore the amount applied to the salary increases and a productivity dividend is limited to 5% per annum in total, ie 3% and 2% per annum respectively during the period of this Agreement.

Changes to products, including new additions, discontinuation of old products and possible weighting modifications to reflect changes in new technologies and work procedures will be managed by an audited conversion to equivalent FTE values and approved by the Director General after a formal review by a senior management and internal audit.

Supplementary Notes

Note 1: The proforma sheets are provided for indicative purposes only. Budgeted allocations and forecasts products are subject to alterations depending upon perceived priorities and past effort.

Note 2: The Land Access Branch has been excluded from these calculations, as in previous years, due to the dynamic changes and project nature of the work involved.

Note 3: The Explosives and Dangerous Goods Division Schedule B is undergoing a major review for the 2000-2001 period. The current draft plan has the proposed products and weighting, however some may still need to be finalised during 2000-2001.

Note 4: Policy Planning and Services Division have removed the mainframe transaction measures. As it is a new division combining two former divisions some product indicators will be used as a baseline in 2000-2001 and included in calculations in 2001-2002.

Note 5: Petroleum Division calculations use a computer based lookup table for some products. Additional system and methodology information relating to their product weightings (marked as 'Lookuptable') is documented on the appropriate departmental file and is fully auditable.

Note 6: Productivity contribution from the Chemistry Centre of WA is included in the aggregation of the total Department figure for calculation of the 1999/2000 outcome. Whilst responsibility for the Chemistry Centre will be transferred to the Department of Commerce and Trade early in 2000/01, the Centre's productivity contribution will be aggregated with DME's Divisions for the full financial year. CCWA employees will thus share in the Department's overall wage outcome for 2000/01.

NOTES FOR CHEMISTRY CENTRE OF WESTERN AUSTRALIA (CCWA) PRODUCTIVITY INITIATIVES

1. Workload Improvements

1.1 Competencies Development

The reduction in staff numbers and the diverse range of investigations require staff to increase the range and level of their competencies. The Chemistry Centre's staff competency system is part of its quality program. The measurement in the model will involve all areas of the Chemistry Centre. Each area of activity in itself will be a measure against which four levels of expertise will be applied to create a baseline. The formula for this will be established by July 1, 2000. The framework will provide an excellent opportunity to make substantial productivity enhancements with confidence. It will be measured in incremental stages, to a maximum of 1% towards the productivity increase.

1.2 Technical Improvements

Technical improvements lead to increased capabilities and improved productivity. These improvements might include the introduction of new procedures or new types of instrumentation. The annual target will be five new initiatives.

Each of these technical improvement (and associated method validation) contributes 0.2% to the productivity increase up to a maximum of 1%.

2. Sustaining Quality Services

2.1 Accreditation/Certification of Quality Systems

The Chemistry Centre has a range of chemical and forensic science tests accredited to ISO Guide 25 by the National Association of Testing Authorities (NATA). The Chemistry Centre's quality management systems are certified to ISO 9001:1994. These systems are subject to biannual audits for each of the fourteen areas of accreditation and are subject to six monthly certification audits. The Chemistry Centre will continue to upgrade to the new accreditation standard ISO/IEC 17025 and to the new certification standard ISO 9000.

The continued improvement to the quality systems to maintain the current accreditations and certification contributes 0.5% to the productivity increase.

2.2 Proficiency Trials

The Chemistry Centre needs to participate in a large range of national and international proficiency trials. These are an integral component of the Chemistry Centre's quality systems. They are required to check the quality of test results.

Participation in proficiency trials with annual test results above four tests per FTE (less than 2 standard deviation from mean for quantifiable results and 'satisfactory' results for qualitative results) contributes 0.5% to the productivity increase.

3. Development of Science

3.1 Publication Index

The publication index is the number of papers accepted for either publication in scientific or professional journals or presentation at national or international scientific conferences per FTE.

A publication index of 0.3 papers per FTE contributes 1% to the productivity increase or proportion thereof. The maximum contribution for the publication index is to be 1%.

3.2 Research Grants

Chemistry Centre staff and collaborators from government agencies, Universities, CSIRO and other scientific institutions compete, in a very competitive environment, for and receive grants from research bodies. These research grants are for one, two or three years.

Competitive research grant funds to the Chemistry Centre of $2 500 per FTE for 2000/01 contributes 0.5% to the productivity increase or a proportion thereof. The maximum contribution for research grants is 1%.

4. Workload Improvements

4.1 Revenue

The Chemistry Centre has been on net appropriation since July 1, 1994 when funding was transferred to its government agency clients. The reduction in some government agency requirements and the transfer of some functions to the private sector has led to a reduction in staff from 150 to 80.

Each 1% improvement in revenue per FTE above the CPI increase and excluding GST will contribute 0.25% to the productivity increase. A maximum of 1% value will apply to this indicator.

5. Client Satisfaction

5.1 Client Survey Results

The Chemistry Centre undertakes an annual client survey early in each calendar year. The initial survey in 1998/99 gave useful information but cannot be used as a comparison due to a layout which led to some confusion in the interpretation of the scale. The layout was improved in 1999/00 and that data is suitable for comparative information.

The client survey evaluates client satisfaction on a range of factors including quality, timeliness and cost.

The client survey will be modified in future years by weighting clients on the revenue received from the client. However, the data will still allow direct comparison with the 1999/00 baseline.

The satisfaction index is the average client response as a percentage of the maximum score.

An increase of 1% in the satisfaction index will be valued at a 1% increase towards the productivity increase.

DME Weighted Multi-Factor Productivity Index : Plan 2000 - 2002

Division: MINERAL TITLES

			Base			Estimate			Estimate			% TREASURY OUTPUT(s)		
			1999-2000			2000-2001			2001-2002			1st	2nd	3rd
	Product Description	**Units**	Weight	Actual	Wtd	Weight	f'cast	Wtd	Weight	f'cast	Wtd	1		
Title Information														
1	Counter Service	customers	0.18	12943	2330	0.18	13590	2446	0.18	14270	2569			
2	Tenement Searches	searches	0.08	27576	2206	0.08	28955	2316	0.08	30403	2432			
3	Tenement Rents	number	0.12	14464	1736	0.12	15187	1822	0.12	15946	1914			
4	Acceptance (Applications/Dealings)	lodgements	0.18	10183	1833	0.18	10692	1925	0.18	11227	2021			
5	Digital Data Sales	orders	2.30	609	1401	2.30	639	1470	2.30	671	1543			
Title Monitoring								0			0			
6	Survey Examination	tenements	27.00	144	3888	27.00	112	3024	27.00	118	3186			
7	Survey Certification	tenements	18.00	209	3762	18.00	235	4230	18.00	247	4446			
8	Miscellaneous Calculations	variations				5.50	154	847	5.50	162	891			
9	Association Maintenance	files				0.58	4493	2606	0.58	4718	2736			
10	Form 5's(Expenditure Reports)	forms	0.09	13332	1200	0.09	13999	1260	0.09	14699	1323			
11	Exemptions (Exp)	applications	1.28	6722	8604	1.28	7058	9034	1.28	7411	9486			
12	Exemptions (S65)	applications	4.78	571	2729	4.78	600	2868	4.78	630	3011			
13	Forfeiture's	number	1.30	2481	3225	1.30	2605	3387	1.30	2735	3556			
14	Plaints	decisions	9.58	429	4110	9.58	450	4311	9.58	473	4531			
15	Sec 65 Surrender	applications	5.00	652	3260	5.00	685	3425	5.00	719	3595			
16	Boundary Reassesment	tenements	0.25	4280	1070	0.25	3652	913	0.25	3835	959			
17	Survey Tenement Integration	tenements	7.50	213	1598	7.50	224	1680	7.50	235	1763			
Title Processing								0			0			
18	Applications Processing	number	8.70	2950	25665	8.70	3150	27405	8.70	3307	28771			
19	Title Issuing	number			0	1.80	1800	3240	1.80	1890	3402			
20	MiTiS Capture/Validation	number			0	2.12	2000	4240	2.12	2100	4452			
21	Data Entry	number	0.27	8632	2331	0.27	9064	2447	0.27	9517	2570			
22	Applications Refused/Withdrawn	number	4.80	1079	5179	4.80	1133	5438	4.80	1190	5712			
23	NTA Re-Processed	number	5.00	3384	16920			0			0			
24	Dealing Registrations	tenements	1.30	10000	13000	1.30	10500	13650	1.30	11025	14333			
25	Survey Tenement Capture	tenements			0	2.45	4467	10944	2.45	4690	11491			
26	SCDB L. S. Capture	files	0.31	7279	2256	0.31	2911	902	0.31	3057	948			
27	Synchronisation Backcapture	Transactions	0.93	8093	7526	0.00	0	0			0			
28	FNA Compilation	number	3.70	585	2165	3.70	614	2272	3.70	645	2387			
29	Tengraph Unsurveyed	tenements	2.45	4651	11395			0			0			
30	Norm2 Maintenace	number	0.63	5387	3394	0.63	4763	3001	0.63	5001	3151			
31	Cadastre	number			0	0.50	30224	15112	0.50	31735	15868			
32	Special Category	number			0	4.90	850	4165	4.90	893	4376			
33	Searching	number	0.27	2800	756			0			0			
34	Section 29 Notification	tenement	1.30	4052	5268	1.30	4255	5532	1.30	4468	5808			
35	Right to Negotiate Process	tenement	1.00	484	484	1.00	508	508	1.00	533	533			
	Weighted Total Production				**139290**			**146420**			**153760**	% Total $ Cash Budget		
	Expenditure (in 1999-2000 dollars - **)	**$M**			7.00			7.00			7.00	100%		
	Productivity/$M	**units/$M**			**19899**			**20917**			**21966**			
	Productivity Improvement	**p.a.**				→		**5.12%**	→		**5.0%**			

DME Weighted Multi-Factor Productivity Index : Plan 2000 - 2002

Division: Geological Survey

1999-2000

			Base			Estimate			Estimate			% TREASURY OUTPUT(s)		
			1999-2000			2000-2001			2001-2002			3	4	3&4
	Product Description	Units	Weight	Actual	Wtd	Weight	f'cast	Wtd	Weight	f'cast	Wtd	%wtd	%wtd	%wtd
BOOKS														**40%**
1	Bulletins	number	1.50	1	1.5	1.50	1	1.5	1.50	2	3.0			
2	Reports	number	1.00	9	9.0	1.00	9	9.0	1.00	6	6.0			
3	Explanatory Notes	number	0.50	19	9.5	0.50	19	9.5	0.50	15	7.5			
4	Records	number	0.50	17	8.5	0.50	17	8.5	0.50	15	7.5			
5	External Papers	number	0.10	24	2.4	0.10	22	2.2	0.10	24	2.4			
6	Miscellaneous	number	0.10	7	0.7	0.10	5	0.5	0.10	5	0.5			
MAPS														**46%**
7	1:500,000	number	0.50	2	1.0	0.50	16	8.0	0.50	4	2.0			
8	1:250,000	number	2.00	2	4.0	2.00	1	2.0	2.00	1	2.0			
9	1:100,000	number	1.50	15	22.5	1.50	12	18.0	1.50	2	3.0			
10	1:100,000 (Preliminary)	number	1.00	2	2.0	1.00	2	2.0	1.00	0	0.0			
11	1:100,000 (Final)	number	0.50	2	1.0	0.50	2	1.0	0.50	2	1.0			
12	1:50,000	number	1.00	1	1.0	1.00	2	2.0	1.00	3	3.0			
13	Project Maps - Colour	number	1.00	2	2.0	1.00	2	2.0	1.00	3	3.0			
14	Short Run Maps - Line	number	0.10	12	1.2	0.10	10	1.0	0.10	5	0.5			
15	Short Run Maps - Image	number	0.10	10	1.0	0.10	10	1.0	0.10	5	0.5			
DATA														**14%**
16	Aeromagnetic Data	line Km	0.000057	0	0.0	0.000057	35000	2.0	0.00	17500	1.00			
17	Gravity	stations	0.000571	2876	1.642	0.000571	3500	2.0	0.00	1750	1.00			
18	Drilling	metres	0.0012	2018	2.42	0.0012	2000	2.4	0.00	1000	1.20			
19	Siesmic Reprocessing	Km	0.0012	0	0.0	0.0012	2000	2.4	0.00	1000	1.20			
GEO-CHEM PACKAGE														
20	Geochem Packages	number	2.00	3	6.0	2.00	1	2.0	2.00	1	2.00			
	Weighted Total Production				**77.36**			**79.00**			**48.30**			
	Expenditure (in 1999-2000 dollars - **)	**$M**			12.34			11.98			6.98			
	Productivity/$M	**units/$M**			**6.27**			**6.59**			**6.92**			
	Productivity Improvement	**p.a.**				→		**5.1%**	→		**5.0%**			

DME Weighted Multi-Factor Productivity Index : Plan 2000 - 2002

Division: Explosives & Dangerous Goods

1999-2000

	Product Description	Units	Base 1999-2000 Weight	Actual	Wtd	Estimate 2000-2001 Weight	f'cast	Wtd	Estimate 2001-2002 Weight	f'cast	Wtd	% TREASURY OUTPUT(s) 11 %wtd	%wtd	%wtd
1	Site visits- metro	visit	4.00	300	1200.0	4.00	210	840.0	4.00	225	900.0			
2	Site visits- below 28 degree	visit	8.00	130	1040.0	8.00	90	720.0	8.00	85	680.0			
3	Site visits- above 28 degree	visit	32.00	30	960.0	32.00	30	960.0	32.00	32	1024.0			
4	Storage applications	application	3.00	600	1800.0	3.00	620	1860.0	3.00	650	1950.0			
5	Storage assessments	assessment	8.00	70	560.0	8.00	60	480.0	8.00	50	400.0			
6	Transport applications	application	1.50	900	1350.0	1.50	900	1350.0	1.50	940	1410.0			
7	Transport assessments	assessment	3.00	40	120.0	3.00	50	150.0	3.00	55	165.0			
8	Explosives applications	application	1.00	570	570.0	1.00	580	580.0	1.00	600	600.0			
9	Explosives assessments	assessment	2.00	150	300.0	2.00	155	310.0	2.00	160	320.0			
10	Licence renewals	renewal	0.50	11950	5975.0	0.50	11980	5990.0	0.50	12000	6000.0			
11	Written advice	number	3.00	2400	7200.0	3.00	2500	7500.0	3.00	2600	7800.0			
12	Telephones & Communications	number	0.30	57800	17340.0	0.30	60000	18000.0	0.30	63000	18900.0			
13	External issues meetings- on site	number	3.00	600	1800.0	3.00	340	1020.0	3.00	370	1110.0			
14	External issues meetings - off site	number	5.00	145	725.0	5.00	190	950.0	5.00	225	1125.0			
15	Internal meetings with external focus (**)	number	1.00	0	0.0	1.00	525	525.0	1.00	570	570.0			
16	Audits & Safety reports meetings-EDG	number	8.00	45	360.0	8.00	90	720.0	8.00	100	800.0			
17	Audits -3rd party	number	8.00	50	400.0	8.00	90	720.0	8.00	100	800.0			
18	Accident Investigations- minor	report	8.00	20	160.0	8.00	25	200.0	8.00	26	208.0			
19	Accident Investigations- routine	report	16.00	16	256.0	16.00	17	272.0	16.00	19	304.0			
20	Accident Investigations- major	report	80.00	5	400.0	80.00	7	560.0	80.00	8	640.0			
21	Prosecutions	report	32.00	5	160.0	32.00	7	224.0	32.00	10	320.0			
22	Complaints	number	4.00	90	360.0	4.00	95	380.0	4.00	100	400.0			
23	Talks/Seminars	number	8.00	80	640.0	8.00	71	568.0	8.00	87	696.0			
24	Standards reviewed	pages	0.25	1050	262.5	0.25	2050	512.5	0.25	2160	540.0			
25	Design Review	number	8.00	45	360.0	8.00	20	160.0	8.00	18	144.0			
26	Safety Reports/ Risk Assessment Reviews	number	20.00	40	800.0	20.00	60	1200.0	20.00	65	1300.0			
27	Report Reviews (CER/PER)	number	8.00	30	240.0	8.00	35	280.0	8.00	40	320.0			
28	Media	number	4.00	150	600.0	4.00	190	760.0	4.00	210	840.0			
29	Policy Documents	pages	4.00	800	3200.0	4.00	1100	4400.0	4.00	1150	4600.0			
30	Exemptions (**)	number	12.00	0	0.0	12.00	30	360.0	12.00	30	360.00			
	Weighted Total Production				**49138.5**			**52551.5**			**55226.0**	**100%**		
	Expenditure (in 1999-2000 dollars - **)	**$M**			1.614			1.61			1.61			
	Productivity/$M	**units/$M**			**30445.2**			**32640.7**			**34301.9**			
	Productivity Improvement	**p.a.**				→		**7.2%**	→		**5.1%**			

*Note: Items flagged as ** may not be readily obtainable for 1999/2000*

DME Weighted Multi-Factor Productivity Index : Plan 2000 - 2002

Division: Mining Operations

1999-2000

			Base			Estimate			Estimate			% TREASURY OUTPUT(s)		
			1999-2000			2000-2001			2001-2002			6	8	6&8
	Product Description	**Units**	Weight	Actual	Wtd	Weight	f'cast	Wtd	Weight	f'cast	Wtd	%wtd	%wtd	%wtd
1	Fatal Accident Investigations	Investigation Report	50.00		0.0	50.00	0.0	0.0	50.0	0.0	0.0			
2	Serious Accident Investigations	Report	10.00	1	10.0	10.00	0.0	0.0	10.0	0.0	0.0			
3	Prosecution and Preparation of briefs	Brief	50.00		0.0	50.00	0.0	0.0	50.0	0.0	0.0			
4	Divisional Strategic Plan	Plan	30.00	1	30.0	30.00	1.0	30.0	30.0	1.0	30.0			
5	Accident/Incident/Health Reports / Weekly Updates	Report	1.00	52	52.0	1.00	52.0	52.0	1.0	52.0	52.0			
6	Project Management Plans	Approval	2.00	39	78.0	2.00	37.0	74.0	2.0	38.0	76.0			
7	Audits - Management Safety Systems (MSS)	Audit	20.00	35	700.0	20.00	30.0	600.0	20.0	30.0	600.0			
8	Audits - High Impact Function (HIF)	Audit	5.00	201	1005.0	5.00	380.0	1900.0	5.0	495.0	2475.0			
9	Site Safety Inspections	Inspection	1.00	1873	1873.0	1.00	1500.0	1500.0	1.0	1500.0	1500.0			
10	Inspectorate Services Plan (maintenance)	Plan	20.00	4	80.0	20.00	4.0	80.0	20.0	4.0	80.0			
11	Audit Plan (maintenance)	Plan	20.00	4	80.0	20.00	4.0	80.0	20.0	4.0	80.0			
12	Survey/Assessment and Reports on Mining Activities	Surveys	5.00	4	20.0	5.00	3.0	15.0	5.0	3.0	15.0			
13	Training Course (conduct)	Attendance	15.00		0.0	1.00		0.0	1.0		0.0			
14	Desk Assessment (OH & ES)	Approval	2.00	305	610.0	2.00	470.0	940.0	2.0	490.0	980.0			
15	Technical Review/Audit/Accident Review	Audit	2.00	132	264.0	2.00	150.0	300.0	2.0	160.0	320.0			
16	Data Entry - Minehealth, Axtat, CONTAM	Valid Entry	0.015	23000	345.0	0.015	17000.0	255.0	0.015	17000.0	255.0			
17	Develop and Review Guidelines/Course Material	Guidelines	12.00	27	324.0	12.00	42.0	504.0	12.0	42.0	504.0			
18	Audit Protocols (from A Team)	Protocol	15.00		0.0			0.0			0.0			
19	Annual Environmental Reviews	Report	4.00	265	1060.0	4.00	280.0	1120.0	4.0	294.0	1176.0			
20	NOI approvals	Approval	1.00	220	220.0	1.00	220.0	220.0	1.0	220.0	220.0			
21	Annual Environmental Statistics	Report	10.00	1	10.0	20.00	1.0	20.0	20.0	1.0	20.0			
22	Environmental Inspections	Inspection	1.00	320	320.0	1.00	336.0	336.0	1.0	352.0	352.0			
23	Environmental Award Scheme	Award	80.00	1	80.0	80.00	1.0	80.0	80.0	1.0	80.0			
24	Certification of Mine Management (Board of Examiners)	Certificates	0.20	200	40.0	0.20	300.0	60.0	0.2	300.0	60.0			
25	Statutory Examinations	Candidates	200.00	4	800.0	1.00	300.0	300.0	1.0	300.0	300.0			
26	Safety Meetings & Presentations	Presentations	2.00	100	200.0	2.00	190.0	380.0	2.0	193.0	386.0			
27	Publications to industry (Minesafe)	Issues	30.00	3	90.0	30.00	4.0	120.0	30.0	4.0	120.0			
28	Statistical information to industry (AXTAT)	Report	10.00	2	20.0	10.00	2.0	20.0	10.0	2.0	20.0			
29	Publications to industry (Rehab Blab)	Issues	10.00	2	20.0	10.00	3.0	30.0	10.0	3.0	30.0			
30	(MODAMS) Publications IT System	Web Reports	20.00		0.0	20.00		0.0	20.0		0.0			
31	Audit Accreditation Program	System	70.00	0.7	49.0	70.00	0.3	21.0			0.0			
32	Enquiries / Short Advice	Contacts	0.006	100	0.6	0.006	1500.0	9.0	0.006	1700.0	10.2			
33	Safety Bulletin Development / Review	Published Item	2.00	4	8.0	2.00	4.0	8.0	2.0	4.0	8.0			
34	Site visit / Industry Contact (other)	Meetings	0.50	170	85.0	0.50	200.0	100.0	0.5	240.0	120.0			
35	Safety &Health Reps contacts	Contacts	0.50	700	350.0	0.50	680.0	340.0	0.5	685.0	342.5			
36	Review MSIA	Project	50.00	1	50.0	50.00	1.0	50.0			0.0			
37	Review MSIA Regulations	Amendment	5.00	10	50.0	5.00	10.0	50.0	5.0	10.0	50.0			
38	External Boards and Committees	Meetings	1.00	20	20.0	1.00	26.0	26.0	1.0	26.0	26.0			
39	Complaints	Complaint	5.00		0.0	5.00	20.0	100.0	5.0	25.0	125.0			
40	MOSHAB and committees	Committee	27.00	10	270.0	27.00	10.0	270.0	27.0	10.0	270.0			
41	SIR's	Published Item	2.00	4	8.0	2.00	2.0	4.0	2.0	2.0	4.0			
42	Policy Development	Policy Doc't	15.00	2	30.0			0.0			0.00			
	Weighted Total Production				**9251.6**			**9994.0**			**10686.7**			**100%**
	Expenditure (in 1999-2000 dollars - "")	**$M**			8.564			8.564			8.564			
	Productivity/$M	**units/$M**			**1080.3**			**1167.0**			**1247.9**			
	Productivity Improvement	**p.a.**				→		**8.0%**	→		**6.9%**			

DME Weighted Multi-Factor Productivity Index : Plan 2000 - 2002

Division: Policy, Planning & Services

1999-2000

	Product Description	Units	Base 1999-2000 Weight	Actual	Wtd	Estimate 2000-2001 Weight	f'cast	Wtd	Estimate 2001-2002 Weight	f'cast	Wtd	% TREASURY OUTPUT(s) 10 %wtd	%wtd	%wtd
INFORMATION SERVICES														
1	Hardware Support	Number (,000)	100	179.0	17900	100	188.0	18795	100	197.3	19734.8			
2	Mail	Number (,000)	200	113.0	22600	200	118.7	23730	200	124.6	24916.5			
3	Mainframe Transactions (suspended - see below)				0.0	0	0.0	0	0	0.0	0.0			
FINANCE & ADMINISTRATION														
4	Key Finance Functions	Number	2000	5.0	10000	2000	5.3	10500	2000	5.5	11025.0			
5	Minor Finance Functions	Number	250	6.0	1500	250	6.3	1575	250	6.6	1653.8			
6	Purchase Order Lines	Number (,000)	120	6.0	720	120	6.3	756	120	6.6	793.8			
7	Quotations (Phone/Fax)	Number	1		0	1	0.0	0	1	0.0	0.0			
8	Formal Quotations/Tenders	Number	30	31.0	930	30	32.6	977	30	34.2	1025.3			
EMPLOYEE RELATIONS & SERVICES														
9	Workshops Courses & Surveys for Change	Number	1000	4.750	4750	1000	5.0	4988	1000	5.2	5237			
10	Key MIS Reports	Number	1000	5.000	5000	1000	5.3	5250	1000	5.5	5513			
11	Personnel and Support Mechanisms	Number	1000	4.500	4500	1000	4.7	4725	1000	5.0	4961			
12	Work Flexibility Initiatives	Number	1000	1.500	1500	1000	1.6	1575	1000	1.7	1654			
FACILITIES SERVICES														
13	Capital Projects Managed	Number	250	6.0	1500	250	6.0	1500	250	6.0	1500.00			
14	Floor Area Managed	000m2	37	32.6	1206	37	32.6	1206	37	32.6	1206.20			
15	Floor Area Refurbished	000m2	300	3.6	1080	300	3.6	1080	300	3.6	1080.00			
16	Key Contracts Managed	Number	1401	10.0	14010	1401	11.0	15411	1401	12.0	16812.00			
ROYALTIES												100%		
17	Royalty Audits (Production value)	Number			0	0	0.0	0	0	0.0	0.00			
18	Royalty Audits (Net value)	Number			0	0	0.0	0	0	0.0	0.00			
19	Collection	Number			0	0	0.0	0	0	0.0	0.00			
20	Issues	Number			0	0	0.0	0	0	0.0	0.00			
COMMUNICATIONS & MARKETING														
21	Speeches	No. pages & complexity			0	30	0.0	0	30	0.0	0.00			
22	Media statements/articles	No. pages & complexity			0	90	0.0	0	90	0.0	0.00			
23	Media and public queries/answers	No. requests & complexity			0		0.0	0	0	0.0	0.00			
24	Publications	No. pages & complexity			0		0.0	0	0	0.0	0.00			
25	Events/displays	No. requests & complexity			0		0.0	0	0	0.0	0.00			
26	Marketing /Research	projects			0		0.0	0	0	0.0	0.00			
INTERNAL AUDIT														
27	Transaction Testing	Number	2	16.0	32	2	16.8	34	2	17.6	35.28			
28	Systems Based testing	Number	4	228.0	912	4	239.4	958	4	251.4	1005.48			
29	Efficiency/Effectivness Analysis	Number	6	88.0	528	6	92.4	554	6	97.0	582.12			
	Weighted Total Production				**88,668**			**93613**			**98735**	100%		
	Expenditure (in 1999-2000 dollars - **)	**$M**			9.14			9.14			9.14			
	Productivity/$M	**units/$M**			**9701**			**10242**			**10802**			
	Productivity Improvement	**p.a.**				→		**5.6%**	→		**5.5%**			

** *Note: As proposed to the OAG the use of Mainframe transactions will be discontinued in the 2000-2002 EBA/WPA procuctivity calculations. The effects of this item will be removed by excising the $'s involved from the PPS budget. The amount is estimated to be $1.5m pa.*

DME Weighted Multi-Factor Productivity Index : Plan 2000 - 2002

Division: Petroleum

			Base			Estimate			Estimate			Allocation to DME		
			1999-2000			2000-2001			2001-2002			Output model		
	Description	Units	Weight	Estimate	Weighted	Weight	Forecast	Weighted	Weight	Forecast	Weighted	Output 2	Output 7	Output 9
TITLE MANAGEMENT												100%		
1	Exploration Title Applications	application	3.5	74	259	3.5	77	269.5	3.5	79	276.5			
2	Development Title Applications	application	11.0	21	231	11.0	24	264	11.0	26	286			
3	Dealings	application	0.7	1926	1348	0.7	1800	1260	0.7	1900	1330			
RESOURCE MANAGEMENT												100%		
4	Well Approvals	decision	2.0	72	144	2.0	80	160	2.0	83	166			
5	Geophysical Approvals	decision	1.0	39	39	1.0	42	42	1.0	43	43			
6	Resource Assessments	report/model	40.0	13	520	40.0	15	600	40.0	17	680			
30	Intermediate Reports	report	12.0	15	180	12.0	18	216	12.0	18	216			
7	Monitoring Reports	report	4.0	22	88	4.0	28	112	4.0	35	140			
8	Inspections (drilling)	inspection	3.0	15	45	3.0	17	51	3.0	18	54			
SAFETY & ENVIRONMENT														100% (shared)
9	Audits	man audits	lookuptable		280	lookuptable		380	lookuptable		399		v	v
10	Environmental Submissions	submission	lookuptable		436	lookuptable		525	lookuptable		551			100%
11	New facility safety cases	assess	lookuptable		238	lookuptable		274	lookuptable		287			
12	Existing facility safety cases	maint	lookuptable		260	lookuptable		299	lookuptable		314			
13	MODU & Bridging Doc.	assess	lookuptable		153	lookuptable		176	lookuptable		185			
14	Maintenance of MODU SC	maint	lookuptable		36	lookuptable		41	lookuptable		43			
15	Seismic	assess & maint	lookuptable		218	lookuptable		251	lookuptable		263			
16	Pipelines	assess & maint	lookuptable		209	lookuptable		240	lookuptable		252			
17	Investigations	Investign	lookuptable		85	lookuptable		85	lookuptable		89		v	v
18	Diving	assess	lookuptable		89	lookuptable		102	lookuptable		107			
INFORMATION AND PROMOTION												Shared		
21	Minist/FOI	number	lookuptable		67	lookuptable		70	lookuptable		75	v	v	v
20	Publications & information	page/number	lookuptable		455	lookuptable		765	lookuptable		510	v	v	v
23	Seminar	number	lookuptable		95	lookuptable		105	lookuptable		110	v	v	v
25	External Presentations	number	lookuptable		140	lookuptable		155	lookuptable		160	v	v	v
LEGISLATION AND POLICY												Shared		
28	Legislative/policy development & review	number	lookuptable		700	lookuptable		1080	lookuptable		875	v	v	v
	Productivity													
	Weighted total production				6315			7523			7412			
	Expenditure (in 1999-2000 dollars)	$M			2.97			3.37			3.16			
	Productivity	Wtd units/$M			2126.3			2232.9			2346.9			
	Productivity change	% p.a.				→		**5.01%**	→		**5.11%**			

Note: For Petroleum Division the 'lookuptable' are calculated by a supporting model. The resulting weighted targets are included in this sheet.

CHEMISTRY	CENTRE OF WA			
	Indicators	**Target/Baseline**	**Weighted**	**Overall Value (max./min) to Productivity Increase**
1. Workload Improvements	Competencies Development	Activity and Level of Expertise formula	N/A	1.00% max
	Technical improvements	5 initiatives pa	N/A	1.00% max
2. Sustaining Quality Services	Accreditation	100%		0.50%
	Proficiency Trials	4 plus	per FTE	0.50%
3. Development of Science	Publication Index	0.3 papers	per FTE	1.00%
	Research Grants	$5,000	per FTE	1.00% max
4. Financial	Revenue	1% improvement to revenue	per FTE	Up to 1.00% max
5. Client Satisfaction	Client Surveys/Results	1% increase to satisfaction index	Client Revenue	1.00%
				OVERALL = 7.00% max
				TARGET FOR WORKFORCE = 3.00%

SCHEDULE C—INDIVIDUAL REWARD MODEL

1. INTRODUCTION

This schedule details the application of performance pay as provided for in Clause 19 - Personal Effectiveness Review of this Agreement. This model rewards individual performance during the life of this Agreement with a potential performance pay bonus at the conclusion of each Agreement measurement period.

2. OBJECTIVES OF INDIVIDUAL REWARD MODEL

(a) to reward staff who are most effective in achieving corporate goals;

(b) to provide an incentive for staff to meet and more than meet the requirements of their position;

(c) to develop the skills of managers to objectively evaluate the performance and behaviours of employees, resulting in clearly understood ratings and any associated financial rewards.

3. BASIS OF PAYMENT

As with previous Enterprise Bargaining Agreements, individual performance will be monitored by a formal Performance Enhancement Program (PEP) to be carried out at the conclusion of the Agreement measurement period, by each employee's manager.

As outlined in Clause 20 above, Personal Effectiveness Increases (PEI) are based upon each individual employee's performance during the preceding financial year. A rating of 'competent, 'very effective', or 'outstanding' on the proposed five point scale used in the Performance Enhancement Program will make an employee eligible for a performance pay bonus.

Any increase awarded on the basis of the employee's performance will be paid as a once off annual performance pay bonus to the employee.

One percent of the Department's annual salary budget will be quarantined for the performance bonus payments each year.

All employees with the same rating will receive the same financial bonus, regardless of classification level and step.

The bonus will be based on the following formula—

$$\text{UNIT COST (Y)} = \frac{\text{1\% OF THE DME SALARY BUDGET}}{(A \times 5) + (B \times 2) + (C \times 1)}$$

where A = Number of staff receiving a rating of 5

B = Number of staff receiving a rating of 4

C = Number of staff receiving a rating of 3

and, a rating of 5 would be worth 5 x Y

a rating of 4 would be worth 2 x Y

a rating of 3 would be worth 1 x Y

An employee who is employed or promoted six months or less before the time of the assessment period (30 June) will be considered as still learning the job, and rated as 2.

An employee who ceases employment before the time of assessment will not be entitled to receive any performance pay bonus unless the employee is redeployed to another department under secondment.

A DME redeployee who returns to DME following a secondment opportunity will be eligible for a performance pay bonus even though the employee may not have returned for a full six months.

Pro rata performance pay will not be available.

4. PEP RATING REVIEW PANEL (PRRP)

(a) DME has established a PEP Ratings Review Panel (PRRP) to assist in settling an outcome where any employee classified at Stratum 1, Stratum 2 or Stratum 3 (non –managerial)[1] and their manager cannot agree on the performance rating arrived at during the regular July/August PEP Review meetings.

[1] Employees at Strata 3,4,5 (with management responsibilities) who do not agree with their PEP review rating will generally have the matter determined by reference to their own MOR, or the Director General. Where the matter is referred to the DG, his/her decision will be final. The MOR shall, with the approval of the DG, have the discretion of convening a PRRP.

(b) A PRRP cannot be requested or convened until the employee and his/her manager have undertaken exhaustive discussions with each other on the point(s) of disagreement, and have sought the assistance of the employee's MOR to mediate the dispute.

(c) The Panel's role is to gather information and attempt settlement of the dispute between the employee and his/her manager. This may include the option of mediation.

(d) The Panel will be convened by the employee's MOR and be constituted as follows—

- The employee's Manager—Once—Removed (MOR) as a non voting chair person;
- A minimum of two Managers (same Stratum/Level as the assessing manager, but different Branch);
- A minimum of two Peers or subordinates (same Stratum/Level or lower stratum/level as the employee and as agreed by him/her;
- One ER&S representative as a non voting process adviser and record keeper; and,
- The employee will be given the option to nominate a non-voting observer to attend the panel proceedings. Observers may be from either the CSA, SCIC or any other DME staff member at the choice of the employee.

(e) The Panel is to operate in accordance with the principles of merit, equity and fairness as provided for in the Department's Code of Conduct and the Public Sector Standards.

(f) The Panel will convene within 7 working days of being constituted.

(g) The MOR may, at his/her discretion, excuse potential members of the PRRP in cases where they declare any possible bias or conflict of interest when nominated for the role of panel member. The employee shall have the opportunity to inform the MOR of any perceived conflict of interest or bias prior to any potential panel member being appointed to a panel role.

(h) The PRRP will afford the aggrieved Employee and the relevant Manager sufficient time to formally explain their case, including—

- The circumstances of the assessment,
- The reasons for the rating considered to be appropriate by each person,
- The perceived reasons for the difference(s) in ratings,
- Statements in support of either party's position. These may be verbal and/or in writing.

(i) The Panel may seek relevant information to substantiate the above statements to assist in the finalisation of the matter.

(j) In cases where the employee and his/her manager cannot resolve the issue with the assistance of the PRRP, the Panel shall consider all of the evidence and issue a written report and recommendation to the Director General within 5 working days of the meeting which provides—

- The background to the dispute;
- A Recommendation of confirmation of the manager's PEP Review Rating; or,
- A Recommendation of the Rating which reflects the employee's opinion; or,
- A Recommendation of such other rating as the panel considers, on the evidence, to be appropriate.

(k) The manager and employee will be afforded the opportunity to consider the outcome and accept the panel's recommendation as a full and final resolution of the matter. Should this occur, the approval of the Director General will not be required.

In the event that either the employee or the manager (or both) do not wish to accept the recommendation in full and final resolution of the matter, then the Director General shall consider the panel's recommendation. Where panel members are unanimous in their recommendation, the Director General will approve it. In cases where the recommendation is not unanimous the Director General will review the matter and make a determination. In both these instances the decision of the Director General shall be final.

SCHEDULE D—DISPUTE AVOIDANCE AND SETTLEMENT PROCEDURES

Types of Grievance and Process for Settlement

Enterprise Agreement:	Equal Opportunity (EO) Grievances:	Health and Safety Grievances:	General Grievances:
A disagreement complaint or grievance raised between an employee or group of employees and management concerning any interpretation or the implementation of this Agreement by either party.	• racial harassment; • sexual harassment; • discrimination or harassment due to a persons sex, marital status, pregnancy, race, impairment, age, family status, and political or religious conviction. This clause does not in any way limit an individuals rights under the specific provisions of the Equal Opportunity Act.	• safety issues in the workplace; • hazardous substances in the workplace; • protective clothing and equipment. This clause does not in any way limit an individuals rights under the specific provisions of the Health and Safety Act.	This covers a variety of grievances that can occur from time to time in the workplace excluding the following: • Those that have a formal appeal process such as grievances relating to promotions or classifications. • Any action by either party likely to cause a demarcation dispute will be resolved by the application of this clause.

Internal Procedure for Dealing with Informal Grievance

a) Any employee who considers that they have grounds for a grievance may submit the grievance to their manager or other appropriate person.

b) The grievance shall be submitted as soon as is practicable after the occurrence so as to enable the prompt resolution of the grievance.

c) Grievances should be resolved informally and as quickly as possible by the parties directly involved.

d) Managers must act to resolve the grievance through an informal process within five (5) working days.

e) During the informal process both parties have the right to seek assistance from the nominated grievance officer and/or their union.

f) The formal grievance process should only be used when the informal process has failed or it becomes evident that the resolution will involve an unreasonable and lengthy time delay.

Unresolved Grievance

Internal Procedure for Dealing with Formal Grievance

a) Where an informal process does not or appears it will not be able to satisfactorily resolve the grievance, either party may seek to have the matter dealt with through the formal grievance process.

b) The grievance may be referred to the employees manager-once-removed or a grievance officer. That officer shall respond within 5 days to the grievance and treat it seriously and impartially. That officer will:

(i) allow the aggrieved employee to bring another person to the interview if he/she wishes for advice, support, advocacy or to act as an interpreter;
(ii) get a broad outline of the grievance;
(iii) agree on a timetable for resolution of grievance at the local level;
(iv) take brief but accurate notes;
(v) verify the information recorded in the notes with the aggrieved person;
(vi) confirm an appropriate level of confidentiality of the proceedings;
(vii) ensure security of records associated with proceedings.

c) Where the parties are unable to satisfactorily resolve the grievance, then either party may seek to have the matter referred to the Director General or his nominee.

Unresolved ↓ Grievance

Grievance Referred to the Director General or His Nominee

a) Once either party has requested that the matter be referred to the Director General or his nominee, the grievance officer and/or manager should contact the Director General or his nominee to hand over the grievance.

b) The Director General or his nominee will:
(i) meet all parties and allow the aggrieved employee to bring another person to the interview if he/she wishes;
(ii) obtain access to all previous notes and records regarding the grievance;
(iii) receive a written statement of grievance in the employee's own words;
(iv) verify the facts with the employee;
(v) reaffirm any issues of confidentiality;
(vi) explore options available to resolve the grievance;
(vii) take brief but accurate notes;
(vii) take brief but accurate notes;
(viii) where relevant provide the opportunity to respond fully to any allegations made against them;
(ix) make the aggrieved employee aware of alternative action.

c) At the end of the investigation the Director General or his nominee will prepare a report.

↓ Unresolved Grievance ↓

Enterprise Agreement:	Equal Opportunity (EEO) Grievances:	Health and Safety Grievances:	General Grievances:
• Western Australian Industrial Relations Commission • Australian Industrial Relations Commission	• Equal Opportunity Commission	• Worksafe WA • Australian Industrial Relations Commission • Western Australian Industrial Relations Commission.	• Public Sector Management Office.

SCHEDULE E—SIGNATORIES

Signed by the Director General of the Department of Minerals and Energy of Western Australia

Date: *18* / *9* /2000

Signed.....Lee Ranford.....

Lee Ranford

Signed for and on behalf of the Civil Service Association of Western Australia Incorporated by

Date: *20* / *9* /2000

Signed.....D Robinson..... *Common Seal*

D ROBINSON

Signed for and on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers Union by

Date: *20* / *9* /2000

Signed.....S. M. Jackson..... *Common Seal*

SHARRYN JACKSON

DEPARTMENT OF TRANSPORT ENTERPRISE AGREEMENT 2000.
No. PSA AG 3 of 2000.

2000 WAIRC 00785

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED, APPLICANT *v.* DIRECTOR GENERAL DEPARTMENT OF TRANSPORT RESPONDENT
CORAM	SENIOR COMMISSIONER G L FIELDING
DELIVERED	TUESDAY, 3 OCTOBER 2000
FILE NO/S	PSGAG 3 OF 2000
CITATION NO.	2000 WAIRC 00785

Result	Agreement registered
Representation	
Applicant	Mr D A Ellis as agent for the Applicant and for the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch
Respondent	Mr J Mercadante and Ms E P Malyn as agents

Order.

HAVING heard Mr D A Ellis as agent on behalf of the Applicant and the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch and Mr J Mercadante and Ms E P Malyn as agents 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 lodged in the Commission on 20 September 2000 entitled Department of Transport Enterprise Agreement 2000 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 Department of Transport Enterprise Agreement 1998 PSGAG 5 of 1998 which is hereby cancelled.

(Sgd.) G.L. FIELDING,
[L.S.] Senior Commissioner/
Public Service Arbitrator.

Schedule.

1.—TITLE

This Agreement shall be known as the "Department of Transport Enterprise Agreement 2000" and shall replace "Department of Transport Enterprise Bargaining Agreement 1998".

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Definitions
4. Purpose and Objectives of the Agreement
5. Scope
6. Number of Employees
7. Parties to Agreement
8. Date and Period of Operation of Agreement
9. Relationship to Parent Awards
10. Transport Enterprise Bargaining Group
11. Availability of Agreement
12. Values Statement
13. Driver/Road Safety
14. Learing Organisation
15. Training and Development
16. Productivity Measurement
17. Salary Increases
18. Consultation
19. Dispute Resolution Procedures
20. Terms and Conditions
    - 20.1 Community Services Leave
    - 20.2 Study Leave
    - 20.3 art-time Employment
    - 20.4 Casual Employment
    - 20.5 Contract Employment
    - 20.6 Level 1 Commencement Of Employment
    - 20.7 Workplace Flexibility
    - 20.8 Flexible Working Hours
    - 20.9 Annual Leave Travel Concession
    - 20.10 Family Leave
    - 20.11 Ceremonial/Cultural Leave
    - 20.12 Career Breaks
    - 20.13 Purchased Leave
    - 20.14 Family Room
    - 20.15 Parental Leave
    - 20.16 Union Business Leave
    - 20.17 Payout of Accrued Leave
21. Signatures of Parties to the Agreement

Appendix 1—Transport Productivity Matrix 2000-2001

Appendix 2—Values Statement

Appendix 3—Salaries

Schedule A—Road Transport Compliance Unit Commuted Shift Allowance Agreement

Schedule B—Commuted Overtime and Seagoing Allowances Agreement

Schedule C—Taxi's Investigations Unit Commuted Shift Allowance Agreement

3.—DEFINITIONS

(1) "Agreement": the "Department of Transport Enterprise Agreement 2000".

(2) "Awards": the industrial awards and agreements under which the employees are covered by the unions in this Agreement—

- Public Service Award 1992; and
- Engineering Trades (Government) Award, 1967 Nos 29, 30 and 31 of 1961 & 3 of 1962.

(3) "employee": for the purpose of this Agreement, someone who is referred to at Clause 5—Scope.

(4) "Employer": The Director General of Transport.

(5) "Government": the State Government of Western Australia.

(6) "Transport": the Department of Transport.

(7) "Union": the union and the association listed as parties to this Agreement which are listed in Clause 7 of this Agreement.

(8) "WAIRC": the Western Australian Industrial Relations Commission.

(9) "PSA": the Public Service Award 1992.

4.—PURPOSE AND OBJECTIVES OF THE AGREEMENT

(1) This Agreement reflects the continued commitment of the parties to ongoing productivity improvement in Transport.

(2) The Agreement introduces a number of initiatives which will assist in enhancing the flexibility of Transport. The initiatives will assist Transport to meet its objectives as well as improve the working life of its employees.

(3) The Agreement also recognises the productivity improvements achieved by the parties from recent reforms, particularly in the Licensing Division.

(4) The shared objectives of the parties are to—

a. achieve Transport's purpose and improve productivity and efficiency in Transport through ongoing improvements;

b. facilitate greater flexibility in decision making and allocation of human and other resources;

c. promote increased satisfaction from jobs and secure employment opportunities;

d. develop and pursue changes on a co-operative continuing basis by using participative practices; and

e. promote health, safety, welfare and equal opportunity for all employees.

5.—SCOPE

(1) This Agreement shall apply to all employees of Transport under the terms and conditions as contained in this Agreement.

(2) The Agreement relates to the employment, by the Director General of Transport as the employing authority of Transport, of persons who are members or eligible to be members of the unions mentioned above.

6.—NUMBER OF EMPLOYEES

(1) The number of employees covered by this agreement as at the date of registration is 178.

7.—PARTIES TO AGREEMENT

(1) This Agreement applies to the parties shown below and no other parties shall be able to be joined to this Agreement during its term—

a. Civil Service Association of Western Australia Incorporated;

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

c. Director General of Transport.

8.—DATE AND PERIOD OF OPERATION OF AGREEMENT

(1) This Agreement shall operate from the first pay period commencing on or after the date on which this Agreement is registered by the Western Australian Industrial Relations Commission, and shall remain in force for a period of twelve (12) months from the date of registration.

(2) The parties will commence a review of this Agreement at least six months prior to the date of expiry.

(3) Following the process of reviewing this Agreement it will be renewed or replaced by another Agreement or cancelled as appropriate.

(4) This Agreement shall not be cancelled or varied during its term unless otherwise provided for.

(5) This Agreement will continue after the expiry of its term until it is replaced by a further Agreement, or such other time as either of the parties withdraws from the Agreement in accordance with Section 41 (7) of the Industrial Relations Act (WA) 1979.

9.—RELATIONSHIP TO PARENT AWARDS

(1) This Agreement shall be read in conjunction with the existing awards that apply to the parties bound to this Agreement. In the case of any inconsistencies, this Agreement shall have precedence to the extent of the inconsistencies.

(2) The relevant parent awards are the Public Service Award 1992 and the Engineering Trades (Government) Award, 1967 No 29, 30 and 31 of 1961 & 3 of 1962.

10.—TRANSPORT ENTERPRISE BARGAINING GROUP

(1) Transport together with the employees covered by this Agreement and unions has formed the Transport Enterprise Bargaining Group (TEBG) covering all employees of Transport employed under this Agreement. The TEBG will monitor the implementation of this Agreement including the development of and progress towards the productivity targets set out in Appendix 1.

11.—AVAILABILITY OF AGREEMENT

(1) Every employee will be entitled to a copy of this Agreement. In addition, a copy or copies of this Agreement will be kept in an easily accessible place or places within Transport, and the location of the copies will be communicated to all employees.

12.—VALUES STATEMENT

(1) Transport has developed a set of values to guide its people in achieving its purpose and objectives. These values will be reviewed from time to time to ensure that they meet the needs of customers and other stakeholders. The parties are committed to applying these values which are contained in the Values Statement as shown on Appendix 2.

13.—DRIVER/ROAD SAFETY

Transport and its employees will embrace road safety principles in the conduct of Transport business.

14.—LEARNING ORGANISATION

(1) Transport is committed to adopting the qualities of a learning organisation as it strives to achieve its purpose and objectives through a changing environment.

(2) As a learning organisation, Transport will strive to—

a. develop a shared vision for the organisation;

b. accept, embrace and seek change;

c. be open to the widest possible range of perspectives in order to identify trends and generate choices;

d. foster teamwork;

e. encourage flexibility and be willing to take risks; and

f. facilitate proactive problem solving.

15.—TRAINING AND DEVELOPMENT

(1) Employees will be provided with timely training and development to enable them to obtain the skills necessary for Transport to achieve its objectives and for employees to enhance their career opportunities. Training Learning plans will be developed jointly by each employee and his/her manager through the Performance Development Program. Training and development undertaken will be accredited by State and/or National Training Authorities and be documented in employee records.

(2) The parties agree that training and development of employees should reflect both the needs of Transport and those of the employee.

16.—PRODUCTIVITY MEASUREMENT

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

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

(3) Consistent with the above, the Productivity Matrix attached at Appendix1 has been developed between management, employees and unions, as part of an overall aim of improving productivity in Transport. The measures contain targets that are both realistic and achievable within agreed time frames.

(4) The Productivity Matrix will assess organisational productivity for the 2000/2001 financial year. The Productivity Matrix will measure and reward employees for the overall improvement in labour productivity at Transport, rather than improvements at a divisional level.

(5) The methodology for measurement and/or calculations for assessment of productivity will be available for examination by the union at any time during the life of the Agreement.

(6) The parties agree that relevant productivity measures assist in the attainment of corporate goals in the interests of clients, employees, Transport and the Government on behalf of the community.

17.—SALARY INCREASES

(1) From the first pay period commencing on or after the date of registration, employees covered by this Agreement shall be paid the rate of pay as contained in Column A of the tables in Appendix 3—Salaries. This represents an increase of 3% above the salary levels provided under the Department of Transport Enterprise Agreement 1998 and is in return for all realised and continuing productivity improvements.

18.—CONSULTATION

(1) The parties to this Agreement recognise that participative practices are the means by which they can work together to make the enterprise more productive and provide more satisfying and secure employment. Co-operation and trust in the workplace, better communication, more information and more

sharing of decisions between management and employees, it is acknowledged, are keys to achieving that outcome. The parties to this Agreement commit themselves to full, frank and timely exchange of information relevant to the achievement of this objective.

(2) Nevertheless, Transport will continue to make decisions as it is accountable to Government through legislation for the efficient and effective operation of its business. Accordingly, the employer may choose not to notify the relevant employee/s and union/s until it has made a definite decision to introduce major changes in operation, organisation, structure or technology that are likely to have significant effects on employees. Employees will then be notified at the earliest opportunity. However, the employer will consult with the relevant employee/s and/or union/s on the likely effects on the employee/s of the action and measures that may be taken by the parties to avoid or minimise the effect.

19.—DISPUTE RESOLUTION PROCEDURES

(1) In the event of any questions, disputes or difficulties, the parties agree to participate in consultation to resolve all matters (relating both to the operation of this Agreement and to matters of personal grievance) in a timely and conciliatory manner.

(2) It is agreed that during any question, dispute or difficulty, the work practices in place before the question, dispute or difficulty arose will continue, provided that matters relating to health and safety shall be exempt from this Agreement. It is understood that no party shall be prejudiced as to the final settlement by the continuance of work in accordance with this subclause.

(3) It is further agreed that a personal grievance of any employee will be settled with as much privacy and confidentiality as is practicable and the employee shall be free from any retaliation using this procedure.

(4) This dispute resolution procedure will apply to any questions, disputes or difficulties that arise under this Agreement—

a. the Union representative and/or the employee/s concerned shall discuss the matters with the immediate supervisor in the first instance. An employee may be accompanied by a Union representative;

b. if the matter is not resolved within ten (10) working days of the discussion in accordance with sub-clause (1) hereof the matter shall be referred by the employee and/or Union representative to the relevant Executive Director for resolution;

c. if the matter is not resolved within seven (7) working days of the discussion in accordance with sub-clause (2) hereof the matter shall be referred by the employee and/or Union representative to the Director General of Transport or his/her nominee for resolution; and

d. if the matter is not resolved to the employee's satisfaction by the Director General of Transport, it may be referred by either party to the Western Australian Industrial Relations Commission.

20.—TERMS AND CONDITIONS

20.1. Community Services Leave

(1) Employees who are active volunteer members of the WA State Emergency Service, WA Volunteer Bush Fire Brigade, St John Ambulance Brigade, a sea and rescue association or other such similar body maybe granted paid leave where they are called to duty to attend an emergency incident.

(2) The employee will—

a. Inform his/her supervisor as soon as is practicable of the intended absence and its expected duration;

b. Complete a leave of absence form upon return to work;

c. Supply written proof from the volunteer organisation of the employee's participation and submit this with the leave form; and

d. If possible, supply the employer with a copy of the volunteer organisation's roster which indicates the employee's commitments.

20.2. Study Leave

(1) For those employees who are eligible for study leave under their relevant award, study leave may be granted by the employer for certified courses or any other courses approved by the employer, subject to operational convenience and provided satisfactory progress is being made by the employee. Approval of study leave is at the discretion of the employer.

20.3. Part-Time Employment

(1) Part-time employees may be employed for up to the full-time hours prescribed in the relevant award. The number of part-time hours is to be agreed between the employer and the employee.

(2) A part-time employee will be paid a proportion of the appropriate full-time salary dependent on time worked.

(3) A part-time employee shall be entitled to the same leave and conditions prescribed in this Agreement together with the relevant award as for full-time employees, with payments proportionate to the hours worked. Such payments in respect of annual leave and long service leave will be averaged where the employee's ordinary working hours have varied during the accrual period. Sick leave and any other paid leave shall be paid at the current salary, but only for those hours or days that would normally have been worked had the employee not been on such leave.

20.4. Casual Employment

(1) An employee may be employed on a casual basis for up to one month. If the services of the casual employee are required for a period greater than one month then he/she will be offered a fixed term contract in accordance with the Public Sector Management Act,1994, section 64(b).

20.5. Contract Employment

(1) To the extent that it is operationally convenient, Transport will engage employees on fixed-term contracts for periods of no less than one month. However, the parties recognise that in some circumstances fixed-term contracts of less than one month may be required by the employer and will be entered into at the discretion of the employer.

20.6. Level 1 Commencement of Employment

(1) An adult employee employed pursuant to Level 1 of the Public Service Award will normally commence employment at Level 1.1. At the discretion of the Director General, the employee may be appointed to a maximum of Level 1.9 upon commencement of employment to a Level 1 position subject to the relevant knowledge and experience of the employee. The date of commencement will be the anniversary date for that employee for the purpose of annual increments subject to satisfactory performance.

20.7. Workplace Flexibility

(1) The employer may temporarily deploy an employee to perform duties that are within the limits of the employee's skills, provided that any such worksite is generally within 50 kilometres of the employee's present workplace location. However, the employee may be temporarily deployed to a more distant location if the employer and the employee agree in writing.

(2) Employees will be provided with a minimum of two (2) weeks' notice, unless a lesser period is agreed between the employer and the employee, and an up-front estimate of the length of any temporary move. It will be expected that an employee will return to his/her substantive position after such temporary placement. Where an employee will not be returned to his/her substantive position he/she will be notified immediately such a decision is made.

(3) Employees may on occasion be required to be permanently transferred to an alternative position within Transport to meet changing business needs and work practices. The transferring of an employee will occur with employee consultation and with regard to the employee's family and financial responsibilities.

20.8. Flexible Working Hours

(1) The minimum hours of duty will average 37.5 hours per week (150 hours per 4 weekly period) for full time employees, to be worked between 7am and 6pm Monday to Friday. By negotiation, starting and finishing times between 6am and 9pm may be agreed as alternative standard hours of duty.

(2) Where starting and finishing times outside 7am to 6pm are required by the employer then shift work allowances will apply.

(3) Where an employee is a Teleworker, the normal hours of duty may be varied, as agreed between the employee and their supervisor, to facilitate the Teleworking arrangement.

20.9. Annual Leave Travel Concession

(1) Employees who are eligible for the annual leave travel concession under a relevant award may, subject to the agreement of the employer, travel to any destination provided the cost does not exceed the cost of an economy return airfare to Perth. Travel must be undertaken to be eligible for the concession.

20.10. Family Leave

(1) Family Responsibility is defined as—

Being responsible for the care of another person, whether or not that person is a dependant.

(2) An employee with family responsibilities shall be entitled to take up to 37.5 hours Family Leave per accrual year without loss of pay to provide care and support for such persons when they are ill.

(3) Family Leave entitlements shall be deducted from accrued sick leave entitlements from previous accrual years.

(4) The employee shall provide a medical certificate if—

a. Family Leave exceeds two consecutive days;

b. a total of five days of any combination of sick leave and Family Leave has already been taken without a medical certificate in the accrual year; or

c. at any other time it is required by the employer.

20.11. Ceremonial/Cultural Leave

(1) Subject to the approval of the employer, an employee may take time off work to meet the employee's customs, traditional law and to participate in ceremonial/cultural activities. Prior notice must be given of the intention to take the leave, the reasons for taking the leave and the estimated length of absence.

(2) Ceremonial/cultural leave may not exceed ten working days in any one year and will be deducted from annual leave or long service leave, or granted as leave without pay.

20.12. Career Breaks

(1) The employer may approve an unpaid career break scheme for an employee. Approval is at the discretion of the employer.

(2) It is the responsibility of the employee to explore his/her personal taxation and superannuation implications and make any necessary arrangements in these areas.

20.13. Purchased Leave

(1) A Purchased Leave option can be adopted by mutual agreement between an individual employee and the employer for the employee to salary sacrifice the value of the amount of leave purchased over a calendar year, whereby the employee will take 8 weeks of leave comprising 4 weeks purchased leave and 4 weeks annual leave. The option can also be taken on a pro rata basis, by joining the scheme for part of a year, to purchase either 2 or 3 weeks additional leave.

(2) In the event that the employee is unable to take such leave, the unused Purchased Leave will be repaid upon completion of the calendar year.

(3) Access to this option will be subject to the employee having satisfied Transport's Leave Management policy. Purchased leave is to be accessed and taken in accordance with HR policy.

20.14. Family Room

(1) The employer agrees to continue to provide a family room at the Murray Street office and Marine House.

(2) The family room is available for employees to bring children into work when unable to arrange any alternative child care arrangements. The room is to be used for short-term emergency use only and not on an ongoing basis. The employee must obtain the approval of his/her manager before making use of the room.

(3) Where the child is ill, family carer's leave should be utilised if possible. However, if the employee brings in an ill child, the child must not have an infectious disease. To ensure that the health of the other employees is not being jeopardised, a medical certificate must be provided if requested by the employer.

20.15. Parental Leave

(1) For the purpose of this clause the following definitions apply—

a. "Employee" includes full-time, part-time, permanent and fixed term contract employees.

b. "Adoption", in relation to a child, is a reference to a child who is not the natural child or step-child of the employee or the employee's spouse, is less than 5 years of age and has not lived with the employee for 6 months or longer.

c. "Primary Care Giver" means the parent who has primary responsibility for the care and basic needs of the child(ren) to the exclusion of the other parent.

d. "Replacement employee" is an employee specifically engaged to replace an employee proceeding on parental leave.

(2) Eligibility for Parental Leave—

a. An employee who has completed 12 months service with the employer will be entitled to 52 weeks parental or adoption leave, to be taken within 12 months of the date of birth or adoption.

b. Where the employee applying for the leave is the partner of a pregnant spouse one week's unpaid leave may be taken at the birth of the child concurrently with parental leave taken by the pregnant employee.

c. An employee seeking to adopt a child shall be entitled to two days unpaid leave to attend interviews or examination required for the adoption procedure. Employees working or residing outside the Perth metropolitan area are entitled to an additional day's leave. The employee may take any paid leave entitlement in lieu of this leave.

d. Except in the circumstances described in subclause (b) of this clause, where both partners are employed by Transport the leave shall not be taken concurrently except under special circumstances and with the prior approval of the Director General.

e. If requested by the employer, the employee must provide a medical certificate or other evidence of the pregnancy or intended adoption.

(3) Other Leave Entitlements

a. An employee proceeding on parental leave may elect to utilise any accrued annual leave or accrued long service leave in lieu of parental leave for the whole or part of the period.

b. At the completion of any period of parental leave an employee may apply to clear any accrued annual leave or accrued long service leave.

c. An employee may extend the maximum period of parental leave with a period of leave without pay subject to the Director General's approval.

d. An employee on parental leave is not entitled to paid sick leave and other paid award absences, nor do leave entitlements accrue.

e. Where the pregnancy of an employee terminates other than by the birth of the child then the employee

shall be entitled to such period of sick leave or unpaid leave for a period certified as necessary by a registered medical practitioner.

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

(4) Notice and Variation

a. The employee shall give not less than ten weeks' notice in writing to the employer of the date the employee proposes to commence parental leave, stating the estimated period of leave to be taken.

b. An employee proceeding on parental leave may elect to take a shorter period of maternity leave. At any time during that period of parental leave, subject to 14 days' written notice being given, the employee may elect to lengthen the period once only or, subject to the approval of the employer, further lengthen or shorten the period.

(5) Transfer to a Safe Job

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

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

(6) Replacement Employee

Prior to engaging a replacement employee Transport shall inform the person of the temporary nature of the employment and the entitlements relating to the return to work of the employee on parental leave.

(7) Return to Work

a. An employee shall confirm the intention to return to work by notice in writing to Transport not less than four weeks prior to the expiration of the period of parental leave.

b. An employee on return from parental leave shall be entitled to the position which the employee occupied immediately prior to proceeding on parental leave. Where an employee was transferred to a safe job pursuant to subclause (5) hereof, the employee is entitled to return to the position occupied immediately prior to the transfer.

c. An employee may return on a part-time basis to the same position occupied prior to the commencement of leave or to a different position at the same classification level on a part-time basis in accordance with the part-time provisions of the relevant award and clause 20.3 of the Agreement; and

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

(8) Effect of Leave on Employment Contract

a. Fixed Term Contract—An employee employed for a fixed term contract shall have the same entitlement to parental leave, however the period of leave granted shall not extend beyond the term of the contract;

b. Continuous Service—Absence on parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose under the relevant award or this Agreement; and

c. Termination of Employment—An employee on parental leave may terminate employment at anytime during the period of leave by written notice in accordance with the relevant award.

20.16. Union Business Leave

(1) Transport shall grant paid leave during ordinary working hours to an employee—

a. who is required to give evidence before any Industrial Tribunal;

b. who as a Union nominated representative is required to attend negotiations and/or conferences between the Union and Transport;

c. when prior agreement between the Union and Transport has been reached for the employee to attend official Union meetings preliminary to negotiations or industrial hearings; or

d. who as an Association/Union nominated representative is required to attend joint Association /Union/ Management consultative committees or working parties.

(2) The granting of leave pursuant to subclause (1) shall only be approved—

a. where an application for leave has been submitted by an employee a reasonable time in advance;

b. for the minimum period necessary to enable the Union business to be conducted or for evidence to be given;

c. for those employees whose attendance is essential; and

d. when the operation of the organisation is not being unduly affected and the convenience of Transport impaired.

(3) a. leave of absence provided under this clause will be granted at the ordinary rate of pay;

b. transport shall not be liable for any expenses associated with an employee attending to Union business; and

c. leave of absence provided under this clause shall include any necessary travelling time in normal working hours.

20.17. Pay Out of Accrued Leave

(1) On application by an employee the Director General may approve an accrued annual leave entitlement to be paid out.

(2) On application by an employee the Director General may approve an accrued long service leave entitlement to be paid out.

21.—SIGNATURES OF PARTIES TO THE AGREEMENT

Signed by the Director General of Transport

M. L .Harris

Date *18/9/00*

Signed for and on behalf of the Civil Service Association of Western Australia Incorporated

D Robinson *(Seal Affixed)*

General Secretary

Date *19/9/00*

Signed for and on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch

Jock Ferguson *(Seal Affixed)*

Date *20/9/00*

APPENDIX 1—TRANSPORT PRODUCTIVITY MATRIX 2000-2001

Productivity Measure	Ratings								Result	Weight	Rating	Weighted Rating
	-2	-1	0	1 Baseline	2	3 Target	4	5				
1. Percentage satisfaction of the Minister regarding policy and planning advice	30%	40%	50%	60%	70%	80%	90%	100%		0.5		
2. Percentage of Ministerials completed on time	30%	40%	50%	60%	70%	80%	90%	100%		0.5		
3. Average cost per policy hour	120	117	114	111	108	105	102	99		1		
4. Percentage of awareness achieved in target population for road safety	25%	35%	45%	55%	65%	75%	85%	95%		0.5		
5. Percentage of motor vehicle inspections completed within 60 minutes	30%	40%	50%	60%	70%	80%	90%	100%		1		
6. Average cost per certificate of vessel survey	370	360	350	340	330	320	310	300		0.5		
7. Percentage of customers who rank Transperth passenger services as satisfactory or better	25%	35%	45%	55%	65%	75%	85%	95%		0.5		
8. Average cost to Government per 1000 passenger place km for Transperth passenger services	$57.5	$55	$52.5	$50	$47.5	$45.81	$42.5	$40		0.5		

Performance Index = Weighted Ratings Total divided by Weighting Total
Target index for 3% increase = 1.5

APPENDIX 2—VALUES STATEMENT

TRANSPORT VALUES STATEMENT

Put the customer first

Understand and value your customers; Find out what your customer needs: Don't assume you know; Develop services in collaboration with customers; Don't let internal problems get in the way of meeting the customer's needs; Support others as they work with their customers; Seek feedback from customers

Honest and open communication

Give people the information they need in an honest and open manner; Be frank and constructive in your point of view; Be open to feedback; When there's a problem, talk directly to the person concerned; Communication is a shared responsibility—be prepared to seek out, listen to and respect what others think

Passion

Pursue goals with enthusiasm and commitment; When you see an opportunity, act on it; Appreciate the value of your work; Embrace change and be prepared to take risks and push the boundaries; Strive to improve the way you work and be the best; Challenge behaviour that doesn't fit our values; Take responsibility for your decisions, your actions and the consequences; Do what you say you'll do; Contribute your ideas and expertise to the task; Take problems seriously and work to sort them out

Working together

Be clear about the purpose of your work; If it has to be done, just get in and do it; Work with your team and the whole of Transport in mind; Build partnerships within Transport, with customers and external stake holders; Make clear agreements about what is to be done, by whom, by when; Go about your work with integrity and fairness

Valuing our people

Set realistic expectations and give people the power and resources to do the job; Build a fulfilling work environment; Care for and value each other; Recognise and value each person's contribution; Give all staff opportunities for development; Trust and enable people to use their skills and experience; Cherish difference

APPENDIX 3—SALARIES

PUBLIC SERVICE AWARD

	Pay rates effective 1/7/1999		From 1st Payday on or after registration	
CLASSIFICATION		Fortnight Rate	Annual Rate	F/N Rate
LEVEL 1				
U/17 yrs or step 1	$12,103.19	464.02	$12,466.28	$477.94
17 yrs or step 2	$14,144.99	542.30	$14,569.34	$558.57
18 yrs or step 3	$16,498.75	632.54	$16,993.71	$651.52
19 yrs or step 4	$19,097.96	732.19	$19,670.89	$754.16
20 yrs or step 5	$21,445.98	822.21	$22,089.36	$846.88
21 yrs / 1st or step 6	$23,559.25	903.23	$24,266.03	$930.33
22 yrs / 2nd or step 7	$42,299.49	931.61	$25,028.48	$959.56
23 yrs / 3rd or step 8	$25,038.70	959.95	$25,789.86	$988.75
24 yrs / 4th or step 9	$25,773.46	$988.12	$26,546.67	$1,017.76
25 yrs / 5th or step 10	$26,512.66	$1,016.46	$27,308.04	$1,046.95
26 yrs / 6th or step 11	$27,251.87	$1,044.80	$28,069.42	$1,076.14
27 yrs / 7th or step 12	$28,102.44	$1,077.41	$28,945.52	$1,109.73
28 yrs / 8th or step 13	$28,690.62	$1,099.96	$29,551.34	$1,132.96
29 yrs / 9th or step 14	$29,560.24	$1,133.30	$30,447.05	$1,167.30
LEVEL 2				
1st yr	$30,601.49	$1,173.22	$31,519.53	$1,208.42
2nd yr	$31,399.90	$1,203.83	$32,341.90	$1,239.94
3rd yr	$32,239.26	$1,236.01	$33,206.44	$1,273.09
4th yr	$33,126.09	$1,270.01	$34,119.88	$1,308.11
5th yr	$34,053.62	$1,305.57	$35,075.23	$1,344.74
LEVEL 2/4				
1st yr	$30,601.49	$1,173.22	$31,519.53	$1,208.42
2nd yr	$32,239.26	$1,236.01	$33,206.44	$1,273.09
3rd yr	$34,053.62	$1,305.57	$35,075.23	$1,344.74
4th yr	$36,322.35	$1,392.55	$37,412.02	$1,434.33
5th yr	$39,839.94	$1,527.41	$41,035.14	$1,573.23
6th yr	$42,132.67	$1,615.31	$43,396.65	$1,663.77
LEVEL 3				
1st yr	$35,328.57	$1,354.45	$36,388.43	$1,395.08
2nd yr	$36,322.35	$1,392.55	$37,412.02	$1,434.33
3rd yr	$37,346.64	$1,431.82	$38,467.04	$1,474.77
4th yr	$38,398.06	$1,472.13	$39,550.00	$1,516.29
LEVEL 4				
1st yr	$39,839.94	$1,527.41	$41,035.14	$1,573.23
2nd yr	$40,970.13	$1,570.74	$42,199.24	$1,617.86
3rd yr	$42,132.67	$1,615.31	$43,396.65	$1,663.77

CLASSIFICATION	Pay rates effective 1/7/1999	Fortnight Rate	From 1st Payday on or after registration Annual Rate	F/N Rate
LEVEL 5				
1st yr	$44,371.92	$1,701.16	$45,703.08	$1,752.19
2nd yr	$45,885.54	$1,759.19	$47,262.11	$1,811.97
3rd yr	$47,458.10	$1,819.48	$48,881.85	$1,874.06
4th yr	$49,089.88	$1,882.04	$50,562.57	$1,938.50
LEVEL 6				
1st yr	$51,714.12	$1,982.65	$53,265.54	$2,042.13
2nd yr	$53,497.96	$2,051.04	$55,102.90	$2,112.57
3rd yr	$55,344.14	$2,121.82	$57,004.46	$2,185.47
4th yr	$57,315.52	$2,197.40	$59,034.98	$2,263.32
LEVEL 7				
1st yr	$60,338.31	$2,313.29	$62,148.46	$2,382.69
2nd yr	$62,492.68	$2,393.47	$64,302.57	$2,465.27
3rd yr	$64,705.19	$2,480.71	$66,646.34	$2,555.13
LEVEL 8				
1st yr	$68,403.54	$2,622.50	$70,455.65	$2,701.18
2nd yr	$71,052.82	$2,724.07	$73,184.41	$2,805.79
3rd yr	$74,337.76	$2,850.01	$76,567.89	$2,935.51
LEVEL 9				
1st yr	$78,440.41	$3,007.30	$80,793.62	$3,097.52
2nd yr	$81,212.02	$3,113.56	$83,648.38	$3,206.97
3rd yr	$84,373.32	$3,234.76	$86,904.52	$3,331.80
CLASS				
C.1	$89,153.88	$3,418.04	$91,828.49	$3,520.58
C.2	$93,933.91	$3,601.30	$96,751.93	$3,709.34
C.3	$98,712.37	$3,784.50	$101,673.75	$3,898.04
C.4	$103,492.93	$3,967.78	$106,597.72	$4,086.81

ENGINEERING TRADES (GOVERNMENT) AWARD

	Classification	Column A Annual Rate Effective from First Pay Period on or After Registration 3% incr. ($)	Column B Annual Rate ($) As Per EBA 1998 at 1/7/99
C5	Level II	35069.83	34048.37
C6	Level I	33739.77	32757.06
C7	Special Class Level II	31079.62	30174.39
C8	Special Class Level I	29749.55	28883.06
C9	Level II	28419.50	27591.74
C10	Level I Production Systems Employee	27089.43	26300.42
C11	Level IV	25069.92	24339.73
C12	Level III	23739.86	23048.40
C13	Level II	22299.96	21650.45
C14	Level I	21238.36	20619.77

Other Rates Deemed to be of Part Ordinary Pay

Industry Allowance	$ pft
(a) After 12 months service	11.20
(b) After 24 months service	11.00
	22.20
Tool Allowance	19.80

SCHEDULE A—ROAD TRANSPORT COMPLIANCE UNIT COMMUTED SHIFT ALLOWANCE AGREEMENT

Inspectors shall be paid a commuted allowance of 10% on gross annual salary, which shall continue to be paid during annual leave, long service leave, sick leave and as part of any retiring allowance to cover—

(i) shift work conditions,

(ii) work in excess of the ordinary hours of the shift up to a maximum of 2.5 hours a week.

Field Officers shall be paid a commuted allowance of 7.5% on gross annual salary, which shall continue to be paid during annual leave, long service leave, sick leave and as part of any retiring allowance to cover—

(i) the nature of the duties involving country investigations,

(ii) work in excess of the ordinary hours of the shift up to a maximum of 2.5 hours a week.

Transport will continue to supply uniforms to Inspectors and Field Officers.

SCHEDULE B—COMMUTED OVERTIME AND SEA GOING ALLOWANCES AGREEMENT

Applies to Marine Officers, Regional Officers, Engineer Ship Surveyors and Shipwright Surveyors Only

1.—TITLE

This Agreement will be known as the Department of Transport commuted Overtime and Sea Going Allowances Agreement.

2.—SCOPE

This Agreement will apply to all Regional Transport Services Unit Officers in receipt of commuted overtime and the Marine Officers in the Department of Transport throughout Western Australia.

3.—DEFINITIONS

"A day" means from midnight to midnight.

"At sea" means the period away from home port.

"Emergency" means search and rescue operations or such other situations deemed by the Director General to be an emergency.

"Director General" means the Director General of the Department of Transport, and will include an officer duly authorised by the Director General to act on his/her behalf.

"Prescribed hours of duty" means the hours prescribed in the former Administrative Instruction 701.

"Gross Annual Salary" means that gross salary payable exclusive of any district allowance, personal allowance, service allowance, responsibility allowance or special allowance.

4.—COMMUTED OVERTIME ALLOWANCES

(a)(i) Subject to the provisions of paragraphs (ii) of this subclause, these officers will be paid an allowance of 12.5% on gross annual salary which will continue to be paid during annual leave, long service leave and as part of any retiring allowance.

(ii) Officers who occupy positions which generally do not require work to be performed outside of, or in excess of the prescribed hours of duty may, at the discretion of the Director General, be paid overtime pursuant to clause 18 of the PSA, in lieu of the allowance prescribed in paragraph (i) of this subclause.

(b) Notwithstanding the provisions of subclause (a) of this clause, any inspector engaged in duties at sea involving an overnight stay on board a vessel will be paid an allowance at a rate equal to 30% of gross annual salary for those days spent at sea, including the day of departure and day of return. The allowance prescribed by this subclause will be paid in lieu of the allowance prescribed by subclause (a) of this clause.

5.—EMERGENCY OVERTIME

(a) Where an emergency situation arises which necessitates officers being required to work, the officers involved will be paid at the overtime rates prescribed in Clause 18 of the PSA, provided that—

(i) The officer has completed ten (10) hours duty on the day on which the emergency arises during normal working hours. Only that period in excess of ten hours will be subject to the provisions of this clause; or

(ii) The officer is recalled to duty prior to commencing or after having completed a normal days work. Only that period outside of normal rostered hours affected by the recall to work will be subject to the provisions of this clause.

(b) Payments under this clause will be calculated on the officers ordinary rate of pay for prescribed hours.

6.—PUBLIC HOLIDAYS

(a) An officer required to perform work on a Public Service Holiday will be paid at the rate of time and one half to a maximum of the first seven and a half (7.5) hours worked on such days and will have one (1) day's leave with pay added to annual leave.

(b) The payment at the rate of one and one half will be calculated on the officer's ordinary rate of pay for prescribed hours.

(c) Where a Public Service Holiday falls on an officer's rostered day off, (1) days leave with pay in lieu of the holiday, will be added to the officer's annual leave.

(d) The additional days leave due when an officer works on or is rostered off duty on a Public holiday may, subject to the approval of the Director General, be taken at a time other than with annual leave.

7.—WEEKEND DUTY

(a) Work performed on a Saturday or Sunday other than emergency overtime will be paid at the rate of time and one half up to a maximum of the first seven and a half (7.5) hours worked on such days.

(b) The payment at the rate of time and one half shall be calculated on the officer's ordinary rate of pay for prescribed hours.

(c) Where an officer so elects in writing, time off in lieu of payment may be granted by the Director General. Such time off in lieu is to be determined at the rate prescribed in subclause (a) of this clause.

8.—SEA GOING ALLOWANCES

(a) Victualling Allowance

(i) An officer who is required to live on board the vessel and is necessarily absent from their usual place of residence overnight, shall be paid a victualling allowance in accordance with Clause 30, Camping Allowance of the PSA to cover victualling and all incidences of employment other than overtime.

(ii) The formula in Clause 42, Travelling Allowance of the PSA will apply in circumstances where the Officer in Subclause 1 qualifies for the victualling allowance for part of the day.

(b) Hard Lying Allowance

To compensate for difficulties associated with living in small vessels at sea, an allowance of thirty seven (37) cents per hour for each hour worked will be paid to officers for sea patrols that exceed thirty six (36) hours duration. Sea patrols of 36 hours or less cannot be claimed for.

(c) The provisions of Clause 42, Travelling Allowance of the PSA will not operate concurrently with the provision of this clause to permit an officer to be paid allowances in respect of both travelling and sea going, for the same period.

(d) The following will apply when Marine Officers are required to act as "master" or "mate"—

Suitably qualified Marine Officers classified level 2 or level 3 who are required to perform the duties and responsibilities of the "master" or "mate" of a vessel, will be paid the hourly rate applicable to "master" or "mate", with payment calculated for each day that the officers are required to carry out those duties.

(e) Diving Allowance

An officer who undertakes diving as part of his or her official duties or as a special duty which is sanctioned by the Chief Executive Officer of his or her department shall be paid an allowance in accordance with the PSA. This allowance shall be in addition to any other payment for duties performed.

Provided that such allowance shall be paid only to an officer engaged on diving when self-contained underwater breathing apparatus or deep sea diving equipment is used.

SCHEDULE C—TAXI'S INVESTIGATIONS UNIT COMMUTED SHIFT ALLOWANCE AGREEMENT

1.—TITLE

This Agreement will be known as the Department of Transport Taxi's Investigations Unit Commuted Shift Allowance Agreement.

2.—SCOPE

The terms of this Agreement will apply to Taxi Unit Investigations Officers in the Department of Transport.

3.—DEFINITIONS

"A day" means from midnight to midnight.

"Gross Annual Salary" means that gross salary payable exclusive of any district allowance, personal allowance, service allowance, responsibility allowance or special allowance.

4.—COMMUTED SHIFT ALLOWANCE

For the purposes of section 4 and Clause 18, Overtime Allowance of the PSA, a 12.5% on gross annual salary allowance will be paid in return for officers—

- disability of working shift work, and a rostered (9) day fortnight.
- working up to 2.5 hours unpaid overtime per week
- commuting shift penalties for working a roster that includes fifteen (15) Saturdays and/or Sundays and (2) two Public Holidays per calendar year
- allowing officers to home garage government vehicles, and commencement and finish of work to cease at their home residence
- maintaining and providing on request a management specified hours worked record system detailing start and finishing times, duties undertaken and unscheduled finishing times
- hours worked in excess of the unpaid 2.5 hours per week, in the first arrangements may be made to award one (1) hour off for each hour worked—to be taken at a mutually convenient time within the month, unless agreed by management.

Those Officers (e.g. Investigations Coordinator) that spend an agreed set percentage of their working hours in field investigations work will receive an equal percentage of the commuted shift allowance.

EQUAL OPPORTUNITY COMMISSION ENTERPRISE AGREEMENT 2000. PSA AG 60 of 2000.

2000 WAIRC 00870

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES	CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED AND THE COMMISSIONER, EQUAL OPPORTUNITY COMMISSION
CORAM	SENIOR COMMISSIONER G L FIELDING
	DELIVERED THURSDAY, 12 OCTOBER 2000
FILE NO/S	PSA AG 60 OF 2000
CITATION NO.	2000 WAIRC 00870

Result	Agreement registered
Representation	
Applicants	Mr M Finnegan as agent on behalf of the Civil Service Association of Western Australia Incorporated and Ms M D Dharmanandra as agent on behalf of the Commissioner, Equal Opportunity Commission

Order.

HAVING Heard Mr M Finnegan as agent on behalf of the Civil Service Association of Western Australia Incorporated and Ms M D Dharmanandra as agent on behalf of the Commissioner, Equal Opportunity Commission, 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 lodged in the Commission on 4 October 2000 entitled Equal Opportunity Commission Enterprise Agreement 2000 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 Equal Opportunity Commission Enterprise Bargaining Agreement 1998 PSA AG 95 of 1998 which is hereby cancelled.

[L.S.] (Sgd.) G.L. FIELDING,
Senior Commissioner/
Public Service Arbitrator.

Schedule.

EQUAL OPPORTUNITY COMMISSION
ENTERPRISE AGREEMENT 2000

Part A—Preliminary Matters

1.—TITLE

This Agreement shall be known as the Equal Opportunity Commission Enterprise Agreement 2000 and shall replace the Equal Opportunity Commission Enterprise Bargaining Agreement 1998.

2.—ARRANGEMENT

Part A—Preliminary Matters
1. Title
2. Arrangement
3. Scope
4. Parties to the Agreement
5. Availability of the Agreement
6. Definitions
7. Terms of Agreement and Renegotiation
8. No Further Claims
9. Single Bargaining Unit
10. Relationship to Parent Award
11. Dispute Resolution Procedures

Part B—Workplace Productivity
12. Vision
13. Shared purpose of the Agreement
14. Productivity Improvements
15. Salary Increases

Part C—Employment Issues
16. Hours of Work and Flexible Hours
17. Part-time Employment
18. Work from Home
19. Adjustment of Allowances
20. Salary Packaging

Part D—Leave Provisions
21. Annual Leave
22. Bereavement Leave
23. Ceremonial/Cultural Leave
24. Community Services Leave
25. Compaction of Annual Leave and Long Service Leave
26. Family Carers' Leave
27. Leave without pay
28. Long Service Leave
29. Option of 48 weeks pay over 52 weeks
30. Parental Leave
31. Short Leave
32. Sick Leave
33. Skills Development Leave

Part E—Workplace Consultation and Change
34. Consultative Mechanism
35. Workplace Change
36. Family Responsibilities
37. Signatures of Parties to the Agreement

Schedule A Salary Rates
Schedule B Performance Productivity Model

3.—SCOPE

This Agreement shall apply throughout the State of Western Australia to all officers employed by the Commissioner for Equal Opportunity who are members of or eligible to be members of the Civil Service Association of Western Australia Incorporated.

4.—PARTIES TO THE AGREEMENT

1. This Agreement is made between the Commissioner for Equal Opportunity and the Civil Service Association of Western Australia Incorporated.

2. As at the date of registration it is estimated that the number of employees covered by this Agreement is 22.

5.—AVAILABILITY OF THE AGREEMENT

1. Each employee shall be entitled to a copy of this Agreement. In addition, a copy or copies of this Agreement will be kept in an easily accessible place or places within the Commission, and the location of the copies will be clearly communicated to all employees.

2. The employer may utilise computer resources to disseminate this Agreement. However, where information technology is not available or is limited within the workplace the requirements of subclause (1) will apply.

6.—DEFINITIONS

In this Agreement, unless expressed elsewhere, the following terms shall have the following meanings—

Accrued leave: Leave that has been accrued as at 1 January in previous calendar years.

Agreement: the Equal Opportunity Commission Enterprise Agreement 2000.

Commission: the office of the Commissioner for Equal Opportunity.

Commissioner: the Commissioner for Equal Opportunity.

Employee: the same meaning as provided within the Industrial Relations Act 1979 and who is referred to within the provisions of clause 3- Scope. It includes full time, part time permanent and fixed term contract employees.

Family: includes "relative" as defined in the Equal Opportunity Act 1984.

Government: the State Government of Western Australia.

Minister: the Minister or the Ministers of the Crown responsible for the administration of the Equal Opportunity Commission.

Metropolitan Area: the area within a radius of fifty (50) kilometres from the Perth City Railway station.

PSA: Public Service Award 1992.

SBU: Single Bargaining Unit.

Replacement Employee: an employee specifically engaged to replace an employee proceeding on parental leave.

Union: Civil Service Association of Western Australia Inc.

WAIRC: The Western Australian Industrial Relations Commission.

7.—TERMS OF AGREEMENT AND RENEGOTIATION

1. This Agreement shall operate from the date of registration and shall remain in force for two years.

2. No later than six (6) months prior to the expiry of this Agreement the parties shall commence negotiations for the replacement of this Agreement.

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

4. The Agreement will continue in force after the expiry of the term until such time as any of the parties withdraws from the Agreement by notification in writing to the other party and to the WAIRC or the parties replace this Agreement with a subsequent Agreement.

8.—NO FURTHER CLAIMS

The parties undertake that for the duration of the Agreement there shall be no further claims relating to the terms and conditions contained herein.

9.—SINGLE BARGAINING UNIT

This Agreement has been negotiated through a Single Bargaining Unit (SBU).

10.—RELATIONSHIP TO PARENT AWARD

This Agreement shall be read and interpreted wholly in conjunction with the provisions of the Public Service Award 1992 that apply to the parties bound to this Agreement. In the case of any inconsistencies, this Agreement shall have precedence to the extent of any inconsistencies. Where the Agreement is silent the Award shall apply.

11.—DISPUTE RESOLUTION PROCEDURES

1. In the event of any proposed change in employment conditions, grievance or other dispute arising, including matters associated with the interpretation and implementation of this Agreement, the parties being committed to the principles of consultation and conciliation agree to follow the procedures set out as follows.

2. Procedures for resolution of grievances and settlement of disputes—

a) The parties further agree that all grievances shall be resolved as quickly as possible.

b) The employee/s and the employee's supervisor shall confer, where appropriate, and clearly identify the facts and, where possible, resolve the issue within 5 working days.

c) If not resolved, or if it is inappropriate for the employee/s to approach their supervisor/manager directly, the employee/s [and if the employee wishes, the union representative or other nominee of the employee], the supervisor/manager shall confer with the Commissioner and, where possible, resolve the issue.

d) At any stage of this process either party may seek relevant human resource advice.

e) If the matter is still not settled, either party may submit the matter for conciliation/arbitration by the Western Australian Industrial Relations Commission.

3. Until the matter is resolved in accordance with the above procedure, the status quo shall remain. While the above procedure is being followed, no party shall be prejudiced as to the final settlement by the continuation of work in accordance with this procedure.

4. Nothing in this Clause shall prevent the application of any grievance or dispute resolution processes required by legislation such as Occupational Safety and Health Act 1984 and Regulations, reviews of breach of standards under the Public Sector Management 1994 and the Equal Opportunity Act 1984.

PART B—WORKPLACE PRODUCTIVITY

12.—VISION

The parties to this Agreement are committed to striving to achieve the Commission's vision, which is—

To ensure that people in the Western Australian community are treated on their merits, free from assumptions based on prejudice or unlawful discrimination.

13.—SHARED PURPOSE OF THE AGREEMENT

Shared strategic goals to lead to the realisation of the Vision are—

- To enhance and foster public understanding and acceptance of the principles of equal opportunity through a series of initiatives in metropolitan, regional and rural Western Australia.
- To provide avenues of redress that remain impartial and sensitive to the needs of complainants and respondents within the scope of the Act.
- To nourish a culture that provides a continuous learning environment and the knowledge that assets of the Commission are continuously enhanced.

14.—PRODUCTIVITY IMPROVEMENTS

1. New, revised and expanded initiatives form the core of the productivity improvements. Through a pro-active approach to the delivery of services, and working in partnerships, benefits have been and will be realised against key outputs. The process of continuous improvements will be maintained by undertaking strategies and initiatives in—

- Regional and rural services model harnessing new technologies.
- Enhancing understanding in workplaces to move beyond compliance to attitudinal shifts.
- Consulting, reviewing and producing publications.
- The recruitment, selection, promotion and retention of mature workers and people from culturally and linguistically diverse backgrounds.
- The timely, sensitive and appropriate delivery of services to people involved in complaints.

2. Specific initiatives with attendant measures are given in Schedule B—Performance Productivity Model.

15.—SALARY INCREASES

1. The salary rates payable are those contained in Schedule A that reflects the following increases.

2. A salary increase of 3.0% paid in accordance with Column 2 of Schedule A of this Agreement will be paid from the date of registration of the Agreement in the WAIRC. This increase is in recognition of current, ongoing productivity improvements.

3. A salary increase of up to 3.0% is contingent upon the achievement of the Composite Performance Index being 3 or above 3, on the 12-month anniversary of the Agreement being ratified. The Index relates to initiatives with attendant measures given in Schedule B—Performance Productivity Model.

4. If the Index is below 3 and above 2 then the pay rise will be 2%. If the Index is 2 and below, no pay rise will be given.

5. If an initiative cannot be implemented for reasons outside the control of the Commission, then that initiative can be replaced by an alternative that is mutually acceptable to the Commission and the Department of Productivity and Labour Relations.

PART C—EMPLOYMENT ISSUES

16.—HOURS OF WORK AND FLEXIBLE HOURS

1. This Clause is to be read in conjunction with Clause 16 (Hours) of the Award with the following variations.

2. The normal operating hours of the Commission will be 7.00 am to 7.00 pm Monday to Friday. Core hours are 9.30 am to 3.30 am.

3. Subject to organisational requirements, staff may be granted approval to work flexible hours, provided that—

a) staff shall not work more than 9.5 hours on any one day;

b) staff shall not work more than 47.5 hours per week;

c) staff shall work an average of 37.5 hours per week over a four week cycle and shall not accrue more than 15 hours in any four week cycle;

d) no more than 15 hours shall be carried over from one period of four weeks to the next.

4. Accrued hours may be taken in one block of two days, provided that approval in advance has been granted by the relevant Manager.

Other Working Arrangements

5. Other working arrangements may be authorised by the Commissioner where it is considered necessary to provide more productive operations. This arrangement does not prevent an employee from receiving overtime under the provisions of Clause 18—(Overtime Allowance) of the Award.

6. Officers may operate under a more flexible starting and finishing time system by mutual arrangement with the Commissioner having regard to, but not limited to, community education activities, such as the provision of outreach, rights-based presentations and fee-for-service training.

Overtime

7. Overtime shall only be worked in exceptional circumstances, and only employees at levels 1 to 5 are eligible to receive compensation for overtime. Overtime may be only accrued with the prior written approval of the Commissioner, and such approval will only be given where flexi-time is not practicable.

17.—PART-TIME EMPLOYMENT

1. This Clause is to be read with Clause 9—(Part Time Employment) of the Award, with the following exceptions.

2. An employee may work any number of hours up to 37.5 hours per week.

3. All entitlements will be on a pro rata basis on the average number of hours worked per week by the employee.

18.—WORK FROM HOME

1. With the prior agreement of the Commissioner, an officer may work from home where—

a) Working from home does not inhibit service and is cost-effective.

b) The quality and quantity of work undertaken is demonstrable.

c) Adequate health and safety requirements are met. An initial assessment will be made prior to approval being considered. Bi-annual assessments will be undertaken to the work area/equipment.

19.—ADJUSTMENT OF ALLOWANCES

1. Wherever an award allowance is calculated by reference to a classification salary point, the parties agree that all such allowances shall be so varied by reference to the same classification salary point as provided by this Agreement**.**

2. All such allowances shall be applicable from the same date as provided for any salary variation under this Agreement.

3. Notwithstanding the provisions of subclause (1) above, the parties may negotiate a new classification salary point, or a new formula for the adjustment of these allowances. However, any rates established under this provision shall not be less than the parent Award rate.

20.—SALARY PACKAGING

1. An employee may, by written agreement with the Commissioner, enter into a salary packaging arrangement provided that it—

a) complies with the Western Australian Government Guidelines for Salary Packaging in the WA Public Sector,

b) complies with the 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. Such costs that may arise will be borne by the employee, and

c) the salary packaging arrangement must be cost neutral in relation to the total cost of the employee.

2. The cancellation of salary packaging will not cancel or otherwise affect the operation of this Agreement.

PART D—LEAVE PROVISIONS

21.—ANNUAL LEAVE

1. This Clause is to be read in conjunction with Clause 19—Annual Leave, of the Public Service Award, and Clause 14—Higher Duties Allowance, of the Public Service Award, with the following exceptions.

2. Annual leave loading will be paid as a lump sum on the first pay period on or after 1 December each year.

3. An employee who has undertaken additional duties or acted in a higher level position for a minimum of twelve months shall receive their next leave loading at the higher level on the first pay period on or after 1 December.

4. The Commissioner may direct an employee who has annual leave in excess of 20 accrued annual days to take such leave, and may determine the date on which such leave shall commence, having due regard to the employee's personal circumstances.

22.—BEREAVEMENT LEAVE

1. Employees are entitled to two days bereavement leave, which may be taken on the death of a family member as defined under the Equal Opportunity Act 1984. The 2 days need not be consecutive but cannot be taken during a period of any other kind of leave.

2. A request for such leave must be made as soon as possible and include the expected time away from work. If requested, reasonable proof must be provided by the employee of his/her relationship to the deceased.

23.—CEREMONIAL/CULTURAL LEAVE

1. Employees who are legitimately required to be absent from work for their ceremonial/cultural/tribal purposes shall be entitled to take accrued annual leave, short leave, flexi-leave entitlements or leave without pay entitlements.

2. Ceremonial leave includes leave to meet the employee's customs, traditional law and to participate in ceremonial customs, and shall be available to, but not limited to, Aboriginal and Torres Strait Islanders.

3. Employees shall give the Commissioner reasonable notice prior to their absence of their intention to take such leave and the length of the leave required.

24.—COMMUNITY SERVICES LEAVE

1. Employees who are active volunteer members of the WA State Emergency Service, WA Volunteer Bush Fire Brigade, St John Ambulance Brigade, a sea and rescue association or other such similar body, may be granted pre and post emergency incident paid leave, in addition to paid leave for attendance at the emergency incident.

2. The employee shall—

a) inform the Commissioner as soon as is practicable of the intended absence and its expected duration;

b) complete a leave of absence form upon return to work;

c) supply written proof from the volunteer organisation of the employee's participation and submit this with the leave form; and

d) if possible, supply the Commissioner with a copy of the volunteer organisation's roster that indicated the employee's commitments.

25.—COMPACTION OF ANNUAL AND LONG SERVICE LEAVE

1. Provided an employee has taken four weeks annual or long service leave in the past 12 months s/he may apply to the Commissioner to take a portion of accrued leave at double pay and half the period of leave.

2. Provided an employee has taken four weeks annual or long service leave in the past 12 months and has additional accrued leave s/he may apply to the Commission to have a portion of leave paid out.

3. Approval in relation to (1) and (2) is subject to the operational requirements of the Commission, and is at the discretion of the Commissioner.

26.—FAMILY CARERS' LEAVE

1. An employee with family responsibilities as defined in the Equal Opportunity Act 1984 can utilise 2 and 1/2 days per annum of his/her accrued sick leave entitlements to care for an ill family member.

2. The employee shall, wherever practical, give the employer notice of the intention to take family leave and the estimated length of absence. If it is not practicable to give prior notice of absence the employee shall notify the employer as soon as possible on the day of absence.

3. The employee shall provide, where required by the employer, evidence to establish the requirement to take family leave.

27.—LEAVE WITHOUT PAY

1. The Commissioner may grant an employee leave without pay provided that—

a) the leave does not conflict with the operational requirements of the Commission, and

b) all other leave entitlements have been exhausted.

2. Annual leave and long service leave taken at half pay are considered leave without pay for the proportion of time not paid.

3. Leave without pay for any purpose shall not count as qualifying service.

28.—LONG SERVICE LEAVE

1. This Clause will be read in conjunction with Clause 21—(Long Service Leave) of the Award, with the following exceptions.

2. Employees who have commenced accruing their second or subsequent period of long service leave may access their accrued leave, annually, of no less than a week at a time as they accrue it.

3. Long service leave will be backfilled at the discretion of the Commissioner in light of the resource needs of the Commission.

29.—OPTION OF 48 WEEKS PAY OVER 52 WEEKS

1. An option that can be adopted by mutual agreement between an individual employee and the Commissioner is for the employee to receive 48 weeks of pay spread over the full 52 weeks of the year, whereby the employee will take 8 weeks leave instead of 4 weeks per year. The additional 4 weeks will not be able to be accrued. In the event that the employee is unable to take such leave, his/her salary will be adjusted at the completion of the 12 month period to take account of the fact that time worked during the year was not included in the salary.

2. Employees wishing to join this scheme require the written approval of the Commission. Access to this option will be subject to—

a) The Commission's requirements based on customer and operation demands.

b) The employee has no accrued annual leave.

c) Such additional leave is not subject to annual leave loading.

30.—PARENTAL LEAVE

1. Eligibility for Parental Leave

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

(b) Where the employee applying for the leave is the partner of a pregnant spouse, one week's leave may be taken at the birth of the child concurrently with parental leave taken by the pregnant employee.

(c) Subject to subclause (b) of this clause where both partners are employed by the Commission, the leave shall not be taken concurrently except under special circumstances and with the approval of the Commissioner.

(d) An employee seeking to adopt a child shall be entitled to two days unpaid leave for the employee to attend interviews or examination required for the adoption procedure. Employees working or residing outside the Perth metropolitan area are entitled to an additional days leave. The employee may take any paid leave entitlement in lieu of this leave.

(e) An employee seeking to adopt a child under the age of five years shall be entitled to three weeks parental leave at the placement of the child and a further period of parental leave up to a maximum of 52 weeks. Where both partners are employed by the Commission, the leave shall not be taken concurrently except under special circumstances and with the approval of the Commissioner.

2. Other Leave Entitlements

(a) An employee proceeding on parental leave may elect to substitute any part of that leave with accrued annual leave or long service leave for the whole or part of the period of parental leave.

(b) An employee may extend the maximum period of parental leave with a period of annual leave, long service leave or leave without pay subject to the Commissioner's approval.

(c) An employee on parental leave is not entitled to paid sick leave.

(d) Should the birth or adoption result in other than the arrival of a child, the person concerned shall be entitled to such period of paid sick leave or unpaid leave for a period certified as necessary by a registered medical practitioner.

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

3. Notice and Variation

(a) The employee shall give not less than 10 week's notice in writing to the Commission of the date that the employee proposes to commence parental leave stating the period of leave to be taken.

(b) An employee seeking to adopt a child shall not be in breach of subclause (a) by failing to give the required period of notice if such failure is due to the requirement of the adoption agency to accept earlier or later placement of a child, or other compelling circumstances.

(c) An employee proceeding on parental leave may elect to take a shorter period of parental leave and may at any time during that period of leave elect to reduce or extend the period stated in the original application provided four weeks written notice is provided or a lesser period as agreed by the Commissioner.

4. Transfer to a Safe Job

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

5. Replacement Employee

Prior to engaging a replacement employee the Commission shall inform the person of the temporary nature of the employment and the entitlements relating to the return to work of the employee on parental leave.

6. Return to Work

(a) An employee shall confirm intention to return to work by notice in writing to the employer not less than four weeks prior to the expiration of parental leave.

(b) An employee on return to work from parental leave shall be entitled to the position that the employee occupied immediately prior to proceeding on parental leave. Where the employee was transferred to a safe job the employee is entitled to return to the position occupied immediately prior to transfer.

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

(d) An employee may return on a part time basis to the same position occupied prior to the commencement of leave or to a different position at the same classification level in accordance with the part time provisions of the Agreement and the prior written approval of the Commissioner.

7. Effect of Leave on the Employment Contract

(a) An employee employed for a fixed term contract shall have the same entitlement to parental leave, however the period of leave granted shall not extend beyond the term of that contract.

(b) Absence on parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose under the Award or Agreement.

(c) An employee on parental leave may terminate employment at any time during the period of leave by written notice in accordance with the Award or Agreement.

31.—SHORT LEAVE

1. An employee shall be entitled to three days Short Leave each year. Any unused portion of this leave may accumulate from year to year up to a maximum of six days. Short Leave

will be available on an hourly basis and all or part of the available leave may be taken for any one event.

2. Short Leave will be approved at the discretion of the Commissioner. Employees may be required to provide information to establish sufficient cause for the requested leave.

32.—SICK LEAVE

1. This Clause shall be read in conjunction with Clause 22—(Sick Leave) of the Award, with the exceptions that—

a) Entitlement shall be in the form of 12 and ½ days sick leave per annum on full pay. There shall be no entitlement to sick leave on half pay.

2. Officers may utilise up to 2 and ½ days of their accrued sick leave entitlement to care for a family member in accordance with Clause 26 of the Agreement.

33.—SKILLS DEVELOPMENT LEAVE

1. Upon application the Commissioner may grant paid leave of no more than 5 hours per week for study or skills development for accredited courses of study relevant to the business needs of the Commission and duties of the employee.

PART E—WORKPLACE CONSULTATION AND CHANGE

34.—CONSULTATIVE MECHANISM

1. The parties to this Agreement are committed to working together to improve the quality of service relating to the principles of equal opportunity and the Equal Opportunity Act 1984. The parties agree to establish an Implementation and Review Committee to monitor the implementation of this Agreement, and the achievement of specified outcomes under the Performance Productivity Model.

2. Membership of this Committee will comprise a representative of the Commissioner, and the Union.

3. During the life of this Agreement the parties will continue to address issues and reforms specifically aimed at increasing productivity. These may be considered in future Agreements.

35.—WORKPLACE CHANGE

1. The parties recognise the need for effective communication to improve the business performance and working environment of the Commission. The parties acknowledge that decisions will continue to be made by the Commissioner, who is responsible and accountable to Government, by statute for the effective and efficient operation of the Commission.

2. The parties agree that—

a) Where the Commissioner proposes to make changes likely to affect existing practices, working conditions or employment prospects of employees, the Union and employees affected shall be notified by the Commissioner as early as possible.

b) For the purposes of such discussion the Commissioner shall provide to the employees concerned relevant information about the changes, including the nature of the changes on employees, provided that the Commissioner shall not be required to disclose any confidential information.

36.—FAMILY RESPONSIBILITIES

1. The Commissioner recognises the needs of employees with family responsibilities, and the parties are committed to the introduction of conditions of work that assist such employees effectively discharge both responsibilities.

2. In consultation with the Union, the parties will consider during the term of this Agreement issues such as the following—

a) Assistance with care for sick dependants—work from home arrangements, provision of pagers, lap tops.

b) Provision of family room on site for emergency childcare, breastfeeding mothers.

c) Access to nanny service for urgent meetings, conferences and the like.

37.—SIGNATURES OF PARTIES TO THE AGREEMENT

Signatories

Signed by

COMMISSIONER FOR EQUAL OPPORTUNITY

...J M Williams...

Date…*3../.10./..00..*

Signed for and on behalf of the

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED

...D Robinson...

Dave Robinson

General Secretary

Date *..3../.10./.00..*

SCHEDULE A

Salary Rates

The second salary increase is contingent upon the achievement of a Composite Performance Index of 3 as set out in the Performance Productivity Model

Classification Level		At 1 October 1999 Current Salary Rates	At October 2000 (3.0%) Column A	At October 2001 (3.0%) Column B
Level 1	under 17	12,585	12,963	13,340
	17	14,708	15,149	15,590
	18	17,155	17,670	18,184
	19	19,858	20,454	21,049
	20	22,301	22,970	23,639
	1st year	25,252	26,010	26,767
	2nd year	26,005	26,785	27,565
	3rd year	26,754	27,557	28,359
	4th year	27,509	28,334	29,160
	5th year	28,262	29,110	29,958
	6th year	29,129	30,003	30,877
	7th year	30,615	31,533	32,452
Level 2	1	31,676	32,626	33,577
	2	32,489	33,464	34,438
	3	33,345	34,345	35,346
	4	34,250	35,278	36,305
	5	35,194	36,250	37,306
Level 3	1	36,494	37,589	38,684
	2	37,508	38,633	39,758
	3	38,551	39,708	40,864
	4	39,623	40,812	42,000
Level 4	1	41,093	42,326	43,559
	2	42,245	43,512	44,780
	3	43,430	44,733	46,036
Level 5	1	45,713	47,084	48,456
	2	47,255	48,673	50,090
	3	48,858	50,324	51,789
	4	50,522	52,038	53,553
Level 6	1	53,197	54,793	56,389
	2	55,015	56,665	58,316
	3	56,897	58,604	60,311
	4	58,907	60,674	62,441
Level 7	1	61,987	63,847	65,706
	2	64,120	66,044	67,967
	3	66,440	68,433	70,426
Level 8	1	70,209	72,315	74,422
	2	72,910	75,097	77,285
	3	76,258	78,546	80,833
Level 9	1	80,439	82,852	85,265
	2	83,265	85,763	88,261
	3	86,487	89,082	91,676

SCHEDULE B—PERFORMANCE PRODUCTIVITY MODEL

Initiatives and Performance Measures			Measures			Composite Performance Index		
	Base Measure 1	Interim Measure 2	Target Measure 3	Excess Measure 4	Excess Measure 5	Weight	Ratings	Result
1 Provision of fee for service training courses to organisations								
1A Proportion of participants able to use what they had learnt in their jobs, stated that the course was useful and recommended courses to colleagues	80.0%	85.0%	**90.0%**	92.0%	95.0%	3		
1B Target Revenue	$10,000	$12,000	**$15,000**	$16,000	$17,000	3		
2 Mature workers employment strategy								
2A Number of sessions given (breakfasts / forums / seminars)	4	5	**6**	7	8	2		
3 Rural and Regional Services Model								
3A Number of towns visited	5	7	**10**	11	12	2		

3B	Number of outreach contacts made	20	22	**25**	27	30	2
4	**Disseminating information via satellite**						
4A	Number of presentations broadcast	4	6	**8**	9	10	2
5	**Continuous review and production of publications**						
5A	Proportion of participants who found the publications useful, and stated that they could use it in their work	70.0%	75.0%	**80.0%**	85.0%	90.0%	2
5B	Number of publications produced	10	11	**12**	13	14	2
6	**Timeliness in complaint handling**						
6A	Proportion of complaints that are outstanding at 24 months	2%	1%	**0%**	N / A	N / A	2
7	**Effectiveness in complaint handling**						
7A	Proportion of complainants and respondents who believed that the complaint handling process is reasonable	65.0%	67.0%	**70.0%**	72.0%	73.0%	2

7C	Proportion of complainants and respondents who believed that the Act provides a good way of resolving cases of discrimination.	65.0%	67.0%	**70.0%**	72.0%	73.0%	2	
8	**Other initiatives**							
8A	Placement of CCH on Intranet	Not complete	Partially complete	**Complete**	n/a	n/a	1	
						Weight =	**27**	**CPI =**

GRACEVILLE WOMEN'S CENTRE—SALVATION ARMY—INDUSTRIAL AGREEMENT 2000.
No. AG 17 of 2000.

2000 WAIRC 00753

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	THE SALVATION ARMY (WESTERN AUSTRALIA) PROPERTY TRUST APPLICANT *v.* AUSTRALIAN LIQUOR, HOSPITALITY AND MISCELLANEOUS WORKERS UNION, WESTERN AUSTRALIAN BRANCH RESPONDENT
CORAM	COMMISSIONER P E SCOTT
DELIVERED	THURSDAY, 28 SEPTEMBER 2000
FILE NO	AG 17 OF 2000
CITATION NO.	2000 WAIRC 00753

Result	Agreement registered

Order.

HAVING heard Mr M O'Connor on behalf of applicant and Ms S Ellery 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 Graceville Women's Centre—Salvation Army—Industrial Agreement 2000 in the terms of the following schedule be registered on the 22nd day of September 2000 and shall replace the Graceville Women's Centre—Salvation Army Industrial Agreement 1997.

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

Schedule.

1.—TITLE

This Agreement shall be known as the "Graceville Women's Centre—Salvation Army Industrial Agreement 2000.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope
4. Term
5. Contract of Service
6. Part-time Employees
7. Casual Employees
8. Hours
9. Overtime
10. Annual Leave
11. Public Holidays
12. Sick Leave
13. Family Leave
14. Long Service Leave
15. Bereavement Leave
16. Parental Leave
17. Dispute Settlement Procedure
18. Introduction of Change
19. Interviews
20. Inspection of Records
21. Posting of Award and Union Notices
22. Wages
23. Additional Payments
24. Payment of Wages
25. Superannuation
26. Number of Employees
27. Liberty to Apply
28. Remuneration Packaging
29. Parties to Agreement
30. Signatures of the Parties

Appendix—Remuneration Packaging Arrangements

3.—SCOPE

This Agreement shall apply to all employees employed in the classifications in Clause 22.—Wages at Graceville Women's Centre, to the Salvation Army and to the Australian Liquor, Hospitality & Miscellaneous Workers Union of Australia, WA Branch.

4.—TERM

The term of this Agreement shall be for one year from the date of registration.

5.—CONTRACT OF SERVICE

(1) The employer may direct an employee to carry out such duties, and use such tools and equipment, as are within the employee's skill, competence and training provided that such duties are not designed to promote de-skilling.

(2) Any such direction shall be consistent with the responsibility of the employer to provide a safe and healthy working environment in accordance with the provisions of the *Occupational Safety and Health Act 1984* and Regulations.

(3) (a) An employee may be engaged on a probationary period of not longer than three months, during which time it will be possible for either the employer or employee to terminate the contract of service with one days' written notice.

(b) During probation the employer shall conduct at least one appraisal of the employee's performance and bring to the employee's attention any areas of performance or conduct which require improvement.

(c) Where the employer has some concerns regarding the employee's performance or conduct during the probationary period, by agreement between the employer and the employee, the probationary period can be extended for a further period of up to 3 months. The notice period referred to in (a) above shall continue to apply to the extended probation.

(4) In order to terminate the employment of an employee, except probationary employees, 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

(5) In addition to the notice prescribed in subclause (4), employees over forty-five 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.

(6) Payment in lieu of notice prescribed in subclauses (4) and/or (5) shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

(7) In calculating any payment in lieu of notice the wages an employee would have received in respect of the ordinary time he or she would have worked during the period of notice had his or her employment not been terminated shall be used.

(8) The period of notice in this Clause shall not apply in the case of conduct which justifies instant dismissal or in the case of casual employees.

(9) The notice required for casuals shall be one hour.

Notice of termination by employee

(10) (a) The notice of termination required to be given by an employee shall be the same as that required of an employer, save and except that there shall be no additional notice based on the age of the employee concerned.

(b) Where an employee does not give the required period of notice of termination in (a) above, the employee may forfeit the equivalent payment in lieu at the discretion of the employer.

Time-off during notice period

(11) 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 times that are convenient to the employee after consultation with the employer.

Summary Dismissal

(12) Notwithstanding the provisions of this Clause, an employer shall have the right to summarily dismiss any employee without notice for misconduct which justifies instant dismissal, and in such case the wages shall be paid up to the time of dismissal only.

6.—PART-TIME EMPLOYEES

(1) A part-time employee shall mean an employee engaged on a weekly contract of service who works regularly from week to week for not less than three hours per day but less than 38 hours per week.

(2) Part-time employees shall receive payment for wages, annual leave, long service leave, sick leave and bereavement leave on a pro rata basis according to the same proportion as the number of hours worked each week bears to 38. In the case of payment for any of the leave entitlements in circumstances where the number of hours worked each week varies, such payment shall be calculated according to the arithmetical average, over the period from the last anniversary date, or date of commencement, as the case may be.

(3) Part time employees who are entitled to annual leave in accordance with subclause (3) of Clause 10.—Annual Leave shall be entitled to paid public holidays which fall on a day they would otherwise work but for the public holiday or day observed in lieu, as provided in Clause 11.—Public Holidays.

(4) By agreement, a part-time employee may work shifts additional to the rostered shifts at ordinary rates, subject only to the normal rostering parameters of a full-time employee.

7.—CASUAL EMPLOYEES

(1) A casual employee shall mean an employee engaged on an hourly contract of service and is engaged for a period of less than one month.

(2) Casual employees shall not be engaged for less than three consecutive hours per engagement.

(3) A casual employee shall be paid 20% over the rates specified herein for his/her class of work.

(4) Casual employees shall not be entitled to annual leave, sick leave or public holidays prescribed by this Agreement.

8.—HOURS

(1) The ordinary hours of work for full time employees shall be an average of 38 per week, not exceeding ten per day, to be worked over not more than ten days in the fortnight.

(2) Each employee shall be entitled to two clear days off duty per week. Such days shall be consecutive unless otherwise agreed between the employer and the employee.

(3) Notwithstanding subclauses (1) and (2) of this clause, by agreement between the employer, the employees and the Union, any other arrangement of hours may be worked.

(4) Every employee shall be entitled to an unpaid meal break of not less than 30 minutes or more than one hour after not more than six hours of work. A morning and afternoon tea break shall be allowed without deduction of pay. The breaks shall be taken at a time agreed between the employer and the employee.

(5) Employees must have ten hours off between shifts other than by request of the employee, where it will not be less than eight hours between shifts.

(6) The roster of working hours shall be based on 37.5 hours per week for full time employees. However, up to 38 ordinary hours of work shall be required for full time employees before overtime is applicable.

(7) An employee will not be rostered to work broken shifts.

9.—OVERTIME

(1) Overtime shall mean all time required and authorised to be worked beyond or in excess of the ordinary rostered hours of duty prescribed in Clause 8.—Hours or Clause 6.—Part Time Employees, of this Agreement on any day the employee is rostered on duty. Except as hereinafter provided, overtime shall be paid at time and one half for the first two hours and double time thereafter.

(2) All work performed by employees on any day on which they are rostered off duty or days worked in excess of those provided in Clause 8—Hours or Clause 6- Part Time Employees or on a Saturday or Sunday shall be paid for at the rate of double time .

(3) In lieu of payment for overtime and by agreement between the employees and the employer, time off shall be calculated in accordance with subclause (1) of this clause, and may be taken at a time mutually agreed between the employee and the employer.

(4) When overtime work is necessary it shall, wherever reasonably practicable, be so arranged that a worker has at least eight consecutive hours off duty between work periods.

(5) 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, or shall be paid the sum of $5.40 as meal money.

Provided that where the employee has been advised of the requirement to work overtime on the previous day or earlier this subclause shall not apply.

10.—ANNUAL LEAVE

(1) Except as hereinafter provided, a period of six consecutive weeks' leave shall be allowed to an employee by the employer after each period of 12 months' continuous employment with the employer. Except as provided hereunder, if an employee lawfully terminates his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid 4.38 hours pay at the rate prescribed by subclause (2) of this clause in respect of each completed week of continuous service for which annual leave has not already been taken.

(2) Payment for leave shall on the usual pay days or where the employee requests shall be paid prior to commencing leave and be on the basis of either what the employee would have earned by way of shift and weekend penalties had he/she not gone on leave, or 17.5% loading, that is, whichever is greater. Where the 17.5% loading applies, it shall be paid for 2/3rds of any leave due in each year.

(3) (a) Not withstanding the provisions of subclause (1) of this Clause, an employee who is not usually rostered for work on public holidays but is entitled to payment on a public holiday in accordance with subclause (3) of Clause 11.—Public Holidays, shall be entitled to a period of four consecutive weeks' leave after each period of twelve months' continuous employment with such employer. If on an occasion such employee does work on a public holiday they shall be paid in accordance with Clause 11—Public Holidays, subclause (3).

(b) Employees entitled to annual leave under this subclause shall accrue annual leave at the rate of 2.92 hours in respect of each completed week of continuous service.

(4) Annual leave may be given and taken before the completion of twelve months continuous service. Annual leave may be split into more than one portion and will be taken by agreement between the employer and employee.

(5) If at the date of termination the employee has taken more leave than was due, the employee shall repay the excess amount of the leave or the employer may deduct such amount from other entitlements otherwise payable to the employee on termination.

(6) Employee Dismissed for Misconduct

(i) An employee who is dismissed for misconduct which occurred after the completion of a 12 month qualifying period shall be paid in full for any leave which accrued in that period but which has not yet been taken.

(ii) An employee dismissed for misconduct which occurred—

- during a completed 12 month qualifying period; or

- in an incomplete 12 month qualifying period; but before the employee has taken leave in respect of that qualifying period, shall be paid an amount equal to one thirteenth of a week's pay (exclusive of penalty rates, overtime or allowances) for each week of service in that qualifying period in respect of which leave has not been taken.

(7) The provisions of this clause shall not apply to casual employees

11.—PUBLIC HOLIDAYS

(1) A rostered employee who works on any public holiday named herein or day observed in lieu thereof, shall be paid a loading of 50% of the ordinary wage for the time worked in ordinary hours on that day in substitution for any other shift penalties otherwise applicable to the work on that day.

(2) For the purposes of this clause the following days shall be public holidays: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

(3) An employee who is not required to work on any public holiday named in this clause or day observed in lieu thereof, shall be entitled to a day's leave and shall be paid the ordinary rate of wage the employee would receive for the hours usually worked.

If an employee, who is not a rostered employee, works on any public holiday they shall be paid for all work done at the rate of double time and a half, with a minimum payment as for four hours work.

(4) An entitlement to public holidays without deduction of pay shall only apply to those employees referred to in subclause (3) of Clause 10.—Annual Leave.

12.—SICK LEAVE

(1) A full time employee shall accrue ten days sick leave per annum.

(2) The entitlement shall accrue pro rata on a weekly basis.

(3) A part time employee shall accrue paid sick leave in the proportion of hours normally worked by that employee to those of a full time employee.

(4) An employee who is unable to attend work on the grounds of personal ill health or injury is entitled to be paid at ordinary rates for the period of the absence up to and including the number of hours which the employee was rostered to work on that day provided that the payment shall not exceed payment for ten weeks in any one year.

(5) Unused portions of sick leave entitlement shall accumulate from year to year and may be taken in any subsequent year.

(6) An 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 illness or injury and the estimated duration of absence.

(7) An employee is allowed a maximum of four days absence without a medical certificate in any one accruing year provided that a medical certificate must be provided for any absence of more than two consecutive days.

(8) An employee who suffers personal ill health or injury whilst on annual leave may be paid sick leave in lieu of annual leave subject to—

(a) providing a medical certificate stating the illness or injury necessitated confinement to home or hospital for seven consecutive days or more;

(b) the portion of annual leave coinciding with the paid sick leave is to be taken at a time agreed by the employer and staff member or shall be added to the next period of annual leave;

(c) payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in Clause 10.—Annual Leave of this Agreement shall be deemed to have been paid with respect to the replaced annual leave.

(10) Paid leave may be withheld if the illness or injury is the result of the employee's own misconduct.

(11) 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 1981, the employee shall reimburse to the employer the payments made under this clause and the employer shall reinstate the staff member's sick leave or other entitlements accordingly.

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

13.—FAMILY LEAVE

Use of Sick Leave

(1) 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 sub-clause, up to 5 days per annum 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. This entitlement does not accumulate from year to year.

(2) The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned.

(3) The entitlement to use sick leave in accordance with this sub-clause 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.

(iii) 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 staff member or spouse of the employee.

(4) 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 Purpose

(5) An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care to a family member who is ill.

14.—LONG SERVICE LEAVE

The Long Service Leave Provisions published in Volume 73 of the Western Australian Industrial Gazette at pages 1 to 4, both inclusive, are hereby incorporated in and shall be deemed part of this Agreement.

15.—BEREAVEMENT LEAVE

(1) On the death of a spouse or de facto spouse, child or step-child, parent or parent-in-law, grandparent, brother, sister or any other person who before that person's death lived with the employee as a member of the family, the employee is entitled to bereavement leave, without loss of ordinary earnings, of up to two days.

(2) Payment of such leave may be subject to the staff member providing proof of the death where the employer requests such proof.

(3) Bereavement leave is not to be taken where the staff member is absent on another form of leave or would not otherwise have been on duty.

16.—PARENTAL LEAVE

Interpretation

(1) "adoption", in relation to a child, is a reference to a child who—

(a) is not the natural child or the stepchild 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 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 clauses 4, 5(1) and 6(1), 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 (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 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.

(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 workplace agreement.

17.—DISPUTE SETTLEMENT PROCEDURE

(1) The parties to this Agreement will endeavour to provide effective and speedy resolution of employee difficulties and problems. The Union recognises the right and responsibility of Graceville Women's Centre to provide uninterrupted and efficient services to the community. The employer recognises the rights and responsibilities of the Union to represent its members in compliance with its rules.

(2) Where a question, dispute or difficulty arises, emphasis shall be placed on a negotiated settlement. However, if the negotiation process is exhausted without the dispute being resolved the parties may jointly or individually refer the matter to the Western Australian Industrial Relations Commission for assistance in resolving the dispute.

(3) The status quo (ie: the conditions applying prior to the issue arising) will remain until the issue is resolved in accordance with the procedure outlined above.

(4) Where the employer seeks to discipline an employee, or terminate an employee the following steps shall be observed—

(a) In the event that an employee commits a misdemeanour, the employee's immediate supervisory or any other staff member so authorised, may exercise the employer's right to reprimand the employee so that the employee understands the nature and implications of their conduct.

(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 in a period not exceeding twelve months continuous service, the contract of service shall, upon the giving of that third reprimand, be terminable in accordance with the provisions of this Agreement.

18.—INTRODUCTION OF CHANGE

(1) Where the employer has made a definite decision to introduce major changes that are likely to have significant effects on employees, the employer shall notify employees who may be affected, and their Union.

(2) As soon as practicable the employer shall enter into discussions with employees on issues involved in the changes.

(3) The employer shall discuss with the Union any matters raised in relations to the changes.

19.—INTERVIEWS

(1) An accredited representative of the Union shall be entitled to enter the business premises of the employer and interview an employee subject to the following—

(a) On arrival at the workplace the Union representative shall seek permission to enter the premises from the employer or its senior representative.

(b) Agreement between the Union representative and the employer shall be sought as to where and subject to what conditions the employee may be interviewed or work inspected.

20.—INSPECTION OF RECORDS

(1) The employer bound by this industrial agreement shall maintain a time and wages record for each employee.

(2) The entries in the time and wages records for each employee shall include—

(a) The name and address given by each employee subject to this award.

(b) The date of birth of an employee if paid as a junior employee.

(c) The date on which each employee commenced employment with that employer.

(d) The classification and "year of employment" of the employee and whether the employee is employed full time, part time or casual.

(e) The commencing and finishing time of work each day, together with any periods between those times when the employee was not required to work.

(f) The total number of ordinary hours and the total number of overtime hours worked each day.

(g) The wages and any allowances paid to each employee each pay period and any deductions made therefrom.

(3) The employer must ensure that each entry in the time and wages record is retained for not less than seven (7) years after it is made.

(4) A representative of an organisation of employees shall have the power to inspect the time and wages records of an employee or former employee.

(5) The power of inspection may not be exercised for the purpose of inspecting the time and wages records of an employee or former employee who—

(a) is not a member of the organisation; and

(b) has notified the employer in writing that the employee or former employee does not consent to a representative of an organisation of employees having access to those records.

(6) The power of inspection may only be exercised by a representative of an organisation of employees authorised in accordance with the rules of the organisation to exercise the power.

(7) The representative is empowered to inspect any notification that an employee or former employee does not consent to a representative having access to time and wages records.

(8) A person who has given a notification referred to in paragraph (b) of subclause (5) hereof may, by notice in writing to the employer, withdraw the notification and, upon that withdrawal, the notification ceases to be of effect.

(9) Before exercising a power of inspection the representative shall give reasonable notice of not less than 24 hours to an employer.

(10) An employer shall endeavour to—

(a) maintain the time and wages records of employees in such a manner that access by a representative of an organisation to the records of employees does not give access to records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records;

(b) ensure that a representative of an organisation does not obtain access to the records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records; and

(c) ascertain whether an employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of the employee or prospective employee.

(11) A person shall not by threats or intimidation persuade or attempt to persuade an employee or prospective employee to give, or refuse to give, written notification that the employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of that employee or prospective employee.

(12) The employer must ensure that any notification from an employee or former employee in accordance with this clause shall be retained for not less than seven (7) years.

(13) There shall be a liberty to apply to amend this clause at any time.

(14) Any employer or organisation bound by or party to this industrial agreement may apply to the Western Australian Industrial Relations Commission at any time in relation to this clause.

21.—POSTING OF AGREEMENT AND UNION NOTICES

(1) A copy of this Agreement shall be exhibited by the employer on the business premises in such a place where it may be conveniently and readily seen by each employee.

(2) The Secretary of the Union, or any other duly accredited representative of the Union, shall be permitted to post notices relating to union business in such a place where it may be conveniently and readily seen by each employee.

22.—WAGES

(1) The following shall be the minimum weekly rates of wages payable to full time employees covered by this Agreement—

	Base rate per week $
(a) Qualified Cook	520.90
(b) Cook	461.00
(c) Maintenance Person	461.00
(d) Domestic	438.30
(e) Supervisor	508.00
(f) Care Worker	463.60
(g) Child Care Worker	463.60

(2) These rates shall be adjusted in accordance with National Wage Decisions intended for general application which are flowed on to similar classifications in the Aged and Disabled Persons Hostels Award.

(3) The hourly rate shall be calculated by dividing the weekly rate by 38.

23.—ADDITIONAL PAYMENTS

(1) All hours worked on Saturday shall be paid at time and one half.

All hours worked on Sunday shall be paid at time and three quarters.

(2) The loading on the ordinary rates of pay for an afternoon or night shift worked in ordinary hours Monday to Friday shall be 15%. An afternoon shift shall be one which commences between 12.00 noon and 6.00 pm and a night shift shall be one which commences between 6.00 pm and 4.00 am.

(3) An employee who is required to remain on call overnight at the Centre shall not remain on call for more than ten hours and will be paid $50.00 for the on-call period.

24.—PAYMENT OF WAGES

(1) Wages shall be paid fortnightly by cheque, direct transfer or cash at the Employer's discretion, following consultation with the employees. In respect of transfer fees associated with the transfer of funds from the employer's bank to any other bank or financial institution, such fees shall be paid by the employer.

(2) No deduction shall be made from an employee's wages unless the employee has agreed to such deduction in writing, or the deduction is authorised by this Agreement.

(3) Each employee shall be provided with a pay advice slip on each day that wages are paid. The pay advice slip shall detail—

(a) The rate of wages.
(b) The hours worked, including overtime.
(c) The gross wage.
(d) The net wage.
(e) Any allowances paid.
(f) Any deductions made.
(g) The composition of any annual leave payment.
(h) The composition of any termination payment.
(i) Remuneration Packaging benefits allowed under Clause 28 and the Appendix—Remuneration Packaging Arrangements.

(4) Subject to subclause (5) hereof, upon termination of employment, the employer shall pay to the employee all monies earned by or payable to the employee within 48 hours of termination of employment.

(5) Subject to the provisions of this Agreement or where deductions are allowed by law, the employer shall forward as soon as reasonably possible all monies earned by or payable to such employee to that employee.

25.—SUPERANNUATION

(1) The Employer shall contribute on behalf of each employee in accordance with the requirements of the *Superannuation Guarantee (Administration) Act 1992*.

Compliance, Nomination and Transition

(2) Notwithstanding anything contained elsewhere herein which requires that contributions be made to a superannuation fund or scheme in respect of an employee, on and from 30 June 1998—

(a) Any such fund or scheme shall no longer be a complying superannuation fund or scheme for the purposes of this clause unless—
  (i) the fund or scheme is a complying fund or scheme within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; and
  (ii) under the governing rules of the fund or scheme, contributions may be made by or in respect of the employee permitted to nominate a fund or scheme;
(b) the employee shall be entitled to nominate the complying superannuation fund or scheme to which contributions are to be made by or in respect of the employee;
(c) The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable;
(d) A nomination or notification of the type referred to in paragraphs (b) and (c) of this subclause shall, subject to the requirements of regulations made pursuant to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the employee to whom such is directed;
(e) The employee and employer shall be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made;
(f) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by a employee;

Provided that on and from 30 June 1998, and until an employee thereafter nominates a complying superannuation fund or scheme—

(g) if one or more complying superannuation funds or schemes to which contributions may be made be specified herein, the employer is required to make contributions to that fund or scheme, or one of those funds or schemes nominated by the employer;
or
(h) if no complying superannuation fund or scheme to which contributions may be made be specified herein, the employer is required to make contributions to a complying fund or scheme nominated by the employer.

(3) Contributions shall be made on the employee's earnings base, which shall include the employee's base rate, over award payments and shift and weekend penalties.

(4) All contributions to the nominated fund shall be paid monthly and within 28 days of the end of each month to which the contributions relate.

(5) The employer shall continue to contribute an amount of not less than 3% on behalf of an employee in receipt of payments under the Workers Compensation and Assistance Act.

(6) An employee may elect to make additional contributions to the nominated superannuation fund. Such additional contributions may be made on the employee's behalf in lieu of equivalent wages. All deductions and contributions for the purpose of superannuation shall be recorded on the employee's pay slip.

26.—NUMBER OF EMPLOYEES

This Agreement shall apply to approximately 14 employees.

27.—LIBERTY TO APPLY

Liberty to seek a variation of this Agreement shall apply with regard to—

(1) Redundancy Payments
(2) On Call or Sleepover Allowance.

28.—REMUNERATION PACKAGING

Remuneration packaging in accordance with the terms and conditions of this clause and the packaging arrangements appended to this Agreement shall be optional for all employees covered by this Agreement.

(1) Where agreed between the employer and the employee, the employer shall offer and the employee accept remuneration packaging in respect of wages and benefits and the terms and conditions of such a package shall not, when viewed objectively, be less favourable than the entitlements otherwise available under this Agreement in terms of wages, penalties and allowances, and shall be subject to the following provisions—

(a) A maximum of 30% salary sacrifice on the employee's averaged wage and penalty payments, where applicable, is available;
(b) Part time employees have packaging based on their pro-rata wage;
(c) The employer shall confirm in writing to the employee the wage payable as applicable to that employee under Clause 22 of this Agreement;
(d) The employer shall advise the employee in writing, of his/her right to choose payment of the wage referred to in Clause 22 of this Agreement instead of a remuneration package;

(2) The packaging agreement, the terms and conditions 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.

(3) A copy of the packaging agreement shall be made available to the employee.

(4) The employee shall be entitled to inspect details of payments and transactions made under the terms of the agreement.

(5) 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 the remuneration packaging arrangement by giving the employer reasonable notice of intention to withdraw from the end of the next quarter of the calendar year.

(6) An employee who has previously declined to take up packaging, may, by giving the employer reasonable notice, take up the benefit at any time.

(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 employee, any unused amount may be carried forward to the next financial year to be utilised by 30 September, or be paid as wages as at the end of the financial year, which will be subject to usual taxation requirements.

(8) 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 either three months prior to the withdrawal taking place, or notice to have effect from the date that the relevant legislation is to take effect, whichever is the earlier.

(9) Subject to subclause (11), in the event of the employer withdrawing from the salary packaging arrangements, the employees will revert to a wage not less than that applicable to the employees classification under this Agreement.

(10) The employer shall as soon as practicable after being advised of the legislative change referred to in subclause (8) hereof, advise the Union and employees and shall convene a meeting of the parties with a view to reaching an alternative agreement on wages and benefits.

(11) In the event that consensus on the terms of a replacement agreement cannot be reached it shall be open to the parties to seek cancellation of this clause and/or refer the matter to the Western Australian Industrial Relations Commission for conciliation or arbitration.

29.—PARTIES TO AGREEMENT

The following parties are bound by the terms of this Agreement.

Australian Liquor, Hospitality and Miscellaneous Workers Union of Australia, WA Branch

The Salvation Army (WA) Property Trust

30.—SIGNATURES OF THE PARTIES

Helen Creed
Secretary
Australian Liquor, Hospitality and Miscellaneous Workers Union of Australia, WA Branch
..... Signed
Signature
18/9/00
Date

Witness
..... Signed
Signature
18/9/00
Date

The Salvation Army (Western Australia) Property Trust
..... Signed
Signature
19/9/00
Date

Witness
..... Signed
Signature
19/9/00
Date

APPENDIX

REMUNERATION PACKAGING ARRANGEMENTS

(1) Packaging Details

(a) Wage packaging will be available to staff in accordance with Clause 28.

(b) Staff may elect to take the maximum rate of packaging available to them or a lesser amount by increments of 5% to a minimum of 10%.

(c) Staff wishing to alter their level of packaging may only do so at the end of each quarter.

(2) Administration Charge

(a) The Salvation Army will charge an administration fee of up to 3% of the amount packaged. This fee will automatically be deducted from the packaged amount. The 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 wages and allowances and the amount that has been credited to the individual staff member's 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 paid out by the packaging arrangement and the figure appearing under the "Tax" column will be the tax payable on the reduced "Taxable Income".

(c) Group Certificates will indicate the reduced taxable income and tax deducted for the year. The amount packaged will not be shown on Group Certificates unless required by law.

(4) Proposed 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 wage 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 or such shorter period as determined by the Employer.

(c) To pay a bill through their wage 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 by the due date of the account but not less than 3 days following receipt of the account by the salary packaging clerk.

(d) When a staff member terminates employment with the Salvation Army they may elect to either use their remaining wage package balance prior to termination or to have the balance paid out as wages. Where the balance is paid out as wages, income tax instalment deductions will be deducted from the wages by the Employer.

(5) Superannuation Guarantee charge

(a) Superannuation Guarantee payments will be based upon the wage rate as applicable under the Superannuation Guarantee Charge Act 1992 as at the date of registration of the Agreement.

(6) Components of Packaging

The following items will be those for which 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.

HOSPITAL SALARIED OFFICERS BODDINGTON DISTRICT HOSPITAL BOARD ENTERPRISE AGREEMENT 1999.
No. PSAAG 57 of 2000.

2000 WAIRC 00822

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	BODDINGTON DISTRICT HOSPITAL BOARD APPLICANT *v.* HOSPITAL SALARIED OFFICERS ASSOCIATION OF WESTERN AUSTRALIA (UNION OF WORKERS) RESPONDENT
CORAM	COMMISSIONER P E SCOTT
DELIVERED	MONDAY, 9 OCTOBER 2000
FILE NO/S	PSAAG 57 OF 2000
CITATION NO.	2000 WAIRC 00822

Result Agreement Registered

Order.

HAVING heard Mr J Hetman on behalf of applicant and Ms C Thomas on behalf of the respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Hospital Salaried Officers Boddington District Hospital Board Enterprise Agreement 1999 in the terms of the following schedule be registered on the 15th day of September 2000 and shall replace the Boddington District Hospital Salaried Officers Enterprise Bargaining Agreement 1997.

(Sgd.) P.E. SCOTT,
[L.S.] Public Service Arbitrator.

Schedule.

1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Boddington District Hospital Board Enterprise Agreement 1999.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Purpose of Agreement
4. Application and Parties Bound
5. Term of Agreement
6. No Extra Claims
7. Objectives, Principles and Commitments
8. Framework and Principles for Identifying Productivity Improvements and Bargaining
9. Awards, Agreements and Workplace Agreements
10. Rates of Pay and their Adjustment
11. Resources for Ongoing Productivity Improvement and Further Enterprise Bargaining Negotiations
12. Dispute Avoidance and Settlement Procedures
13. Hours
14. Part-Time Employees
15. Medical Imaging Technologists
16. Public Holidays
17. Long Service Leave
18. Sick Leave
19. Taking of Annual Leave
20. Family, Bereavement and Personal Leave
21. Parental Leave
22. Allowances
23. Overpayments
24. Mobility
25. Skills Acquisition, Training and Employee Development
26. Salary Packaging
27. Establishment of Level 1 & 2 Competencies
28. Rural Recruitment and Retention Issues
29. Salaries
30. Award Consolidation
31. Contract of Service—Probation
32. Travelling Allowance
33. Ratification

ATTACHMENT 1 Model for Identifying Productivity Increases
ATTACHMENT 2 Award Amendments

3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of the Boddington District Hospital Board along with allowing the benefits from those improvements to be shared by employees, the BDHB and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Boddington District Hospital Board taking responsibility for their own human resource and labour relations affairs and reaching agreement on issues appropriate to the Boddington District Hospital Board.

4.—APPLICATION AND PARTIES BOUND

(1) This agreement applies to the Hospital Salaried Officers Association of Western Australia (Union of Workers) (HSOA), the Employees covered by the Hospital Salaried Officer's Award No. 39 of 1968 and employed by the Boddington District Hospital Board, and the Boddington District Hospital Board (BDHB).

(2) The estimated number of employees bound by this Agreement at the time of registration is 2.

(3) This Agreement shall be read in conjunction with the Hospital Salaried Officers Award No. 39 of 1968 (hereafter sometimes referred to as the Award) and shall replace the provisions of that Award where expressly stated herein. Wherever there is an inconsistency between the Agreement and the Award, the Agreement shall take precedence.

This Agreement cancels and replaces the Boddington District Hospital Enterprise Bargaining Agreement 1997.

5.—TERM OF AGREEMENT

(1) This Agreement shall operate from the date of Registration until its expiry on 1 December 2001.

(2) The parties to this Agreement agree to re-open negotiations at least no later than six months prior to the expiry of this Agreement, provided that neither party may refuse to commence negotiations as early as Enterprise bargaining

negotiations commence for the Metropolitan Health Service Board.

6.—NO EXTRA CLAIMS

Subject to the terms of this agreement, for life of the agreement, the HSOA shall make no further claims on the BDHB.

7.—OBJECTIVES, PRINCIPLES AND COMMITMENTS

(1) The parties agree that the objectives of this Agreement are to—

(a) improve the productivity and efficiency of the BDHB;

(b) facilitate greater flexibility in the management of conditions and work arrangements across the BDHB;

(c) ensure high quality patient services in a safe, healthy and equitable work environment;

(d) ensure high quality of employment and jobs; and BDHB

(e) provide a pathway to providing a wage increase to employees based upon the achievement of improved productivity and efficiency.

(2) This is to be achieved by—

(a) ensuring that gains achieved through agreed improved productivity and changes in workplace culture are shared by employees, BDHB and its clients and the Government on behalf of the community;

(b) ensuring that the BDHB operates in a manner consistent with the principles outlined in Section 7 of the Public Sector Management Act;

(c) developing and pursuing changes on a co-operative basis; and

(d) ensuring that the BDHB operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and the BDHB, Management and Employees bound by this Agreement are committed to—

(a) Supporting and actively contributing to health service continuous quality improvement, including best practice, where—

(i) best practice is simply the best way of doing things;

(ii) best practice is a continuous improvement process, which involves constantly changing, adapting and integrating related approaches to health service issues;

(iii) practices are not fixed and not restricted to an examination of costs, but also include quality and delivery issues;

(iv) best practice is outcome rather than simply activity based;

(v) best practice provides the processes, structures, rights and obligations that are essential to ensure that the full capacity for innovation of employees is fully and effectively used;

(vi) best practice depends on effective training, empowerment and participation of both management and employees to acquire and utilise the skills which are necessary to effectively develop, implement and evaluate the change process; and

(vii) best practice is to be based on the following principles—

* customer/patient focus
* management commitment
* employee participation
* leadership
* information analysis
* policies and plans
* appropriate standards
* hospital/health service performance
* cost effectiveness
* working smarter

(b) Supporting the clinical, teaching, research and organisational goals of the health service and contributing to the achievement of those goals as active members of the health service community.

(c) Supporting and actively contributing to the achievement and/or maintenance of ACHS Accreditation.

(d) Actively contributing to the achievement of health service budgets.

(e) Assisting with achieving Health Department defined waiting list priorities and day surgery targets.

(f) Co-operating with the development and implementation of strategies to achieve length of stay targets.

(g) Participating in a Multi-disciplinary approach to patient care.

(h) The principles of public sector administration; in particular to the principles contained in Sections 7, 8 and 9 of the Public Sector Management Act 1994.

(4) In addition, the BDHB is committed to facilitating and encouraging the participation and commitment of employees.

8.—FRAMEWORK AND PRINCIPLES FOR IDENTIFYING PRODUCTIVITY IMPROVEMENTS AND BARGAINING

(1) (a) Following receipt of a request from the HSOA to negotiate a new Agreement, in accordance with Clause 5. -Term of Agreement, a representative from the BDHB will meet with a representative from the HSOA to discuss the request as soon as practicable but in any event within five working days of the receipt of the request.

These discussions should include process issues such as what sort of bargaining mechanism will be established, what consultative process can be used or needs to be put in place, possible initiatives to be considered and the time frame.

Negotiations will be conducted in a manner and time frame agreed by the parties to this Agreement.

(b) The negotiations should occur on the basis of a broad agenda of initiatives designed to improve efficiency, effectiveness, productivity, patient care and flexibility within the BDHB.

(c) The agenda should include but not be limited to—

(i) changes in work organisation, job design and working patterns and arrangements;

(ii) the examination of terms and conditions of employment to ensure they are suited to the BDHB's operational requirements;

(iii) the identification and implementation of best practice across all areas of service delivery;

The above (i), (ii) and (iii) can be achieved by means including but not limited to—

(aa) new training and skills development programs as and where required;

(bb) the optimum use of human and capital resources including new technology;

(cc) quality assurance and continuous improvement programs;

(dd) having due regard to operational requirements, allowing sufficient flexibility to enable employees to meet their family responsibilities; and

(ee) active occupational health and safety risk reduction, training and rehabilitation programs.

(2) In negotiating further salary increases in return for productivity improvements, the parties should ensure that the following issues have been addressed and/or applied—

(a) Productivity Improvements

Productivity improvements are changes which increase the efficiency and effectiveness of the BDHB in meeting its agreed and contracted service programs and outcomes. Productivity improvements may be related to work practices or arrangements. They may be things which go to minimise the cost of what is

done, to the way things are done, to when they are done, to the quality of what is done or to improve the ability of the provider to meet patient and customer needs. They may or may not require changes from Award conditions.

Without limiting any of the above, in practice, the primary focus of Enterprise Bargaining in the workplace is likely to be on best practice, efficiency, effectiveness, competitiveness, cost savings, and quality of employment.

(b) Sharing Gains from Productivity Improvement

The parties accept that there is no precise formula for the sharing of gains from productivity improvements, but in any agreement, in addition to employee benefits, there must be a clear and specific return to the BDHB and/or the Government. Productivity improvements may be related to work practices or arrangements, subject to acceptance that where capital expenditure requires changes in work methods and/or the number of employees and the changes are of a nature that enhances the investment, it shall qualify as a productivity improvement, provided that there is a net quantifiable benefit to the BDHB.

Any agreement reached should not rely primarily on improvements which are merely the result of new technology or financial reforms or other such initiatives. For example; in the case of capital investment (technology), changes arising from capital expenditure for which the BDHB takes the risk and which require a reasonable return on the funds invested, do not necessarily count as a productivity improvement.

The treatment of improved efficiency arising from major capital expenditure is to be agreed by the BDHB and the HSOA and shall take into account factors such as the cost of capital.

Where employees repackage or exchange employment conditions, all or most of the saving or productivity improvement made by the BDHB can be returned to the employees.

(c) Identifying Productivity Increases

To assist in identifying and negotiating productivity improvements during the life of this agreement and in negotiating the next agreement a model for identifying productivity increases is contained in Attachment 1.

9.—AWARDS, AGREEMENTS AND WORKPLACE AGREEMENTS

(1) Relationship Between Agreements and Awards

Consistent with the Industrial Relations Act 1979 and the State Wage Principles, this Agreement shall provide the whole of the employees' wage increases for the life of the Agreement.

(2) Choice between this Agreement and Workplace Agreements

(a) The parties accept that Employees will be given an informed and free choice between this Agreement and Workplace Agreements;

(b) To facilitate the making of an informed and free choice—

(i) Employees who are to be offered a choice between this Agreement and a workplace agreement may only be required to indicate their choice after the employee has been offered the position.

(ii) Where an employee has been offered a choice the employee shall have a minimum of seven days in which to decide which alternative to take, provided that where it is necessary to fill a position within a period of less than seven days or where an employer agrees to an employee commencing within a period of less than seven days, the employee shall have up to the date of formal acceptance.

(iii) The employee shall be provided with—

(aa) a copy of an agreed summary of this Agreement; and

(bb) a copy of a summary of the Workplace Agreement.

(iv) At the request of an employee, the employee shall be provided with;

(aa) access to a copy of this Agreement and the Workplace Agreement;

(bb) any other relevant documentation, such as information on salary packaging; and

(cc) information on where they can obtain further advice and on how to contact the Union.

For its part, the Union undertakes to advise all employees on the matter of choice whether or not they are members of the Union.

(c) If agreement on any aspect of this clause is not able to be reached the dispute settlement procedure set out in Clause 12 of this Agreement is to be followed.

(3) By agreement between the employer and the employee, an employee who has signed a Workplace Agreement prior to the registration of this S.41 Industrial Agreement can revisit the Workplace Agreement in light of this Agreement.

(4) All staff transferred or redeployed to the BDHB from within the Public Sector or within the Government Health Industry may be offered the choice of a Workplace Agreement or this Agreement subject to the discretion of the BDHB.

(5) All promotional positions and new staff recruited by the BDHB from outside the Public Sector may be provided with the choice of a Workplace Agreement or this Agreement, subject to the discretion of the BDHB.

(6) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (4) and (5) of this clause, the BDHB shall ensure that the decision to only offer a Workplace Agreement is made for legitimate operational reasons. In exercising their discretion to only offer a Workplace Agreement, the BDHB is to liaise with the HSOA to ensure it is not done to circumvent the option of choice.

10.—RATES OF PAY AND THEIR ADJUSTMENT

This Agreement provides for the following salary increases—

(1) 4.0% from 16 November 1999;

(2) 1.5% from 1 January 2000;

(3) 2.0% from 1 July 2000; and

(4) 1.25% from 1 January 2001. The final payment of 1.25% will be subject to—

(a) the BDHB identifying productivity in excess of that used to justify the other salary increases; and

(b) approved by Government.

Productivity is to be identified in accordance with the definitions contained in Clause 8 of this Agreement and the "Model for Identifying Productivity increases" referred to in that clause.

(5) The rates of pay are set out in clause 29.— Salaries, of this Agreement.

(6) All increases are compounded.

11.—RESOURCES FOR ONGOING PRODUCTIVITY IMPROVEMENT AND FURTHER ENTERPRISE BARGAINING NEGOTIATIONS

(1) It is recognised that enterprise bargaining places considerable obligations upon the parties at the BDHB.

(2) (a) To assist in meeting these obligations, the BDHB will assist by providing appropriate resources having regard to the operational requirements of the BDHB and resource requirements associated with developing productivity improvements under this Agreement and with negotiating a new agreement;

(b) It is accepted that employees of the BDHB who are involved in the productivity improvement and the enterprise bargaining processes will be allowed reasonable paid time to fulfil their responsibilities in this process;

(c) Access to resources shall be negotiated with the BDHB and shall not unreasonably affect the operation of the BDHB;

(d) Any paid time or resources shall be provided in a manner suitable to both parties and to enable negotiations to occur and to assist in the achievement of improvements and of agreement.

(e) The parties accept that the process of bargaining in good faith includes disclosing relevant information, as appropriate for the purposes of the negotiations and confidentiality and privacy in the negotiation process will be respected at all times.

(f) The parties accept that on occasions the nature of certain information may prejudice a party's position or not assist in the resolution of the matter. Subject to the rights of the parties to invoke Clause 12.—Dispute Avoidance and Settlement Procedures of this Agreement, a decision on whether or not to exchange or divulge information will be a matter for the relevant party to decide, provided that information shall not be unreasonably withheld;

(g) Where information of a commercial or sensitive nature is exchanged, the parties agree not to use or divulge that information outside of the negotiating forums.

(3) No officer or employee will be discriminated against as a result of activities conducted in accordance with this clause.

12.—DISPUTE AVOIDANCE AND SETTLEMENT PROCEDURES

(1) This clause is to be read in conjunction with Clause 27 of the Award. The objective of this Clause is to provide a set of procedures for dealing with any question, dispute or difficulty arising under this Agreement and for dealing with any question, dispute or difficulty between the parties during negotiations for amendments to this Agreement.

(2) Subject to the Public Sector Management Act 1994, in the event of any question, dispute or difficulty arising under this Agreement, the following procedures shall apply, provided that nothing in these procedures shall prevent the Secretary of the HSOA (or his/her nominee) from intervening to assist in the process—

(a) The matter is to be discussed between the HSOA employee representative and the employer representative and an attempt made to resolve the matter;

(b) If the matter is unable to be resolved through discussions between the HSOA employee representative and the employer representative, the matter is to be discussed between the employee representative and a representative nominated by the Chairman of the BDHB (or his/her nominee), as soon as practicable but within five working days. Notification of any question, dispute or difficulty may be made verbally and/or in writing;

(c) The parties may individually or collectively seek advice from any appropriate organisation or person in an attempt to resolve the matter;

(d) If the matter is not resolved within five working days of the date of notification in (b) hereof, either party may notify the Secretary of the HSOA (or his/her nominee), or a representative nominated by the Chairman of the BDHB (or his/her nominee) of the existence of a dispute or disagreement;

(e) The Secretary of the HSOA (or his/her nominee) a representative nominated by the Chairman of the BDHB (or his/her nominee) shall confer on the matters notified by the parties within five working days and—

(i) where there is agreement on the matters in dispute the parties shall be advised within two working days;

(ii) where there is disagreement on any matter it may be submitted to the Western Australian Industrial Relation Commission.

(3) Where any matter is referred to the Western Australian Industrial Relations Commission and the matter is not resolved by conciliation, then the matter remaining in dispute may be resolved by arbitration in accordance with the provisions of the Industrial Relations Act 1979 and the State Wage Principles.

13.—HOURS

This clause replaces Clause 13.—Hours of the Hospital Salaried Officers Award No. 39 of 1968.

(1) (a) The ordinary hours of work shall be an average of thirty eight per week and shall be worked by one of the following arrangements—

(i) Ordinary hours of work of thirty eight per week;

(ii) Flexitime roster covering a settlement period of four weeks;

(iii) Actual hours of seventy six over nine days with the tenth day to be taken as a paid rostered day off;

(iv) Such other arrangements as are agreed between the employer and employee. Provided that proposed hours of duty where set outside the terms of this Agreement shall be subject to ratification of the WA Industrial Relations Commission.

(v) In addition to the above arrangements, where the employees concerned, the employer and the Union agree in writing, shifts of up to but not more than 12 hours may be worked.

(vi) Subject to meal breaks, prescribed hours are to be worked in one continuous period provided that where a hospital or health service and employee have entered into an alternative arrangement involving discontinuous shifts prior to 1 December 1998, that arrangement may continue under this Agreement.

(b) Subject to the following, where the employer and an employee or group of employees agree in writing, shifts of up to 12 hours may be worked provided the average normal hours worked in a shift cycle or settlement period does not exceed 76 per fortnight.

(i) While recognising that in the course of an averaging process there may be some individual variances, the terms and conditions of the shift agreement shall on balance be no less favourable than those prescribed by this Agreement;

(ii) The period of the shift cycle or settlement period over which the arrangement may extend shall be clearly defined;

(iii) The arrangement shall allow for a minimum of one clear day off in each 7 days;

(iv) The arrangement may allow for additional time off in lieu of penalty rates;

(v) The arrangement may allow for salary averaging of regular penalties and allowances including penalties for working on a public holiday;

(c) Where the employer has made a definite decision to introduce changes to shift rosters or employees' ordinary hours, the employer shall notify the employees who may be affected by the proposed changes and the Union as soon as the decision has been made and before the changes are to be introduced. Discussion with the employees and union shall occur consistent with the Introduction of Change clause of the Hospital Salaried Officers Award No. 39 of 1968.

(d) The operation of working arrangements prescribed in paragraph (a) above shall be consistent with the working arrangements prescribed in this clause.

(e) Any arrangement of hours of work which fall outside the parameters set out in this clause shall be subject to ratification by the WA Industrial Relations Commission.

(2) Ordinary Hours

Subject to the Award clauses other than those expressly replaced by this Agreement, the spread of ordinary hours will be from 6.00am to 6.00pm Monday to Friday inclusive with a meal break of not less than 30 minutes nor more than 60 minutes to be taken between 12.00noon and 2.00pm, provided that an employee may with prior approval of their supervisor be allowed to extend the meal break beyond 60 minutes to a maximum of 90 minutes.

(3) Other Working Arrangements

(a) The ordinary hours of duty observed may be varied in accordance with subclause (1)(a)(iv) so as to make provisions for—

(i) the attendance of employees for duty on a Saturday, Sunday, or Public Holidays.

(ii) the performance of shift work including work on Saturdays, Sundays or Public Holidays; and

(iii) the nature of the duties of an employee or class of employees in fulfilling the responsibilities of their office.

provided that where the hours of duty are so varied an employee shall not be required to work more than five hours continuously without a break unless agreed in writing between the employee and the employer.

(b) Notwithstanding the above, where it is considered necessary to provide a more economic operation, the employer may authorise the operation of alternative working arrangements in the hospital/health service, or any branch or section thereof.

The continuing operation of any alternative working arrangements, so approved, will depend on the employer being satisfied that the efficient functioning of the hospital/health service is being enhanced by its operation.

Such alternative working arrangements shall be in accordance with subclause (1)(a) and (d).

(4) Flexitime Arrangements

(a) Flexitime Roster

(i) The authorisation of a flexitime roster shall be the responsibility of the employer. The roster will indicate the minimum staffing and any other requirements in respect to starting and finishing times, lunch break coverage and flexileave.

(ii) The roster shall cover a settlement period of four weeks and shall be made available to all affected employees no later than three days prior to the settlement period commencing.

(iii) The roster shall be prepared in consultation with the affected employees, subject to the employer retaining the right to determine arrangements to suit the operational needs of the department.

(iv) Subject to four weeks notice being given to affected employees, the employer may withdraw authorisation of a flexitime roster.

(b) Hours of Duty

(i) The ordinary hours of duty may be an average of 7 hours 36 minutes per day which may be worked with flexible commencement and finishing times in accordance with the provisions of this subclause, provided that the required hours of duty for each four week settlement period shall be 152 hours.

(ii) For the purpose of leave and Public Holidays, a day shall be credited as 7 hours 36 minutes.

(c) Flexitime Periods

Within the constraints of the prepared roster and subject to the concurrence of the supervisor, employees may select their own starting and finishing times within the following periods—

6.00 am to 9.30 am

11.00 am to 2.30 pm (Minimum half an hour break)

3.30 pm to 6.00 pm

(d) Core Periods

Core periods may be set by agreement between the employer and the employee.

(e) Lunch Break

(i) An employee shall be allowed to extend the meal break between 11 am and 2.30 pm of not less than 30 minutes but not exceeding 60 minutes except as provided below.

(ii) An employee may be allowed to extend the meal break beyond 60 minutes to a maximum of 90 minutes. Such an extension is subject to prior approval of the employee's supervisor.

(f) Flexileave

(i) Within the constraints of the prepared roster and subject to the prior approval of the supervisor, an employee may be allowed a maximum of two full days or any combination of half days and full days that does not in total exceed two days in any one settlement period.

(ii) Approval to take flexileave is subject to the employee having accrued sufficient credit hours to cover the absence prior to taking the leave. In exceptional circumstances and with the approval of the employer, flexileave may be taken before accrual subject to such conditions as the employer may impose.

(g) Settlement Period

(i) For recording time worked, there shall be a settlement period which shall consist of four weeks.

(ii) The settlement period shall commence at the beginning of a pay period.

(iii) The required hours of duty for a settlement period shall be 152 hours.

(h) Credit Hours

(i) Credit hours in excess of the required 152 hours to a maximum of 8 hours are permitted at the end of each settlement period. Such credit hours shall be carried forward to the next settlement period.

(ii) Credit hours in excess of 8 hours at the end of a settlement period shall be lost.

(iii) Credit hours at any point within the settlement period shall not exceed 20 hours.

(i) Debit Hours

(i) Debit hours below the required 152 hours to a maximum of 4 hours are permitted at the end of each settlement period. Such debit hours shall be carried forward to the next settlement period.

(ii) Where an employee's debit hours exceed 4 hours, the employer may treat the time as if the employee had taken leave without pay for the period necessary to reduce debit hours to four hours.

(iii) Employees having excessive debit hours may be required to work standard working hours in addition to not being paid for the number of hours in excess of the debit hours permitted at the end of each settlement period.

(j) Maximum Daily Working Hours

Subject to subclause (1)(b), a maximum of 10 hours may be worked in any one day.

(k) Study Leave

Where study leave has been approved by the employer, credits will be given for education commitments falling within the ordinary hours of duty and for which "time off" is necessary to allow for attendance at formal classes.

(l) Overtime

(i) Employees receiving at least one day's prior notice of overtime shall be required to work the ordinary hours of duty determined by the employer under subclause (1) of this clause.

(ii) Where an employee is required to work overtime at the conclusion of a day with less than one day's notice, and

(aa) where the employee has at the commencement of that day 2 hours or more

flexitime credits, the employee shall be paid overtime after 5 hours work on that day, or for time worked after 3.30 pm, whichever is the later, or

(bb) where that employee has commenced duty prior to 8.30 am and has, at the commencement of that day, less than 2 hours flexitime credits, the employee shall be paid overtime, for time worked after the completion of ordinary hours of duty or after working 7 hours 36 minutes on that day, whichever is the earlier, or

(cc) where that employee has commenced work after 8.30 am and has, at the commencement of that day, less than 2 hours flexitime credits, the employee shall be paid overtime for time worked after 5.30 pm or after working 7 hours 36 minutes, on that day whichever is the earlier.

(iii) Where an employee is required to work overtime at the beginning of a day with less than one day's notice, that employee shall be paid overtime for any time worked prior to the commencing time for ordinary hours of duty determined by the employer under subclause (1) of this clause.

(5) Nine Day Fortnight

(a) Hours of Duty

(i) The employer may authorise the operation of a nine day fortnight where the ordinary hours of duty of 76 hours a fortnight are worked over nine days of the fortnight, exclusive of work performed on Saturday, Sunday and the special rostered day off, with each day consisting of 8 hours and 27 minutes.

(ii) The employer shall determine employees' commencing and finishing times between the spread of 6.00 am and 6.00 pm, in order to ensure that departmental requirements are met on each day.

(b) Lunch Break

A meal break shall be allowed and taken in accordance with the standard provisions of this clause.

(c) Special Rostered Day Off

Each employee shall be allowed one special rostered day off each fortnight in accordance with a roster prepared by management showing days and hours of duty and special rostered days off for each employee.

(d) Leave and Public Holidays.

For the purposes of leave and Public Holidays, a day shall be credited as 8 hours 27 minutes notwithstanding the following—

(i) When a Public Holiday falls on an employee's special rostered day off the employee shall be granted a day in lieu of the holiday prior to the conclusion of the current fortnight.

(ii) For a Public Holiday occurring during a period of annual leave, an additional day will be added to the period of leave irrespective of whether it falls on a rostered work day or special rostered day off.

(iii) A four week annual leave entitlement is equivalent to 152 hours, the equivalent to eighteen rostered working days of 8 hours 27 minutes, and two special rostered days off.

(iv) An employee who is sick on a special rostered day off will not be granted sick leave for that day, and will not be credited with an additional day off in lieu.

(e) Overtime

The provisions of the relevant overtime clause, shall apply for work performed prior to an employee's nominated starting time and after an employee's nominated ceasing time in accordance with subparagraph (a)(ii) and on an employee's special rostered day off.

(f) Study Leave

Credits for Study Leave will be given for educational commitments falling due between and employee's nominated starting and finishing times.

14.—PART-TIME EMPLOYEES

To be read in conjunction with Clause 34.—Part-time Employees of the Hospital Salaried Officers Award No. 39 of 1968.

(1) Part-time employees shall be paid at a rate pro-rata to the rate prescribed for the class of work for which they are engaged in the proportion to which their fortnightly hours bear to 76 hours per fortnight.

(2) When a part-time employee classified above the 20 years of age rate as defined by the Hospital Salaried Officers Award No. 39 of 1968, commences employment on or after the 1 July 1996, he/she shall accrue service towards progression onto subsequent salary increments within a salary level, on a pro-rata basis of the number of hours worked to full time hours.

(3) Provided that relevant prior service and experience shall be taken into account when determining at what increment within a specified salary level a part-time employee is appointed.

(4) Part-Time Flexibility for Relief

(a) (i) The purpose of this provision is to provide those part time employees who wish to access it with the opportunity to work additional hours by covering short-term relief requirements of the employer.

(ii) While relief for vacancies will normally be provided from full time relief staff, where that is not possible, opportunities for relieving vacancies will be offered on an equitable basis to available, suitably qualified part time staff.

(iii) Where the numbers of suitably qualified and available part time staff warrant it, they shall form a relief pool for the purposes of this subclause.

(b) The purpose of the relief pool is to identify a pool of available and appropriately trained employees to provide staffing relief for absences of other workers while reducing the need for employers to resort to the use of casuals to provide adequate relief cover. It is envisaged relief under this subclause will be required for absences occasioned by matter such as—

* Brief periods of unplanned absence;
* Sick leave;
* Time in lieu;
* Annual leave;
* Long service leave.

(c) This provision applies to part time workers only

(d) For the purposes of this subclause, as applicable, a pool or pools of staff qualified for the work to be relieved, will be formed.

(e) Relief will be provided for absences of both part time and full time employees.

(f) The pool will consist of only those employees who indicate their willingness to participate in the pool and to accept the modified terms and conditions applying to its operation those terms being set out in paragraph (g) below.

(g) (i) Not withstanding the provision of Subclause (1) (b) of Clause 34 Part-time Employees, of the Award, and subject to subclauses (b), (c), (d) of this clause where a part-time employee has previously indicated in writing a willingness to work extra hours and or extra shifts such employee may work up to 76 hours per fortnight at ordinary rates of pay without receiving prior notice.

(ii) The indication given by an employee of their willingness to work extra hours may be withdrawn at any time.

(iii) An indication by an employee of his/her willingness to work additional hours does not oblige the employee to work additional hours if they are offered by the employer, accordingly, the employee may refuse to work any additional hours offered to them and may not be required to give any reasons for so refusing. Any such refusal is without prejudice to the employee.

(iv) The employer may not make it a Condition of Employment that an employee agrees to make themselves available to work additional hours.

(v) Consistent with the operation of this Agreement there will be no rostered split shifts.

15.—MEDICAL IMAGING TECHNOLOGISTS

This provision replaces Clause 12. of the Hospital Salaried Officers Award No. 39 of 1968.

Notwithstanding anything contained elsewhere in this Agreement or in the Hospital Salaried Officers Award No. 39 of 1968, Medical Imaging Technologists who were prior to this Agreement employed on a thirty-five hour and four week annual leave basis shall, as a result of the registration of this Agreement, be employed on a thirty-five and a half (35.5) hour week and four week annual leave basis.

16.—PUBLIC HOLIDAYS

This provision replaces subclause 16(1)(a) of the Hospital Salaried Officers Award No. 39 of 1968.

The following days or the days observed in lieu thereof shall subject as hereinafter provided, be allowed as holidays without deduction of pay, namely New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in this subclause.

17.—LONG SERVICE LEAVE

This clause replaces Clause 19. Long Service Leave of the Hospital Salaried Officers Award No. 39 of 1968.

(1) An employee shall be entitled to thirteen weeks paid long service leave on the completion of ten years of continuous service and an additional thirteen weeks paid long service leave for each subsequent period of seven years of continuous service completed by the employee.

(2) Notwithstanding subclause (1), an employee in employment with an employer respondent to the Hospital Salaried Officers Award No. 39 of 1968 at the time of the inception of this agreement shall retain the proportion of long service leave accrued at the rate provided by the Award or relevant agreement, as the case may be, at that time, and shall accrue the balance in accordance with sub clause (1) of this clause.

(3) Upon application by an employee, the employer may (subject to subclause (4) of this Agreement) approve of the taking by the employee—

(a) of double the period of long service leave on half pay, in lieu of the period of long service leave entitlement on full pay; or

(b) of half the period of long service leave on double pay, in lieu of the period of long service leave entitlement on full pay; or

(c) of any portion of his/her long service leave entitlement on full pay or double such period on half pay; or half such period on double pay;

(d) A full time employee who, during a qualifying period towards an entitlement of long service leave was employed continuously on both a full time and part time basis may elect to take a lesser period of long service leave calculated by converting the part time service to equivalent full time service.

(4) Long service leave may be taken in weekly multiples on full, half or compacted pay provided that where an employees remaining portion of accrued untaken leave entitlement is less than a week such portion may be taken.

(5) Any holiday occurring during the period in which an employee is on long service leave will be treated as part of the long service leave, and extra days in lieu thereof shall not be granted.

(6) Long service leave shall be taken as it falls due at the convenience of the employer but within three years next after becoming entitled thereto: Provided that the employer may approve the accumulation of long service leave not exceeding twenty six weeks.

(7) (a) An employee who;

(i) at or before the certification of this agreement was employed by the BDHB, and has completed at least 15 years continuous service within the Western Australian Public Sector; or

(ii) commenced employment with the BDHB after the certification of this agreement and has completed at least 15 years continuous service within the Western Australian Public Sector Health Industry;

may, by agreement with the employer, take pro-rata long service leave provided that the employee has completed at least three years continuous service with the BDBH immediately prior to taking this leave.

(b) An employee who resigns from their employment with BDBH and who—

(i) at or before the certification of this agreement was employed by the BDBH and has completed at least 15 years continuous service within the Western Australian Public Sector; or

(ii) commenced employment with the BDBH after the certification of this agreement and has completed at least 15 years continuous service within the Western Australian Public Sector Health Industry;

shall, in addition to any accrued long service leave be paid pro-rata long service leave, provided that the employee has completed at least three years continuous service with the BDBH immediately prior to his her resignation.

(8) For the purposes of subclause (7), the Western Australian Public Sector Health Industry shall mean the Minister for Health, the Commissioner of Health and all Public Sector Hospitals, Health Services and Agencies constituted under the Hospitals and Health Services Act 1927.

(9) Where an Employee has been redeployed at the direction of a Western Australian Public Sector Employer, three years continuous service for the purposes of subclauses (7) of this Clause shall be calculated including the service with such previous employer or employers.

(10) An employee who resigns having not qualified to be paid pro-rata long service leave in accordance with subclause (8) shall, subject to subclause (12), be entitled to payment for accrued long service leave only.

(11) An employee who is dismissed, shall not be entitled to long service leave or payment for long service leave other than leave that had accrued to the employee prior to the date of the offence for which the employee is dismissed provided that an employee who is dismissed through no fault of his/her own and who having completed at least 15 years continuous service, calculated in accordance with the provisions of this Clause, and having completed at least three years continuous service, calculated in accordance with the provisions of this Clause, with the BDHB immediately prior to dismissal shall, in addition to any accrued long service leave be paid pro-rata long service leave.

(12) A lump sum payment for long service leave accrued in accordance with this clause and for pro-rata long service leave shall be made in the following cases—

(a) To an employee who retires at or over the age of fifty-five years or who has retired on the grounds of ill health, provided that no payment shall be made for pro-rata long service leave unless the employee has completed not less than twelve months' continuous service.

(b) To an employee who has retired for any other cause: Provided that no payment shall be made for pro-rata long service leave unless the employee had completed not less than three years' continuous service before the date of his/her retirement.

(c) To the widow or widower of an employee or such other person as may be approved by the employer in the event of the death of an employee: Provided that no payment shall be made for pro-rata long service leave unless the employee had completed not less than twelve months' continuous service prior to the date of his/her death.

(13) A calculation of the amount due for long service leave accrued and for pro-rata long service leave shall be made at the rate of salary of an employee at the date of retirement, resignation or death, whichever applies and no such payment shall exceed the equivalent of twelve months' salary.

(14) Long service leave accrued prior to the issue of the Hospital Salaried Officers Award No. 39 of 1968 shall remain to the credit of each employee.

(15) Subject to the provisions of subclauses (6), (10), (11), (12) and (16) of this clause, the service of an employee shall not be deemed to have been broken—

(a) by resignation, where he/she resigned from the employment of an employer a party to the Award and commenced with another employer a party to the Award within one working week of the expiration of any period for which payment in lieu of annual leave or holidays has been made by an employer party to the Award from whom he/she resigned or, if no such payment has been made, within one working week of the day on which his/her resignation became effective; or

(b) by any absence approved by the employer as leave whether with or without pay.

(16) The expression "continuous service" in this clause includes any period during which an employee is absent on full pay or part pay, from his/her duties with any employer party to the Award, but does not include—

(a) any cumulative period exceeding two weeks in any one anniversary year during which the employee is absent on leave without pay;

(b) any service of the employee who resigns or is dismissed, other than service prior to such resignation or to the date of any offence in respect of which the employee is dismissed when such prior service has actually entitled the employee to long service leave, including pro-rata long service leave, under this clause.

(17) Portability

(a) Where an employee was, immediately prior to being employed by the BDHB, employed in the service of: The Commonwealth of Australia, or any other State Government of Australia, or any Western Australian State public sector or state government employer, and the period between the date when the employee ceased previous employment and the date of commencing employment by a respondent to this Agreement does not exceed one week, that employee shall be entitled to long service leave determined in the following manner—

(i) the pro rata portion of long service leave to which the employee would have been entitled up to the date of appointment under the Public Sector Management Act, shall be calculated in accordance with the provisions that applied to the previous employment referred to, but in calculating that period of pro rata long service 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) the balance of the long service leave entitlement of the employee shall be calculated upon appointment by a respondent to this Agreement in accordance with the provisions of this clause.

(b) Nothing in this clause confers or shall be deemed to confer 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 with the BDBH. At the request of the employee and with the agreement of the employer, an employee may be paid in lieu of taking a portion of long service leave.

(18) At the request of the employee and with the agreement of the employer, an employee may be paid in lieu of taking a portion of long service leave.

18.—SICK LEAVE

(1) This provision replaces subclause (7) of Clause 18.—Sick Leave of the Hospital Salaried Officers Award No. 39 of 1968.

The basis for the cumulative accrual of sick leave shall be—

	Leave On Full Pay Working Days
(a) On date of employment of the employee	5
(b) On completion by the employee of six months' service	5
(c) On completion by the employee of twelve months' service	10
(d) On completion of each additional twelve months' service by the employee	10

Provided that where an employee has accrued sick leave on half days pay prior to the date upon which this Agreement comes into effect those accrued half days shall be converted to the equivalent of full days sick leave and shall remain to the employee's credit until such time as they may be taken.

19.—TAKING OF ANNUAL LEAVE

This clause modifies the provisions of Clause 16.—Holidays and Annual Leave of the Hospital Salaried Officers Award No. 39 of 1968, in the manner and to the extent described in the provisions below.

(1) This subclause clause shall be read as if it were subclause (4A) of Clause 16.—Holidays and Annual Leave of the Hospital Salaried Officers Award No. 39 of 1968.

(a) (i) An employee is expected to take annual leave in the year immediately following the anniversary date upon which the leave became due and the employer will accommodate employees to take their leave in that year.

(ii) The scheduling of annual leave should be as a result of consultation between the employer and the employee.

(iii) If the employee refuses to enter into discussions in relation to the taking of annual leave the employer may roster the employee off for a period of annual leave providing at least four weeks notice is given.

(b) An employee, who has accumulated in excess of two year's annual leave entitlement and who has been advised accordingly by the employer, may be required to take sufficient leave prior to the next entitlement becoming due to ensure that their entitlement does not exceed two years entitlement.

(c) An employee who fails to take the leave as specified in paragraph (b) of this subclause may have any entitlements in excess of two years paid out at the current rate of pay provided that the employee shall be required to take at least two weeks leave in any anniversary year of employment.

(d) At the request of an employee and with the written agreement of the employer, an employee may be allowed to accumulate in excess of two years annual leave entitlement upon demonstrating an extraordinary or special reason to the Employer.

(e) Any employee who has accrued an excessive amount of leave (i.e. in excess of two years entitlement) may be required to clear any excessive accrued leave by taking double their entitlement of accrued leave in any one year until such time as their entitlement is less than two years entitlement.

(f) Where the employer and employee agree, an employee who has an entitlement in excess of two years may be paid out their annual leave at their current rate of pay, rather than proceeding on annual leave, provided that the employee has proceeded on two weeks leave in that anniversary year of employment.

(g) For the duration of this agreement annual leave will not be accessible until a minimum of 4 weeks annual leave entitlement has accrued, provided that at the request of the employee, an employee may take annual leave in periods of less than four weeks, provided that annual leave will not be taken in periods of less than one day.

(2) The loading on annual leave prescribed by subclause (13) of Clause 16.—Holidays and Annual Leave of the Hospital Salaried Officers Award No. 39 of 1968 will not be paid to employees for leave accrued during the period of this enterprise agreement instead the loading will be converted to three and one half days leave per annum.

(a) For the purpose of this clause one day shall equal 7.6 hours.

(b) Any leave loading outstanding from past credits will be paid out at the commencement of this agreement, provided that, subject to the leave not having been taken, an employee may elect to take the loading due on the four weeks of leave that fell due to be taken in their current anniversary year of employment as additional leave.

(c) The three and one half days leave in lieu of leave loading must be taken during the anniversary year in which it falls due, provided that—

(i) if such leave is not taken during the anniversary year in which it falls due, it will, at the option of the employer, be paid out automatically at the conclusion of that year;

(ii) the employer shall not refuse an employee any reasonable request to take such leave; and

(iii) at the option of the employee, such leave may be taken either separately or in conjunction with a period of annual leave.

(d) There will be no pro rata payments of leave in lieu of loading for partially completed years of service.

(e) An employee may apply, in writing, to have the additional three and one half days leave paid out in lieu of taking such leave.

(f) The ordinary rate of salary for a shift worker on annual leave includes the shift and weekend penalties the worker would have received had they not proceeded on annual leave. 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 leave.

20.—FAMILY, BEREAVEMENT AND PERSONAL LEAVE

This clause replaces Clause 17.—Short Leave of the Hospital Salaried Officers Award No. 39 of 1968.

(1) Family Leave

(a) In this subclause "family member" means the employee's spouse, defacto spouse, child, stepchild, parent, step-parent. This entitlement will also apply to another person who lives with the employee as a member of the employee's family.

(b) The employee is entitled to use up to 38 hours of his/her personal accrued sick leave to care for an ill family member each year, providing the employee must maintain a minimum of 10 days of sick leave available for personal use in each year. Subject to subclause (e), all family leave taken is deducted from the employee's sick leave entitlement.

(c) Family leave is not cumulative from year to year.

(d) Medical certificate requirements are as per those for Sick Leave under the Award.

(e) Where an employee has insufficient accrued sick leave, by mutual agreement, up to five days of annual leave may be used for the purpose of family leave.

(2) Bereavement Leave

(a) An employee shall on the death of—

(i) the spouse of the employee;

(ii) the child or step-child of the employee;

(iii) the parent or step-parent of the employee;

(iv) the brother, sister, step brother or step sister; or

(v) any other person, who immediately before that person's death, lived with the employee as a member of the employee's family,

be eligible for up to two (2) days bereavement leave, provided that at the request of an employee the employer may exercise a discretion to grant bereavement leave to an employee in respect of some other person with whom the employee has a special relationship.

(b) The 2 days need not be consecutive.

(c) Bereavement leave is not to be taken during any other period of leave.

(d) An employee who claims to be entitled to paid leave under paragraph (a) of this subclause is to provide to the employer, if so requested, evidence that would satisfy a reasonable person as to—

(i) the death that is the subject of the leave sought; and

(ii) the relationship of the employee to the deceased person.

(e) An employee requiring more than two days bereavement leave in order to travel overseas in the event of the death overseas of a member of the employees immediate family may, upon providing adequate proof, in addition to any bereavement leave to which the employee is eligible, have immediate access to annual leave and/or accrued long service leave in weekly multiples and/or leave without pay provided all accrued leave is exhausted.

(3) Special Personal Leave

(a) Without Pay

The employer may upon the request of an employee, grant that employee special leave without pay for any special or personal reason.

(b) Use of Annual Leave

The employer may, upon the request of an employee and with sufficient cause being shown, which may in the circumstances be with little notice, grant that employee single days of annual leave for pressing personal emergencies.

(c) Use of Sick Leave

The employer may, upon the request of an employee and with sufficient cause being shown, which may in the circumstances be with little notice, grant that employee single days of sick leave for pressing personal emergencies, providing the employee must maintain a minimum of 10 days of sick leave available for personal use in each year

(d) Employees may be granted leave for the following—

- International sporting events
- Defence force reserves
- State emergency service volunteers

Employees must submit a written request for leave and the Employer shall consider the request having regard to patient care and operational requirements.

21.—PARENTAL LEAVE

This clause replaces the Clause 18A.—Maternity Leave of the Hospital Salaried Officers Award No. 39 of 1968. Subject to the terms of this clause employees are entitled to parental leave and / or to work part-time in connection with the birth or adoption of a child.

(1) Definitions

For the purpose of this clause—

(a) "Child" means a child of the employee under the age of one year except for adoption of a child where

"child" means a person under the age of five years of age who is placed with the employee for the purpose of adoption, other than a child or step-child of the employee or of the spouse of the employee or child who has previously lived continuously with the employee for a period of six months or more.

(b) "Parental leave" means maternity, paternity or adoption leave taken in accordance with this clause.

(2) Basic entitlement

(a) Employees whose contract of service is by the month are entitled to 52 weeks unpaid parental leave in relation to the birth or adoption of their child. For females maternity leave may be taken and for males paternity leave may be taken. Adoption leave may be taken in the case of adoption.

(b) Parental leave is to be available to only one parent at a time, except that both parents may simultaneously access the leave in the following circumstances—

(i) for maternity leave and paternity leave, an unbroken period of one week at the time of the birth of the child—

(ii) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

(c) In order to demonstrate to the employer that, subject to paragraph (b), only one parent will be off on Parental leave at a time an employee shall, when applying for parental leave, provide the employer with a statutory declaration stating particulars of any period of parental leave sought or taken by his or her spouse.

(3) Maternity leave

(a) An employee will provide to the employer at least ten weeks in advance of the expected date of confinement—

(i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement; and

(ii) written notification of the date on which she proposes to commence maternity leave, and the period of leave to be taken.

(b) Subject to subclause (c) and unless agreed otherwise between employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of the birth.

(c) Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.

(d) Where the pregnancy of an employee terminates after 27 weeks and the employee has not commenced maternity leave, the employee may take unpaid leave (to be known as special maternity leave) for such period as a registered medical practitioner certifies as necessary, except that where an employee is suffering from an illness not related to the direct consequences of the delivery, an employee shall be entitled to access paid sick leave to which she is entitled, in lieu of, or in addition to, special maternity leave.

(e) Where leave is granted under subclause (3)(d), during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.

(f) 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.

(g) Where an employee then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed twelve months.

(4) Paternity leave

An employee will provide to the employer, at least ten weeks prior to each proposed period of paternity leave —

(a) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place; and

(b) written notification of the date on which he proposes to start and finish the period of paternity leave.

(5) Adoption leave

(a) The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.

(b) The employer may require an employee to provide confirmation from the appropriate government authority of the placement.

(c) The employer shall grant an employee who is seeking to adopt a child such unpaid leave as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee, the employer may require the employee to take such leave in lieu of unpaid leave.

(d) Where the placement of a child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from the date of notification for the employee's return to work.

(6) Variation of notice period

Notwithstanding the requirement to give at least 10 weeks notice of the date of commencement of parental leave, such notice may be for a greater or lesser period, where it is necessary to vary the date of commencement of parental leave due to a variation in the actual date of arrival of the child. Such variation does not count as a variation for the purposes of subclause (7) of this clause.

(7) Variation of period of parental leave

Unless agreed otherwise between the employer and employee, an employee may apply to their employer to change the period of parental leave on one occasion. Any such change shall be notified at least four weeks prior to the commencement of the changed arrangements.

(8) Parental leave and other entitlements

An employee may in lieu of or in conjunction with parental leave, access other paid leave entitlements which the employee has accrued, such as annual leave and long service leave, subject to the total amount of leave not exceeding 52 weeks.

(9) Transfer to a safe job

(a) Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

(b) If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee, to commence parental leave.

(10) Entitlement to Part-Time employment

(a) Where an employee is pregnant, and has a doctors certificate advising that it would be preferable for the employee to work part-time, or where an employee is eligible for parental leave, and the employer agrees, the employee may work part-time, the terms of which are to be agreed in writing, in one or more periods at any time until the child's second birthday or until the second anniversary of the placement of the child.

(b) The work to be performed part-time need not be the work performed by the employee in his or her former position.

(11) Returning to work after a period of parental leave or part time work.

(a) An employee will notify of their intention to return to work after a period of parental leave or part-time work entered into in accordance with this clause at least four weeks prior to the expiration of the leave or part-time work.

(b) An employee will be entitled to the position that they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to subclause (8), the employee will be entitled to return to the position they held immediately before such transfer. An employee who entered into part-time work in accordance with subclause (10) will be entitled to return to his or her former position.

(c) When such position no longer exists but there are other positions available, which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

(12) Replacement employees

(a) A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.

(b) A replacement employee will be informed of the temporary nature of the employment and of the rights of the employee who is being replaced.

(13) Notwithstanding any award, agreement or other provision to the contrary—

(a) absence on parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of the Award or this Agreement.

(b) commencement of part-time employment in accordance with this clause, and return from part time to full time work under this clause, shall not break the continuity of service or employment.

22.—ALLOWANCES

Where an employee subject to this Agreement is paid an allowance as provided under the Hospital Salaried Officers Award No. 39 of 1968, which is calculated as a percentage of a salary rate prescribed by that Award, the allowance shall for the life of this Agreement, now be calculated using the salary rates as prescribed at Clause 29.—Salaries of this Agreement.

23.—OVERPAYMENTS

(1) Where an employee is paid for work not subsequently performed or is overpaid in any other manner, the employer is entitled to make adjustment to the subsequent wages or salaries of the employee.

(2) One-off Overpayments

Subject to subclauses (4) and (5), one-off overpayments may be recovered by the employer in the pay period immediately following the pay period in which the overpayment was made, or in the period immediately following the pay period in which it was discovered that overpayment has occurred.

(3) Cumulative Overpayments

Subject to subclauses (4) and (5), cumulative overpayments may be recovered by the employer at a rate agreed between the employer and the employee, provided that the rate at which the overpayment is recovered is not at a lesser rate than the rate at which it was overpaid or $50 per week, depending on which is the lesser amount per pay period.

(4) In exceptional circumstances, other arrangements for the recovery of overpayments may be agreed between the employer and the employee.

(5) The employer is required to notify the employee of their intention to recoup overpayment and to consult with the employee as to the appropriate recovery rate.

24.—MOBILITY

(1) This clause will apply to all current and prospective employees of the BDHB.

(2) The parties agree that the provision of appropriate levels of health care is better able to be facilitated where the workforce is prepared to be mobile in the sense of being able to work in more than one position and where appropriate able to move on a temporary or permanent basis to a different location and or position.

(3) It is agreed that employee mobility should;

(a) not impose unreasonable difficulties, out of pocket expenses, or otherwise impact adversely on employees; and

(b) subject to the provisions of this clause, be as far as practicable, voluntary.

(4) Staffing mobility, administered in accordance with the standards and principles contained in this clause, within the Boddington District Hospital Board region will benefit employees through providing:

(a) access to a greater variety of employment opportunities

(b) the opportunity to develop and acquire a wide range of skills, competencies and work experience;

(c) expanded opportunities in terms of career development; and

(d) improved employment security.

(5) Employees agree to be prepared to give reasonable consideration to any proposal in regard to their mobility which meets the principles and requirements of this clause.

(6) The parties agree that in giving effect to the mobility provisions of this clause, both the organisation's and employee's needs are to be considered including:

(a) ensuring that the careers of employees are not disadvantaged;

(b) consideration of family & career responsibilities;

(c) the availability of transport and its cost;

(d) the reimbursement of the employee for any reasonable costs incurred by the employee as a result of a temporary or permanent move made.

(e) matching skill level and professional suitability of any temporary job opportunity or permanent new position;

(f) the availability of training and support to assist the employee with any skills deficit in respect to the requirement of the temporary job opportunity or permanent new position.

(g) consideration of the employee's ability to cope with the temporary or permanent change;

(h) providing adequate support to assist the employee with dealing with the change involved in moving to another job on either a temporary or permanent basis.

(7) The parties acknowledge the above and any other reasonable considerations can only be properly assessed through consultation between the employer, employee and the union. When considering the reasonableness of any proposed move the level of the employee and the relative cost to the employee of any move will be taken into account. Subject to family and social commitments and the suitability of the position, the higher the classification of the employee, the more the employee can be expected to demonstrate flexibility in regard to mobility.

(8) The parties agree that they will assist in the introduction of this initiative on the following basis—

(a) Relief:

(b) It is agreed that all positions, which for operational reasons are required to be relieved, will be relieved.

(i) Relief is defined as: "Planned relief" which is relief in positions for which a minimum of four weeks notice can reasonably be given. It is likely that planned relief will usually be for the cover of leave, higher duties and relief for vacancies caused by special projects and the like. "Unplanned relief" which is relief at short notice for unplanned absences such as sick leave, family leave, urgent operational requirements and the like.

(ii) Employees may agree to relieve in positions at the request of their supervisor to meet short-term operational requirements.

(iii) Where possible, all such relief will be provided on a voluntary basis, and vacancies will be notified and open to all eligible employees and awarded on the basis of merit.

(iv) Where no suitable employee has volunteered, and it is not reasonable to recruit from outside the health service, or in exceptional circumstances, following consultation with the employee, an employee may be required to relieve in a position provided that—

(aa) the position is suitable;

(bb) due consideration is given to the employees personal commitments;

(cc) the employee will not be financially disadvantaged;

(v) Where an employee has been directed to relieve in a position on more than two occasions in a calendar month, the employee may seek a review of the decision.

(vi) The relieving employee has the right to return to their substantive position at the end of the period of relief, as does the person whose position is being relieved.

(c) Temporary Transfer. Subject to agreement between the employer and employee, an employee may be transferred to another position within the Boddington District Hospital Board on a temporary basis, provided that:

(i) the employer and employee mutually agree the decision to transfer;

(ii) the period of time is defined;

(iii) the transfer is at a comparable classification level; and

(iv) the employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee.

(v) where an employee has agreed to a temporary transfer the employee may not capriciously withdraw their agreement to that transfer.

(d) Permanent Transfer. Subject to agreement between the parties, an employee may be transferred to another position within the Boddington District Hospital Board on a permanent basis, provided that:

(i) the employer and employee mutually agree the decision to transfer;

(ii) the transfer is at a comparable classification level; and

(iii) the employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee.

(e) Restructure. Where the requirement for mobility arises out of an organisational restructure the relevant provisions of the award together with the relevant legislation applies.

25.—SKILLS ACQUISITION, TRAINING AND EMPLOYEE DEVELOPMENT

(1) This clause is to be read in conjunction with Clause 28.-Mobility.

(2) The purpose of these clauses is to—

(a) recognise that change is a constant factor within the work environment, that the workplace of tomorrow will not be the same workplace today, and that employees can be expected to work in several different types of job during their working life;

(b) recognise that both employees and employers share obligations to ensure that the organisation and the employees are able to adapt to continuous change;

(c) facilitate the creation of a mobile, skilled, efficient, effective and adaptable workforce;

(d) facilitate the training and development of staff so that they are best able to meet the present and future needs of the Government Health Industry;

(e) assist in ensuring that employers are able to attract, develop and retain the best possible staff;

(f) facilitate the deployment of employees within the operations of the employer to best effect; while at the same time respecting the individual needs, security, expectations and reasonable requirements of employees, and not imposing, either directly or indirectly, unnecessary or unreasonable costs on them.

(3) The parties agree that the provision of appropriate levels of health care is better able to be facilitated where the workforce is appropriately trained and skilled both for present needs and for reasonably expected future requirements including career development and opportunities within the Government Health Industry.

(4) It is agreed that skills acquisition, training and employee development will;

(a) not impose unreasonable difficulties, out of pocket expenses, or otherwise impact adversely on employees;

(b) be subject to the provisions of this clause, be as far as practicable, voluntary;

(5) Skills acquisition, training and employee development, administered in accordance with the standards and principles contained in this clause, within the BDHB health service region will benefit employees through providing;

(a) access to a greater variety of employment opportunities;

(b) the opportunity to develop and acquire a wide range of skills, competencies and work experience;

(c) expanded opportunity in terms of career development; and

(d) improved employment security.

(6) Employees agree to be prepared to give reasonable consideration to any proposal in regard to their skills acquisition, training and development which meets the principles and requirements of this clause.

(7) The parties agree that in giving effect to the provisions of this clause, both the organisation's and employee's needs and reasonable expectations are to be considered including—

(a) ensuring that the careers of employees are enhanced and that they are not disadvantaged;

(b) consideration of the possible impact of any course study requirements, training, training schedule, employee development and or succession plan on family and carer responsibilities;

(c) reimbursement of the employee for any reasonable costs incurred by the employee as a result of attendance at or participation in any training, course of study or development activities at the direction of the employer;

(d) the skill level, aptitude, aspirations and suitability of the employee for the proposed skills acquisition, training or development program;

(e) the relevance of any proposed skills acquisition, training or development program to the needs of the employer, and

(f) that attendance by the employee does not unduly affect or inconvenience the operations of the employer.

The parties acknowledge the above and any other reasonable considerations can only be properly assessed through consultation between the employer, employee and, where appropriate, the union.

(8) For the purposes of this clause, an "approved course" or "approved training" is an accredited or industry recognised course of study, conference or workshop undertaken by the employee which in the employer's view;

(a) is relevant to the business outcomes to be achieved by the employee

(b) is relevant to the current and emerging business needs of the employer; and/or

(c) enhances the career development of the employee.

(9) The parties agree that they will assist in the introduction of this initiative on the following basis—

(10) Training and Short Courses

(a) An employee may be required to attend a training course or short course directly related to their work during ordinary working hours.

(b) Attendance at such courses shall be at no expense to the employee.

(c) An employee shall not unreasonably refuse to participate in any course of study where the subject matter is relevant to the current or emerging business needs of the employer, provided the course of study is conducted in ordinary working hours and is paid in accordance with the terms of the Agreement.

(d) The employer may grant leave with pay to participate in an approved short course or training course. The amount of leave may be up to 38 hours within a 12 month period.

(e) Where attendance is paid for by the employer, the employee may be required to;

(i) provide evidence to the employer of attendance and satisfactory progress with studies.

(ii) report to other employees on the course or training or to impart the knowledge gained to other employees.

(f) The employer may, where the short course or training is not an approved course or training, grant an employee leave to attend the short course or training during the employee's hours of duty and may require the employee to make up the hours or the employer may grant unpaid leave for such purpose.

(11) Multiskilling

(a) Employees agree that they will assist in the introduction of this policy on the following basis;

(i) Job Rotation

(aa) Employer and Employee mutually negotiate the decisions.

(bb) The period of time for any job rotation cycle is defined.

(cc) Prior to commencement of a job rotation arrangement, agreement is reached regarding the employee's continuity of service, tenure of employment in their substantive position or placement, at the completion of the rotation.

(ii) Job Enlargement and Enrichment

(aa) Decisions are mutually agreed by employee and supervisor.

(bb) The purpose, progression and outcomes from the enlargement/enrichment process are clearly defined.

(cc) The period of time is defined, where possible.

(dd) The employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee.

(ee) The employee is provided with adequate support and mentoring to ensure they have an adequate opportunity to learn and become expert in the new duties and responsibilities.

(b) Any job specific training required will be provided by the BDHB. A training programme will be developed to allow employees to gain a high level of understanding of the new position and will take into account the continuity of customer service and the career development of the employee.

(c) While as far as practicable, participation in multi-skilling will be voluntary, where, subject to the considerations set out in this clause, the employee unreasonably refuses a multi-skilling opportunity, the employer may direct the employee to undertake the placement.

For the purposes of this paragraph, "unreasonably" is defined as an employee who can be seen to be damaging their own employment by refusing to multi-skill, and/or the employer can demonstrate significant operational need for the employee to be multi-skilled.

(12) Staff Development Program

(a) BDHB will develop at an organisational level staff development programs.

(b) The staff development program will be directed to meeting the current and future staffing needs of the BDHB and will be based on the identified staffing needs and succession plans of the hospitals, health services, and health units, which make up the BDHB area.

(c) The staff development program(s);

(i) may be focused at the health service or BDHB level as appropriate.

(ii) will involve staff who either nominate or are nominated to participate in the scheme, but whose participation shall be voluntary.

(iii) where, due to the number of nominations a quota is necessary selection for participation will be on merit.

(iv) will be focused on meeting the current and future staffing needs of the Health Service and Government Health Industry; and

(v) may be based either or both on the job training and formal training.

(d) All reasonable expenses incurred by an employee arising out of participation in a staff development program will, subject to the presentation of adequate proof, be reimbursed by the employer.

(13) Formal Part-time or Full-time Post Secondary Study

The provisions of this clause shall not diminish the rights of employees who undertake formal post secondary study in an approved course.

(14) Notwithstanding, any provisions contained above in this clause, the employer can limit access to training and development courses based upon financial grounds.

(15) The BDHB will review the application of skills acquisition, training and employee development programs during the life of this agreement. The parties agree to review the application of this clause as a result of that review.

26.—SALARY PACKAGING

This clause is an agreement entered into in accordance with Clause 44 Salary Packaging of the Award and shall be read in conjunction with that clause.

(1) At the request of an employee, an employer and employee may agree to enter into a salary packaging arrangement.

(2) BDHB shall not require an employee to enter into a salary packaging arrangement, provided that this clause will not impinge on any additional employer provided benefits.

(3) The salary packaging arrangement entered into shall be by separate written agreement with the employer which sets out the terms and conditions of the arrangement provided that the terms of such agreement shall comply with the terms of this clause.

(4) Such agreement shall be formulated on the basis that, on balance, there shall be no material disadvantage of the employee concerned, and shall be cost neutral in relation to the total employment cost the employer.

(5) 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.

(6) An employee may elect to cancel any salary packaging arrangement by giving a minimum of four weeks notice.

(7) The employer may elect to cancel any salary packaging arrangement by giving minimum of four weeks notice if the employer incurs a liability to pay fringe benefits tax or any other tax in respect of the non-cash benefits provided, provided that the employer cannot retrospectively cancel any salary packaging arrangement.

(8) Notwithstanding subclauses (6) and (7) the employer and the employee may agree to forgo the notice period.

(9) The cancellation of salary packaging will not cancel or otherwise effect the operation of this Agreement.

(10) Any dispute arising from the operations of this clause will be dealt with in accordance with the relevant dispute settlement provisions."

27.—ESTABLISHMENT OF LEVEL 1 & 2 COMPETENCIES

(1) The BDHB agrees to investigate the potential for the progressive introduction and implementation of competency based job descriptions for Levels 1 and 2 employees.

(2) As a first step, the parties agree that they will review the outcomes of the processes set out under clause 33 of the Hospital Salaried Officers Metropolitan Health Service Board Enterprise Agreement 1999.

(3) It is agreed, subject to the agreement of the MHSB, the BDHB may participate as an observer in the HSOA/MHSB competency review process.

28.—RURAL RECRUITMENT AND RETENTION ISSUES

(1) Recruitment and retention of suitably qualified and / or experienced employees, particularly Allied Health professionals, is a significant issue for Country Health Services including Boddington District Hospital Board. These issues have significant cost, quality, efficiency, effectiveness, flexibility, service, and patient care implications , as does their resolution.

(2) The parties agree to investigate ways of removing obstacles to the recruitment and retention of suitably qualified and / or experienced employees.

(3) As a first step to addressing these matters the parties agree to consider—

(a) appropriateness and flexibility of the current classification system;

(b) training and professional development opportunities;

(c) support systems and mentoring;

(d) career paths;

(e) incentive schemes;

(f) flexible leave arrangements; and

(g) work practices and arrangements.

(4) To address these issues, the parties agree that the Health Service will establish a working party to make recommendations aimed at improving recruitment and retention of employees. The working party will report back to the Health Service and Hospital Salaried Officers Association by no later than 31 September 2000. Terms of reference for the working party will be established jointly by the Health Service and the Hospital Salaried Officers Association.

(5) The parties agree to consider the report of the Working Party by 28 February 2001 with a view to reaching agreement on the implementation of a package of recruitment and retention strategies.

29.—SALARIES

This clause replaces Schedule A—Minimum Salaries of the Hospital Salaried Officers Award No. 39 of 1968.

(1) Subject to the provision of Clause 9.—Salaries of the Award and to the provisions of this Clause the minimum annual salaries for employees bound by this Agreement are set in this Clause and shall apply from 16 November 1999 until the expiry of this Agreement.

(2) Minimum salaries as follows; for all callings other than those specified in subclause (3);

	Previous EBA Rates Salary P/Annum	4% From 16.11.99 Salary P/Annum	1.50% From 1/01/00 Salary P/Annum	2% From 1/07/00 Salary P/Annum	1.25% From 1/01/01 subject to Clause 10(4) Salary P/Annum
	$	$	$	$	$
LEVEL 1					
under 17 years of age	12,237	12,726	12,917	13,176	13,340
17 years of age	14,289	14,861	15,083	15,385	15,577
18 years of age	16,680	17,347	17,607	17,960	18,184
19 years of age	19,306	20,078	20,379	20,787	21,047
20 years of age	21,681	22,548	22,886	23,344	23,636
1st year of full-time equivalent adult service	23,816	24,769	25,140	25,643	25,964
2nd year of full-time Lequivalent adult service	24,551	25,533	25,916	26,434	26,765
3rd year of full-time equivalent adult service	25,282	26,293	26,688	27,221	27,562
4th year of full-time equivalent adult service	26,011	27,051	27,457	28,006	28,356
LEVEL 2	26,742	27,812	28,229	28,793	29,153
	27,475	28,574	29,003	29,583	29,952
	28,317	29,450	29,891	30,489	30,870
	28,900	30,056	30,507	31,117	31,506
	29,760	30,950	31,415	32,043	32,443
LEVEL 3	30,777	32,008	32,488	33,138	33,552
	31,567	32,830	33,322	33,989	34,413
	32,399	33,695	34,200	34,884	35,320
	33,724	35,073	35,599	36,311	36,765
LEVEL 4	34,418	35,795	36,332	37,058	37,522
	35,459	36,877	37,431	38,179	38,656
	36,527	37,988	38,558	39,329	39,821
	38,047	39,569	40,162	40,966	41,478
LEVEL 5	38,838	40,392	40,997	41,817	42,340
	39,926	41,523	42,146	42,989	43,526
	41,045	42,687	43,327	44,194	44,746
	42,196	43,884	44,542	45,433	46,001
LEVEL 6	44,414	46,191	46,883	47,821	48,419
	46,060	47,902	48,621	49,593	50,213
	48,400	50,336	51,091	52,113	52,764
LEVEL 7	49,651	51,637	52,412	53,460	54,128
	51,237	53,286	54,086	55,167	55,857
	52,880	54,995	55,820	56,937	57,648
LEVEL 8	55,280	57,491	58,354	59,521	60,265
	57,248	59,538	60,431	61,640	62,410
LEVEL 9	60,226	62,635	63,575	64,846	65,657
	62,298	64,790	65,762	67,077	67,915
LEVEL 10	64,566	67,149	68,156	69,519	70,388
	68,214	70,943	72,007	73,447	74,365
LEVEL 11	71,128	73,973	75,083	76,584	77,542
	74,091	77,055	78,210	79,775	80,772
LEVEL 12	78,154	81,280	82,499	84,149	85,201
	80,899	84,135	85,397	87,105	88,194
	84,029	87,390	88,701	90,475	91,606
CLASS 1	88,764	92,315	93,699	95,573	96,768
CLASS 2	93,498	97,238	98,696	100,670	101,929
CLASS 3	98,231	102,160	103,693	105,766	107,089
CLASS 4	102,965	107,084	108,690	110,864	112,249

(a) An employee, who is 21 years of age or older on appointment to a classification equivalent to Level 1, may be appointed to the minimum rate of pay based on years of service, not on age.

(b) A Medical Typist or Medical Secretary shall be paid a medical terminology allowance of $1000 per annum.

For the purposes of this subclause 'Medical Typist' and 'Medical Secretary' shall mean those workers classified on a classification equivalent to Level 1,2, or 3 who spend at least 50% of their time typing from tapes, shorthand, and/or Doctor's notes of case histories, summaries, reports or similar material involving a broad range of medical terminology.

(3) Minimum salaries for Specified Callings and Other Professionals are detailed as follows;

(a) Employees, who possess a relevant tertiary level qualification, or equivalent as agreed between the HSOA and the employers, and who are employed in the callings of Architect, Audiologist, Bio Engineer, Chemist, Dietitian, Engineer, Medical Scientist, Librarian, Occupational Therapist, Physiotherapist,

Physicist, Pharmacist, Clinical Psychologist, Psychologist, Research Officer, Scientific Officer, Social Worker, Speech Pathologist, Podiatrist, Medical Imaging Technologist, Nuclear Medicine Technologist, Radiation Therapist, Orthotist, Certified Clinical Perfusionist, or any other professional calling as agreed between the HSOA and employers, shall be entitled to Annual Salaries as follows—

	Previous EBA Rates Salary P/Annum	4% From 16.11.99 Salary P/Annum	1.50% From 1/01/00 Salary P/Annum	2% From 1/07/00 Salary P/Annum	1.25% From 1/01/01 subject to Clause 10(4) Salary P/Annum
	$	$	$	$	$
LEVEL 3/5	30,777	32,008	32,488	33,138	33,552
	32,399	33,695	34,200	34,884	35,320
	34,418	35,795	36,332	37,058	37,522
	36,527	37,988	38,558	39,329	39,821
	39,926	41,523	42,146	42,989	43,526
	42,196	43,884	44,542	45,433	46,001
LEVEL 6	44,414	46,191	46,883	47,821	48,419
	46,060	47,902	48,621	49,593	50,213
	48,400	50,336	51,091	52,113	52,764
LEVEL 7	49,651	51,637	52,412	53,460	54,128
	51,237	53,286	54,086	55,167	55,857
	52,880	54,995	55,820	56,937	57,648
LEVEL 8	55,280	57,491	58,354	59,521	60,265
	57,248	59,538	60,431	61,640	62,410
LEVEL 9	60,226	62,635	63,575	64,846	65,657
	62,298	64,790	65,762	67,077	67,915
LEVEL 10	64,566	67,149	68,156	69,519	70,388
	68,214	70,943	72,007	73,447	74,365
LEVEL 11	71,128	73,973	75,083	76,584	77,542
	74,091	77,055	78,210	79,775	80,772
LEVEL 12	78,154	81,280	82,499	84,149	85,201
	80,899	84,135	85,397	87,105	88,194
	84,029	87,390	88,701	90,475	91,606
CLASS 1	88,764	92,315	93,699	95,573	96,768
CLASS 2	93,498	97,238	98,696	100,670	101,929
CLASS 3	98,231	102,160	103,693	105,766	107,089
CLASS 4	102,965	107,084	108,690	110,864	112,249

(b) Subject to paragraph (d) of this sub clause, on appointment or promotion to the Level 3/5 under this sub clause—

(i) Employees, who have completed an approved three-year academic tertiary qualification, relevant to their calling, shall commence at the first year increment;

(ii) Employees, who have completed an approved four-year academic tertiary qualification, relevant to their calling, shall commence at the second year increment;

(iii) Employees, who have completed an approved Masters or PhD Degree relevant to their calling shall commence on the third year increment;

Provided that employees who attain a higher tertiary level qualification after appointment shall not be entitled to any advanced progression through the range.

(c) The employer and the HSOA shall be responsible for determining the relevant acceptable qualifications for appointment for the callings covered by this sub clause and shall maintain a manual setting out such qualifications.

(d) The employer in allocating levels pursuant to paragraph (b) of this sub clause may determine a commencing salary above Level 3/5 for a particular calling/s.

(4) The following conditions shall apply to employees in the callings detailed below—

Engineers—

Employees employed in the calling of Engineer and who are classified Level 3/5 under this Agreement shall be paid a minimum salary at the rate prescribed for the maximum of Level 3/5 where the employee is an "experienced engineer" as defined.

For the purposes of this paragraph "experienced engineer" shall mean—

(a) An engineer appointed to perform professional engineering duties and who is a Corporate Member of The Institution of Engineers, Australia, or who attains that status during service.

(b) An engineer appointed to perform professional duties who is not a Corporate Member of the Institution of Engineers, Australia but who possesses a degree or diploma from a University, College, or Institution acceptable to the employer on the recommendation of the Institution of Engineers, Australia, and who—

(i) having graduated in a four or five academic year course at a University or Institution recognised by the employer, has had four years experience on professional engineering duties acceptable to the employer since becoming a qualified engineer, or

(ii) not having a University degree but possessing a diploma recognised by the employer, has had five year's experience on professional engineering duties, recognised by the employer since becoming a qualified engineer.

30.—AWARD CONSOLIDATION

(1) The parties agree to the consolidation of the award during the life of this agreement.

(2) In order to facilitate the consolidation process, the BDHB may seek the assistance of the HDWA in negotiating the consolidation, or to work through the Health Department of Western Australia, as its agent.

(3) The amendments to the Award are outlined in Attachment 2—Award Amendments.

31.—CONTRACT OF SERVICE—PROBATION

This Clause replaces subclauses (1) of Clause 8.—Contract of Service, of the Hospital Salaried Officers Award No. 39 of 1968.

(1) (a) Every new employee appointed to the employ of the BDHB shall be on probation for a period of three (3) months.

(b) At any time during the period of probation the BDHB may annul the appointment and terminate the service of the employee by the giving of two weeks notice.

(c) At any time during the period of probation the employee may resign by giving two (2) weeks notice.

(d) A lesser period of notice may be agreed, in writing between the BDHB and the employee.

(e) On the completion of three months employment the period of probation may be extended for a further and final period of three months at the discretion of the BDHB. The provisions of subclause (b), (c) and (d) of this clause still apply during the period of probation.

(f) Where an employee's period of probation has been extended for a further period of three months, the BDHB shall notify the employee in writing of the extension and provide justification for the extension of probation.

(g) An employee shall not be deemed to be employed by the month until he/she has completed his/her probationary period or extended probationary period of employment as the case may be.

32.—TRAVELLING ALLOWANCE

(1) At the option of the employer, which option shall be notified in writing to the employee before it is exercised and before the employee has made the travel arrangements for which the allowance is to be claimed, this clause may replace Clause 21.—Travelling to the Hospital Salaried Officers Award No. 39 of 1968

(2) Subject to clauses (1) and (3), an employee who is required to travel on official business will be reimbursed for reasonable accommodation, meals and incidental expenses based on actual reasonable costs incurred as demonstrated by the production of receipts, provided that reasonable payment will be made for incidental expenses for which receipts are not available and that the maximum amount payable will not

be greater than the amounts allowed for accommodation, incidental expenses and meal allowances, as the case may be, in the relevant area as set out in Clause 24A of the Award.

(3) At the request of the employee required to travel in the course of his or her duties, the employer shall provide the employee with sufficient funds to cover reasonably expected out of pocket expenses prior to the employee travelling.

(4) The provisions of this clause do not apply to an employee who is relieving or who has been temporarily transferred to a position for a period exceeding five (5) working days.

33.—RATIFICATION

The signatories that follow testify to the fact that this Agreement shall come into effect as of the date of registration.

Toni Farrell

……Signed…… …25/9/00…

(Signature) (Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Dan Hill

……Signed…… …25/9/00…

(Signature) (Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

The Common Seal of the Boddington District Hospital Board is affixed hereto pursuant to a resolution of the Board

Jeffery Gibbs

……Signed…… …18/9/00…

(Signature) (Date)

Chairman for and on behalf or the Boddington District Hospital Board

ATTACHMENT 1—MODEL FOR IDENTIFYING PRODUCTIVITY INCREASES

The following model is to be used as a guide only and it is expected that it will be modified to meet the needs of BDHB as required.

A Model for Identifying Productivity Increases

The primary focus of Enterprise Bargaining in the workplace will be on best practice, efficiency, effectiveness, competitiveness and cost saving.

Employees to focus on the following areas—

- **Productivity improvements which can be made:** Identification of all possibilities for improving productivity through looking at possible changes in what work is done, who does the work, who could better do the work, when the work is done, whether the work should be done (i.e. whether a particular task can be performed less often and still achieve a satisfactory output 0 possibilities for multi- skilling and opportunities to reduce costs (including financial costs) and reduce waste.
- **Barriers to Productivity Improvements**: Identification of any significant barriers to improving productivity, such as, need for training, need for equipment, problems with computer programs, demarcation problems and arguments about who should do what, award constraints, information or guidelines problems, problems in regard to supervision, whether too much or not enough, or of poor quality, opportunities and barriers to self management, physical barriers such as the location of various functions which interact with each other and barriers to communication.

Employers, in consultation with their Employees, to focus on all of the above plus macro issues impacting on productivity—

- **Structural Matters**: Management may need to look at the structures within which the work is done and how they can be improved upon.
- **Management Style**: Management style and its appropriateness may need to be examined at both an organisational and departmental level.
- **Best Practice, Benchmarking, Continuous Improvement and New Opportunities**: Initiatives in these areas will in general need to be initiated by management. This is an important area given that one of its outcomes should be improved competitiveness.

  Where barriers to competitiveness beyond the control of the employer/health service are identified, these should be drawn to the attention of the Health Department so that they can be addressed on an industry basis.
- **Culture and Environment**: Management culture and organisational culture may need to be examined in light of the overall direction of health management and where appropriate programs and training be introduced to address any identified problems.

Quality of Employment—Issues to be Examined by Both Employees and Employers—

This area does not necessarily impact on productivity, as such, but may have a positive impact financially and/or an improvement in the non-wage rewards of employment and is therefore a very valuable, win-win, area for both employees and employers. Matters to be examined under this heading include, but are not confined to—

- Occupational Health and Safety
- Unplanned Absences
- Health and Welfare of the Workforce
- Family needs and other demands on workers: better ways to accommodate and acknowledge that these without losing focus on the main objectives in regard to responsibility for service to the employer.
- Use of Leave
- Equal Opportunity
- Career paths, including access to special project work, providing opportunities for development and recognition
- Employee Recognition, through feedback, support, acknowledgment, enablement, empowerment, consultation and non-financial rewards
- Training and Development
- Equity Issues

ATTACHMENT 2—AWARD AMENDMENTS

Consolidation of the Hospital Salaried Officers Award No. 39 of 1968 to be completed during the life of this agreement.

(1) The consolidation is to consolidate into the award a number of conditions and arrangements currently being provided in accordance with Administrative Instructions and / or Operational Instructions of the Health Department;

(2) The conditions and arrangements it is agreed to introduce are to be introduced on a no-win/no-loss basis.

(3) The consolidation includes the removal of gender biased and inconsistent language, the removal of inconsistencies, the updating of provisions to reflect current practice and usage, the removal of redundant provisions, updating of allowances as expressed in the Award and the modernisation of provisions.

(4) The clarification of provisions to improve administration and interpretation of the Award and to bring it into line with the new health service structures provided that the area of coverage and scope of the Award will not be amended by the consolidation.

In addition to and/or in association with the consolidation a number of amendments including the following are to be made to the Hospital Salaried Officers Award No. 39 of 1968—

(1) Definitions to be updated.

(2) Hours clause to be updated and clarified so that it adopts the Enterprise Bargaining clause and includes a provision to permit shifts of up to 12 hours to be worked.

(3) Holidays and Annual Leave clause to be amended to—

(a) permit leave to be taken in single days; and

(b) include simplified formulas for accrual of annual leave and calculation of leave on termination and pro rata leave.

(4) Parental Leave to be included.

(5) Long service leave clause to be amended to include calculation of entitlement on the basis of 13 weeks rather than 3 months, and to be taken in multiples of a week, the clause to be similar to that to be included in the S41 Agreements but to retain the right to 13 weeks leave after 7 years of service but with no pro rata leave except as currently specified in the Award clause.

(6) There will be additional changes as the details of the consolidation are finalised.

The agreement for Consolidation and Amendment of the Hospital Salaried Officers Award No.39 of 1968 is a package agreement.

HOSPITAL SALARIED OFFICERS BROOKTON HEALTH SERVICE ENTERPRISE AGREEMENT 1999.
No. PSA AG 56 of 2000.

2000 WAIRC 00823

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	BROOKTON HEALTH SERVICE APPLICANT *v.* HOSPITAL SALARIED OFFICERS ASSOCIATION OF WESTERN AUSTRALIA (UNION OF WORKERS) RESPONDENT
CORAM	COMMISSIONER P E SCOTT
DELIVERED	MONDAY, 9 OCTOBER 2000
FILE NO/S	PSAAG 56 OF 2000
CITATION NO.	2000 WAIRC 00823

Result	Agreement Registered

Order.

HAVING heard Mr J Hetman on behalf of applicant and Ms C Thomas on behalf of the respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Hospital Salaried Officers Brookton Health Service Enterprise Agreement 1999 in the terms of the following schedule be registered on the 15th day of September 2000 and shall replace the Brookton Health Service Hospital Salaried Officers Enterprise Bargaining Agreement 1997.

(Sgd.) P.E. SCOTT,
[L.S.] Public Service Arbitrator.

Schedule.

1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Brookton Health Service Enterprise Agreement 1999.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Purpose of Agreement
4. Application and Parties Bound
5. Term of Agreement
6. No Extra Claims
7. Objectives, Principles and Commitments
8. Framework and Principles for Identifying Productivity Improvements and Bargaining
9. Awards, Agreements and Workplace Agreements
10. Rates of Pay and their Adjustment
11. Resources for Ongoing Productivity Improvement and Further Enterprise Bargaining Negotiations
12. Dispute Avoidance and Settlement Procedures
13. Hours
14. Part-Time Employees
15. Medical Imaging Technologists
16. Public Holidays
17. Long Service Leave
18. Sick Leave
19. Taking of Annual Leave
20. Family, Bereavement and Personal Leave
21. Parental Leave
22. Allowances
23. Overpayments
24. Mobility
25. Skills Acquisition, Training and Employee Development
26. Salary Packaging
27. Establishment of Level 1 & 2 Competencies
28. Rural Recruitment and Retention Issues
29. Salaries
30. Award Consolidation
31. Contract of Service—Probation
32. Travelling Allowance
33. Ratification

ATTACHMENT 1 Model for Identifying Productivity Increases

ATTACHMENT 2 Award Amendments

3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of the Brookton Health Service along with allowing the benefits from those improvements to be shared by employees, the BHS and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Brookton Health Service taking responsibility for their own human resource and labour relations affairs and reaching agreement on issues appropriate to the Brookton Health Service.

4.—APPLICATION AND PARTIES BOUND

(1) This agreement applies to the Hospital Salaried Officers Association of Western Australia (Union of Workers) (HSOA), the Employees covered by the Hospital Salaried Officer's Award No. 39 of 1968 and employed by the Brookton Health Service, and the Brookton Health Service (BHS).

(2) The estimated number of employees bound by this Agreement at the time of registration is 2.

(3) This Agreement shall be read in conjunction with the Hospital Salaried Officers Award No. 39 of 1968 (hereafter sometimes referred to as the Award) and shall replace the provisions of that Award where expressly stated herein. Wherever there is an inconsistency between the Agreement and the Award, the Agreement shall take precedence.

This Agreement cancels and replaces the Brookton Health Service Enterprise Bargaining Agreement 1997.

5.—TERM OF AGREEMENT

(1) This Agreement shall operate from the date of Registration until its expiry on 1 December 2001.

(2) The parties to this Agreement agree to re-open negotiations at least no later than six months prior to the expiry of this Agreement, provided that neither party may refuse to commence negotiations as early as Enterprise bargaining negotiations commence for the Metropolitan Health Service Board.

6.—NO EXTRA CLAIMS

Subject to the terms of this agreement, for life of the agreement, the HSOA shall make no further claims on the BHS.

7.—OBJECTIVES, PRINCIPLES AND COMMITMENTS

(1) The parties agree that the objectives of this Agreement are to—

(a) improve the productivity and efficiency of the BHS;

(b) facilitate greater flexibility in the management of conditions and work arrangements across the BHS;

(c) ensure high quality patient services in a safe, healthy and equitable work environment;

(d) ensure high quality of employment and jobs; and BHS

(e) provide a pathway to providing a wage increase to employees based upon the achievement of improved productivity and efficiency.

(2) This is to be achieved by—

(a) ensuring that gains achieved through agreed improved productivity and changes in workplace culture are shared by employees, BHS and its clients and the Government on behalf of the community;

(b) ensuring that the BHS operates in a manner consistent with the principles outlined in Section 7 of the Public Sector Management Act;

(c) developing and pursuing changes on a co-operative basis; and

(d) ensuring that the BHS operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and the BHS, Management and Employees bound by this Agreement are committed to—

(a) Supporting and actively contributing to health service continuous quality improvement, including best practice, where—

(i) best practice is simply the best way of doing things;

(ii) best practice is a continuous improvement process, which involves constantly changing, adapting and integrating related approaches to health service issues;

(iii) practices are not fixed and not restricted to an examination of costs, but also include quality and delivery issues;

(iv) best practice is outcome rather than simply activity based;

(v) best practice provides the processes, structures, rights and obligations that are essential to ensure that the full capacity for innovation of employees is fully and effectively used;

(vi) best practice depends on effective training, empowerment and participation of both management and employees to acquire and utilise the skills which are necessary to effectively develop, implement and evaluate the change process; and

(vii) best practice is to be based on the following principles—

* customer/patient focus
* management commitment
* employee participation
* leadership
* information analysis
* policies and plans
* appropriate standards
* hospital/health service performance
* cost effectiveness
* working smarter

(b) Supporting the clinical, teaching, research and organisational goals of the health service and contributing to the achievement of those goals as active members of the health service community.

(c) Supporting and actively contributing to the achievement and/or maintenance of ACHS Accreditation.

(d) Actively contributing to the achievement of health service budgets.

(e) Assisting with achieving Health Department defined waiting list priorities and day surgery targets.

(f) Co-operating with the development and implementation of strategies to achieve length of stay targets.

(g) Participating in a Multi-disciplinary approach to patient care.

(h) The principles of public sector administration; in particular to the principles contained in Sections 7, 8 and 9 of the Public Sector Management Act 1994.

(4) In addition, the BHS is committed to facilitating and encouraging the participation and commitment of employees.

8.—FRAMEWORK AND PRINCIPLES FOR IDENTIFYING PRODUCTIVITY IMPROVEMENTS AND BARGAINING

(1) (a) Following receipt of a request from the HSOA to negotiate a new Agreement, in accordance with Clause 5.—Term of Agreement, a representative from the BHS will meet with a representative from the HSOA to discuss the request as soon as practicable but in any event within five working days of the receipt of the request.

These discussions should include process issues such as what sort of bargaining mechanism will be established, what consultative process can be used or needs to be put in place, possible initiatives to be considered and the time frame.

Negotiations will be conducted in a manner and time frame agreed by the parties to this Agreement.

(b) The negotiations should occur on the basis of a broad agenda of initiatives designed to improve efficiency, effectiveness, productivity, patient care and flexibility within the BHS.

(c) The agenda should include but not be limited to—

(i) changes in work organisation, job design and working patterns and arrangements;

(ii) the examination of terms and conditions of employment to ensure they are suited to the BHS operational requirements;

(iii) the identification and implementation of best practice across all areas of service delivery;

The above (i), (ii) and (iii) can be achieved by means including but not limited to—

(aa) new training and skills development programs as and where required;

(bb) the optimum use of human and capital resources including new technology;

(cc) quality assurance and continuous improvement programs;

(dd) having due regard to operational requirements, allowing sufficient flexibility to enable employees to meet their family responsibilities; and

(ee) active occupational health and safety risk reduction, training and rehabilitation programs.

(2) In negotiating further salary increases in return for productivity improvements, the parties should ensure that the following issues have been addressed and/or applied—

(a) Productivity Improvements

Productivity improvements are changes which increase the efficiency and effectiveness of the BHS in meeting its agreed and contracted service programs and outcomes. Productivity improvements may be related to work practices or arrangements. They may be things which go to minimise the cost of what is done, to the way things are done, to when they are done, to the quality of what is done or to improve the ability of the provider to meet patient and customer needs. They may or may not require changes from Award conditions.

Without limiting any of the above, in practice, the primary focus of Enterprise Bargaining in the workplace is likely to be on best practice, efficiency, effectiveness, competitiveness, cost savings, and quality of employment.

(b) Sharing Gains from Productivity Improvement

The parties accept that there is no precise formula for the sharing of gains from productivity improvements, but in any agreement, in addition to employee benefits, there must be a clear and specific return to the BHS and/or the Government. Productivity improvements may be related to work practices or arrangements, subject to acceptance that where

capital expenditure requires changes in work methods and/or the number of employees and the changes are of a nature that enhances the investment, it shall qualify as a productivity improvement, provided that there is a net quantifiable benefit to the BHS.

Any agreement reached should not rely primarily on improvements which are merely the result of new technology or financial reforms or other such initiatives. For example; in the case of capital investment (technology), changes arising from capital expenditure for which the BHS takes the risk and which require a reasonable return on the funds invested, do not necessarily count as a productivity improvement.

The treatment of improved efficiency arising from major capital expenditure is to be agreed by the BHS and the HSOA and shall take into account factors such as the cost of capital.

Where employees repackage or exchange employment conditions, all or most of the saving or productivity improvement made by the BHS can be returned to the employees.

(c) Identifying Productivity Increases

To assist in identifying and negotiating productivity improvements during the life of this agreement and in negotiating the next agreement a model for identifying productivity increases is contained in Attachment 1.

9.—AWARDS, AGREEMENTS AND WORKPLACE AGREEMENTS

(1) Relationship Between Agreements and Awards

Consistent with the Industrial Relations Act 1979 and the State Wage Principles, this Agreement shall provide the whole of the employees' wage increases for the life of the Agreement.

(2) Choice between this Agreement and Workplace Agreements

(a) The parties accept that Employees will be given an informed and free choice between this Agreement and Workplace Agreements;

(b) To facilitate the making of an informed and free choice—

(i) Employees who are to be offered a choice between this Agreement and a workplace agreement may only be required to indicate their choice after the employee has been offered the position.

(ii) Where an employee has been offered a choice the employee shall have a minimum of seven days in which to decide which alternative to take, provided that where it is necessary to fill a position within a period of less than seven days or where an employer agrees to an employee commencing within a period of less than seven days, the employee shall have up to the date of formal acceptance.

(iii) The employee shall be provided with—

(aa) a copy of an agreed summary of this Agreement; and

(bb) a copy of a summary of the Workplace Agreement.

(iv) At the request of an employee, the employee shall be provided with;

(aa) access to a copy of this Agreement and the Workplace Agreement;

(bb) any other relevant documentation, such as information on salary packaging; and

(cc) information on where they can obtain further advice and on how to contact the Union.

For its part, the Union undertakes to advise all employees on the matter of choice whether or not they are members of the Union.

(c) If agreement on any aspect of this clause is not able to be reached the dispute settlement procedure set out in Clause 12 of this Agreement is to be followed.

(3) By agreement between the employer and the employee, an employee who has signed a Workplace Agreement prior to the registration of this S.41 Industrial Agreement can revisit the Workplace Agreement in light of this Agreement.

(4) All staff transferred or redeployed to the BHS from within the Public Sector or within the Government Health Industry may be offered the choice of a Workplace Agreement or this Agreement subject to the discretion of the BHS.

(5) All promotional positions and new staff recruited by the BHS from outside the Public Sector may be provided with the choice of a Workplace Agreement or this Agreement, subject to the discretion of the BHS.

(6) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (4) and (5) of this clause, the BHS shall ensure that the decision to only offer a Workplace Agreement is made for legitimate operational reasons. In exercising their discretion to only offer a Workplace Agreement, the BHS is to liaise with the HSOA to ensure it is not done to circumvent the option of choice.

10.—RATES OF PAY AND THEIR ADJUSTMENT

This Agreement provides for the following salary increases:

(1) 4.0% from 16 November 1999;

(2) 1.5% from 1 January 2000;

(3) 2.0% from 1 July 2000; and

(4) 1.25% from 1 January 2001. The final payment of 1.25% will be subject to—

(a) the BDHB identifying productivity in excess of that used to justify the other salary increases; and

(b) approved by Government.

Productivity is to be identified in accordance with the definitions contained in Clause 8 of this Agreement and the "Model for Identifying Productivity increases" referred to in that clause.

(5) The rates of pay are set out in clause 29.— Salaries, of this Agreement.

(6) All increases are compounded.

11.—RESOURCES FOR ONGOING PRODUCTIVITY IMPROVEMENT AND FURTHER ENTERPRISE BARGAINING NEGOTIATIONS

(1) It is recognised that enterprise bargaining places considerable obligations upon the parties at the BHS.

(2) (a) To assist in meeting these obligations, the BHS will assist by providing appropriate resources having regard to the operational requirements of the BHS and resource requirements associated with developing productivity improvements under this Agreement and with negotiating a new agreement;

(b) It is accepted that employees of the BHS who are involved in the productivity improvement and the enterprise bargaining processes will be allowed reasonable paid time to fulfil their responsibilities in this process;

(c) Access to resources shall be negotiated with the BHS and shall not unreasonably affect the operation of the BHS;

(d) Any paid time or resources shall be provided in a manner suitable to both parties and to enable negotiations to occur and to assist in the achievement of improvements and of agreement.

(e) The parties accept that the process of bargaining in good faith includes disclosing relevant information, as appropriate for the purposes of the negotiations and confidentiality and privacy in the negotiation process will be respected at all times.

(f) The parties accept that on occasions the nature of certain information may prejudice a party's position or not assist in the resolution of the matter. Subject to the rights of the parties to invoke Clause 12.—Dispute Avoidance and Settlement Procedures of this Agreement, a decision on whether or not to exchange or divulge information will be a matter for the relevant party to decide, provided that information shall not be unreasonably withheld;

(g) Where information of a commercial or sensitive nature is exchanged, the parties agree not to use or divulge that information outside of the negotiating forums.

(3) No officer or employee will be discriminated against as a result of activities conducted in accordance with this clause.

12.—DISPUTE AVOIDANCE AND SETTLEMENT PROCEDURES

(1) This clause is to be read in conjunction with Clause 27 of the Award. The objective of this Clause is to provide a set of procedures for dealing with any question, dispute or difficulty arising under this Agreement and for dealing with any question, dispute or difficulty between the parties during negotiations for amendments to this Agreement.

(2) Subject to the Public Sector Management Act 1994, in the event of any question, dispute or difficulty arising under this Agreement, the following procedures shall apply, provided that nothing in these procedures shall prevent the Secretary of the HSOA (or his/her nominee) from intervening to assist in the process—

(a) The matter is to be discussed between the HSOA employee representative and the employer representative and an attempt made to resolve the matter;

(b) If the matter is unable to be resolved through discussions between the HSOA employee representative and the employer representative, the matter is to be discussed between the employee representative and a representative nominated by the Chairman of the BHS (or his/her nominee), as soon as practicable but within five working days. Notification of any question, dispute or difficulty may be made verbally and/or in writing;

(c) The parties may individually or collectively seek advice from any appropriate organisation or person in an attempt to resolve the matter;

(d) If the matter is not resolved within five working days of the date of notification in (b) hereof, either party may notify the Secretary of the HSOA (or his/her nominee), or a representative nominated by the Chairman of the BHS (or his/her nominee) of the existence of a dispute or disagreement;

(e) The Secretary of the HSOA (or his/her nominee) a representative nominated by the Chairman of the BHS (or his/her nominee) shall confer on the matters notified by the parties within five working days and—

(i) where there is agreement on the matters in dispute the parties shall be advised within two working days;

(ii) where there is disagreement on any matter it may be submitted to the Western Australian Industrial Relation Commission.

(3) Where any matter is referred to the Western Australian Industrial Relations Commission and the matter is not resolved by conciliation, then the matter remaining in dispute may be resolved by arbitration in accordance with the provisions of the Industrial Relations Act 1979 and the State Wage Principles.

13.—HOURS

This clause replaces Clause 13.—Hours of the Hospital Salaried Officers Award No. 39 of 1968.

(1) (a) The ordinary hours of work shall be an average of thirty eight per week and shall be worked by one of the following arrangements—

(i) Ordinary hours of work of thirty eight per week;

(ii) Flexitime roster covering a settlement period of four weeks;

(iii) Actual hours of seventy six over nine days with the tenth day to be taken as a paid rostered day off;

(iv) Such other arrangements as are agreed between the employer and employee. Provided that proposed hours of duty where set outside the terms of this Agreement shall be subject to ratification of the WA Industrial Relations Commission.

(v) In addition to the above arrangements, where the employees concerned, the employer and the Union agree in writing, shifts of up to but not more than 12 hours may be worked.

(vi) Subject to meal breaks, prescribed hours are to be worked in one continuous period provided that where a hospital or health service and employee have entered into an alternative arrangement involving discontinuous shifts prior to 1 December 1998, that arrangement may continue under this Agreement.

(b) Subject to the following, where the employer and an employee or group of employees agree in writing, shifts of up to 12 hours may be worked provided the average normal hours worked in a shift cycle or settlement period does not exceed 76 per fortnight.

(i) While recognising that in the course of an averaging process there may be some individual variances, the terms and conditions of the shift agreement shall on balance be no less favourable than those prescribed by this Agreement;

(ii) The period of the shift cycle or settlement period over which the arrangement may extend shall be clearly defined;

(iii) The arrangement shall allow for a minimum of one clear day off in each 7 days;

(iv) The arrangement may allow for additional time off in lieu of penalty rates;

(v) The arrangement may allow for salary averaging of regular penalties and allowances including penalties for working on a public holiday;

(c) Where the employer has made a definite decision to introduce changes to shift rosters or employees' ordinary hours, the employer shall notify the employees who may be affected by the proposed changes and the Union as soon as the decision has been made and before the changes are to be introduced. Discussion with the employees and union shall occur consistent with the Introduction of Change clause of the Hospital Salaried Officers Award No. 39 of 1968.

(d) The operation of working arrangements prescribed in paragraph (a) above shall be consistent with the working arrangements prescribed in this clause.

(e) Any arrangement of hours of work which fall outside the parameters set out in this clause shall be subject to ratification by the WA Industrial Relations Commission.

(2) Ordinary Hours

Subject to the Award clauses other than those expressly replaced by this Agreement, the spread of ordinary hours will be from 6.00am to 6.00pm Monday to Friday inclusive with a meal break of not less than 30 minutes nor more than 60 minutes to be taken between 12.00noon and 2.00pm, provided that an employee may with prior approval of their supervisor be allowed to extend the meal break beyond 60 minutes to a maximum of 90 minutes.

(3) Other Working Arrangements

(a) The ordinary hours of duty observed may be varied in accordance with subclause (1)(a)(iv) so as to make provisions for—

(i) the attendance of employees for duty on a Saturday, Sunday, or Public Holidays.

(ii) the performance of shift work including work on Saturdays, Sundays or Public Holidays; and

(iii) the nature of the duties of an employee or class of employees in fulfilling the responsibilities of their office.

provided that where the hours of duty are so varied an employee shall not be required to work more than five hours continuously without a break unless agreed in writing between the employee and the employer.

(b) Notwithstanding the above, where it is considered necessary to provide a more economic operation, the employer may authorise the operation of alternative working arrangements in the hospital/health service, or any branch or section thereof.

The continuing operation of any alternative working arrangements, so approved, will depend on the employer being satisfied that the efficient functioning of the hospital/health service is being enhanced by its operation.

Such alternative working arrangements shall be in accordance with subclause (1)(a) and (d).

(4) Flexitime Arrangements

(a) Flexitime Roster

(i) The authorisation of a flexitime roster shall be the responsibility of the employer. The roster will indicate the minimum staffing and any other requirements in respect to starting and finishing times, lunch break coverage and flexileave.

(ii) The roster shall cover a settlement period of four weeks and shall be made available to all affected employees no later than three days prior to the settlement period commencing.

(iii) The roster shall be prepared in consultation with the affected employees, subject to the employer retaining the right to determine arrangements to suit the operational needs of the department.

(iv) Subject to four weeks notice being given to affected employees, the employer may withdraw authorisation of a flexitime roster.

(b) Hours of Duty

(i) The ordinary hours of duty may be an average of 7 hours 36 minutes per day which may be worked with flexible commencement and finishing times in accordance with the provisions of this subclause, provided that the required hours of duty for each four week settlement period shall be 152 hours.

(ii) For the purpose of leave and Public Holidays, a day shall be credited as 7 hours 36 minutes.

(c) Flexitime Periods

Within the constraints of the prepared roster and subject to the concurrence of the supervisor, employees may select their own starting and finishing times within the following periods—

6.00 am to 9.30 am

11.00 am to 2.30 pm (Minimum half an hour break)

3.30 pm to 6.00 pm

(d) Core Periods

Core periods may be set by agreement between the employer and the employee.

(e) Lunch Break

(i) An employee shall be allowed to extend the meal break between 11 am and 2.30 pm of not less than 30 minutes but not exceeding 60 minutes except as provided below.

(ii) An employee may be allowed to extend the meal break beyond 60 minutes to a maximum of 90 minutes. Such an extension is subject to prior approval of the employee's supervisor.

(f) Flexileave

(i) Within the constraints of the prepared roster and subject to the prior approval of the supervisor, an employee may be allowed a maximum of two full days or any combination of half days and full days that does not in total exceed two days in any one settlement period.

(ii) Approval to take flexileave is subject to the employee having accrued sufficient credit hours to cover the absence prior to taking the leave. In exceptional circumstances and with the approval of the employer, flexileave may be taken before accrual subject to such conditions as the employer may impose.

(g) Settlement Period

(i) For recording time worked, there shall be a settlement period which shall consist of four weeks.

(ii) The settlement period shall commence at the beginning of a pay period.

(iii) The required hours of duty for a settlement period shall be 152 hours.

(h) Credit Hours

(i) Credit hours in excess of the required 152 hours to a maximum of 8 hours are permitted at the end of each settlement period. Such credit hours shall be carried forward to the next settlement period.

(ii) Credit hours in excess of 8 hours at the end of a settlement period shall be lost.

(iii) Credit hours at any point within the settlement period shall not exceed 20 hours.

(i) Debit Hours

(i) Debit hours below the required 152 hours to a maximum of 4 hours are permitted at the end of each settlement period. Such debit hours shall be carried forward to the next settlement period.

(ii) Where an employee's debit hours exceed 4 hours, the employer may treat the time as if the employee had taken leave without pay for the period necessary to reduce debit hours to four hours.

(iii) Employees having excessive debit hours may be required to work standard working hours in addition to not being paid for the number of hours in excess of the debit hours permitted at the end of each settlement period.

(j) Maximum Daily Working Hours

Subject to subclause (1)(b), a maximum of 10 hours may be worked in any one day.

(k) Study Leave

Where study leave has been approved by the employer, credits will be given for education commitments falling within the ordinary hours of duty and for which "time off" is necessary to allow for attendance at formal classes.

(l) Overtime

(i) Employees receiving at least one day's prior notice of overtime shall be required to work the ordinary hours of duty determined by the employer under subclause (1) of this clause.

(ii) Where an employee is required to work overtime at the conclusion of a day with less than one day's notice, and

(aa) where the employee has at the commencement of that day 2 hours or more flexitime credits, the employee shall be paid overtime after 5 hours work on that day, or for time worked after 3.30 pm, whichever is the later, or

(bb) where that employee has commenced duty prior to 8.30 am and has, at the commencement of that day, less than 2 hours flexitime credits, the employee shall be paid overtime, for time worked after the completion of ordinary hours of duty or after working 7 hours 36 minutes on that day, whichever is the earlier, or

(cc) where that employee has commenced work after 8.30 am and has, at the commencement of that day, less than 2 hours flexitime credits, the employee shall be paid overtime for time worked after 5.30 pm or after working 7 hours 36 minutes, on that day whichever is the earlier.

(iii) Where an employee is required to work overtime at the beginning of a day with less than one day's notice, that employee shall be paid overtime for any time worked prior to the commencing time for ordinary hours of duty determined by the employer under subclause (1) of this clause.

(5) Nine Day Fortnight

(a) Hours of Duty

(i) The employer may authorise the operation of a nine day fortnight where the ordinary hours of duty of 76 hours a fortnight are worked over nine days of the fortnight, exclusive of work performed on Saturday, Sunday and the special rostered day off, with each day consisting of 8 hours and 27 minutes.

(ii) The employer shall determine employees' commencing and finishing times between the spread of 6.00 am and 6.00 pm, in order to ensure that departmental requirements are met on each day.

(b) Lunch Break

A meal break shall be allowed and taken in accordance with the standard provisions of this clause.

(c) Special Rostered Day Off

Each employee shall be allowed one special rostered day off each fortnight in accordance with a roster prepared by management showing days and hours of duty and special rostered days off for each employee.

(d) Leave and Public Holidays.

For the purposes of leave and Public Holidays, a day shall be credited as 8 hours 27 minutes notwithstanding the following—

(i) When a Public Holiday falls on an employee's special rostered day off the employee shall be granted a day in lieu of the holiday prior to the conclusion of the current fortnight.

(ii) For a Public Holiday occurring during a period of annual leave, an additional day will be added to the period of leave irrespective of whether it falls on a rostered work day or special rostered day off.

(iii) A four week annual leave entitlement is equivalent to 152 hours, the equivalent to eighteen rostered working days of 8 hours 27 minutes, and two special rostered days off.

(iv) An employee who is sick on a special rostered day off will not be granted sick leave for that day, and will not be credited with an additional day off in lieu.

(e) Overtime

The provisions of the relevant overtime clause, shall apply for work performed prior to an employee's nominated starting time and after an employee's nominated ceasing time in accordance with subparagraph (a)(ii) and on an employee's special rostered day off.

(f) Study Leave

Credits for Study Leave will be given for educational commitments falling due between and employee's nominated starting and finishing times.

14.—PART-TIME EMPLOYEES

To be read in conjunction with Clause 34.—Part-time Employees of the Hospital Salaried Officers Award No. 39 of 1968.

(1) Part-time employees shall be paid at a rate pro-rata to the rate prescribed for the class of work for which they are engaged in the proportion to which their fortnightly hours bear to 76 hours per fortnight.

(2) When a part-time employee classified above the 20 years of age rate as defined by the Hospital Salaried Officers Award No. 39 of 1968, commences employment on or after the 1 July 1996, he/she shall accrue service towards progression onto subsequent salary increments within a salary level, on a pro-rata basis of the number of hours worked to full time hours.

(3) Provided that relevant prior service and experience shall be taken into account when determining at what increment within a specified salary level a part-time employee is appointed.

(4) Part-Time Flexibility for Relief

(a)(i) The purpose of this provision is to provide those part time employees who wish to access it with the opportunity to work additional hours by covering short-term relief requirements of the employer.

(ii) While relief for vacancies will normally be provided from full time relief staff, where that is not possible, opportunities for relieving vacancies will be offered on an equitable basis to available, suitably qualified part time staff.

(iii) Where the numbers of suitably qualified and available part time staff warrant it, they shall form a relief pool for the purposes of this subclause.

(b) The purpose of the relief pool is to identify a pool of available and appropriately trained employees to provide staffing relief for absences of other workers while reducing the need for employers to resort to the use of casuals to provide adequate relief cover. It is envisaged relief under this subclause will be required for absences occasioned by matter such as—

* Brief periods of unplanned absence;
* Sick leave;
* Time in lieu;
* Annual leave;
* Long service leave.

(c) This provision applies to part time workers only

(d) For the purposes of this subclause, as applicable, a pool or pools of staff qualified for the work to be relieved, will be formed.

(e) Relief will be provided for absences of both part time and full time employees.

(f) The pool will consist of only those employees who indicate their willingness to participate in the pool and to accept the modified terms and conditions applying to its operation those terms being set out in paragraph (g) below.

(g)(i) Not withstanding the provision of Subclause (1) (b) of Clause 34 Part-time Employees, of the Award, and subject to subclauses (b), (c), (d) of this clause where a part-time employee has previously indicated in writing a willingness to work extra hours and or extra shifts such employee may work up to 76 hours per fortnight at ordinary rates of pay without receiving prior notice.

(ii) The indication given by an employee of their willingness to work extra hours may be withdrawn at any time.

(iii) An indication by an employee of his/her willingness to work additional hours does not oblige the employee to work additional hours if they are offered by the employer, accordingly, the employee may refuse to work any additional hours offered to them and may not be required to give any reasons for so refusing. Any such refusal is without prejudice to the employee.

(iv) The employer may not make it a Condition of Employment that an employee agrees to make themselves available to work additional hours.

(v) Consistent with the operation of this Agreement there will be no rostered split shifts.

15.—MEDICAL IMAGING TECHNOLOGISTS

This provision replaces Clause 12. of the Hospital Salaried Officers Award No. 39 of 1968.

Notwithstanding anything contained elsewhere in this Agreement or in the Hospital Salaried Officers Award No. 39 of 1968, Medical Imaging Technologists who were prior to this Agreement employed on a thirty-five hour and four week annual leave basis shall, as a result of the registration of this Agreement, be employed on a thirty-five and a half (35.5) hour week and four week annual leave basis.

16.—PUBLIC HOLIDAYS

This provision replaces subclause 16(1)(a) of the Hospital Salaried Officers Award No. 39 of 1968.

The following days or the days observed in lieu thereof shall subject as hereinafter provided, be allowed as holidays without deduction of pay, namely New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in this subclause.

17.—LONG SERVICE LEAVE

This clause replaces Clause 19. Long Service Leave of the Hospital Salaried Officers Award No. 39 of 1968.

(1) An employee shall be entitled to thirteen weeks paid long service leave on the completion of ten years of continuous service and an additional thirteen weeks paid long service leave for each subsequent period of seven years of continuous service completed by the employee.

(2) Notwithstanding subclause (1), an employee in employment with an employer respondent to the Hospital Salaried Officers Award No. 39 of 1968 at the time of the inception of this agreement shall retain the proportion of long service leave accrued at the rate provided by the Award or relevant agreement, as the case may be, at that time, and shall accrue the balance in accordance with sub clause (1) of this clause.

(3) Upon application by an employee, the employer may (subject to subclause (4) of this Agreement) approve of the taking by the employee—

(a) of double the period of long service leave on half pay, in lieu of the period of long service leave entitlement on full pay; or

(b) of half the period of long service leave on double pay, in lieu of the period of long service leave entitlement on full pay; or

(c) of any portion of his/her long service leave entitlement on full pay or double such period on half pay; or half such period on double pay;

(d) A full time employee who, during a qualifying period towards an entitlement of long service leave was employed continuously on both a full time and part time basis may elect to take a lesser period of long service leave calculated by converting the part time service to equivalent full time service.

(4) Long service leave may be taken in weekly multiples on full, half or compacted pay provided that where an employees remaining portion of accrued untaken leave entitlement is less than a week such portion may be taken.

(5) Any holiday occurring during the period in which an employee is on long service leave will be treated as part of the long service leave, and extra days in lieu thereof shall not be granted.

(6) Long service leave shall be taken as it falls due at the convenience of the employer but within three years next after becoming entitled thereto: Provided that the employer may approve the accumulation of long service leave not exceeding twenty six weeks.

(7) (a) An employee who;

(i) at or before the certification of this agreement was employed by the BHS, and has completed at least 15 years continuous service within the Western Australian Public Sector; or

(ii) commenced employment with the BHS after the certification of this agreement and has completed at least 15 years continuous service within the Western Australian Public Sector Health Industry;

may, by agreement with the employer, take pro-rata long service leave provided that the employee has completed at least three years continuous service with the BHS immediately prior to taking this leave.

(b) An employee who resigns from their employment with BHS and who—

(i) at or before the certification of this agreement was employed by the BHS and has completed at least 15 years continuous service within the Western Australian Public Sector; or

(ii) commenced employment with the BHS after the certification of this agreement and has completed at least 15 years continuous service within the Western Australian Public Sector Health Industry;

shall, in addition to any accrued long service leave be paid pro-rata long service leave, provided that the employee has completed at least three years continuous service with the BHS immediately prior to his her resignation.

(8) For the purposes of subclause (7), the Western Australian Public Sector Health Industry shall mean the Minister for Health, the Commissioner of Health and all Public Sector Hospitals, Health Services and Agencies constituted under the Hospitals and Health Services Act 1927.

(9) Where an Employee has been redeployed at the direction of a Western Australian Public Sector Employer, three years continuous service for the purposes of subclauses (7) of this Clause shall be calculated including the service with such previous employer or employers.

(10) An employee who resigns having not qualified to be paid pro-rata long service leave in accordance with subclause (8) shall, subject to subclause (12), be entitled to payment for accrued long service leave only.

(11) An employee who is dismissed, shall not be entitled to long service leave or payment for long service leave other than leave that had accrued to the employee prior to the date of the offence for which the employee is dismissed provided that an employee who is dismissed through no fault of his/her own and who having completed at least 15 years continuous service, calculated in accordance with the provisions of this Clause, and having completed at least three years continuous service, calculated in accordance with the provisions of this Clause, with the BHS immediately prior to dismissal shall, in addition to any accrued long service leave be paid pro-rata long service leave.

(12) A lump sum payment for long service leave accrued in accordance with this clause and for pro-rata long service leave shall be made in the following cases—

(a) To an employee who retires at or over the age of fifty-five years or who has retired on the grounds of ill health, provided that no payment shall be made for pro-rata long service leave unless the employee has completed not less than twelve months' continuous service.

(b) To an employee who has retired for any other cause: Provided that no payment shall be made for pro-rata long service leave unless the employee had completed not less than three years' continuous service before the date of his/her retirement.

(c) To the widow or widower of an employee or such other person as may be approved by the employer in the event of the death of an employee: Provided that no payment shall be made for pro-rata long service leave unless the employee had completed not less than twelve months' continuous service prior to the date of his/her death.

(13) A calculation of the amount due for long service leave accrued and for pro-rata long service leave shall be made at the rate of salary of an employee at the date of retirement, resignation or death, whichever applies and no such payment shall exceed the equivalent of twelve months' salary.

(14) Long service leave accrued prior to the issue of the Hospital Salaried Officers Award No. 39 of 1968 shall remain to the credit of each employee.

(15) Subject to the provisions of subclauses (6), (10), (11), (12) and (16) of this clause, the service of an employee shall not be deemed to have been broken—

(a) by resignation, where he/she resigned from the employment of an employer a party to the Award and commenced with another employer a party to the Award within one working week of the expiration of any period for which payment in lieu of annual leave or holidays has been made by an employer party to the Award from whom he/she resigned or, if no such payment has been made, within one working week of the day on which his/her resignation became effective; or

(b) by any absence approved by the employer as leave whether with or without pay.

(16) The expression "continuous service" in this clause includes any period during which an employee is absent on full pay or part pay, from his/her duties with any employer party to the Award, but does not include—

(a) any cumulative period exceeding two weeks in any one anniversary year during which the employee is absent on leave without pay;

(b) any service of the employee who resigns or is dismissed, other than service prior to such resignation or to the date of any offence in respect of which the employee is dismissed when such prior service has actually entitled the employee to long service leave, including pro-rata long service leave, under this clause.

(17) Portability

(a) Where an employee was, immediately prior to being employed by the BHS, employed in the service of: The Commonwealth of Australia, or any other State Government of Australia, or any Western Australian State public sector or state government employer, and the period between the date when the employee ceased previous employment and the date of commencing employment by a respondent to this

Agreement does not exceed one week, that employee shall be entitled to long service leave determined in the following manner—

(i) the pro rata portion of long service leave to which the employee would have been entitled up to the date of appointment under the Public Sector Management Act, shall be calculated in accordance with the provisions that applied to the previous employment referred to, but in calculating that period of pro rata long service 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) the balance of the long service leave entitlement of the employee shall be calculated upon appointment by a respondent to this Agreement in accordance with the provisions of this clause.

(b) Nothing in this clause confers or shall be deemed to confer 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 with the BHS. At the request of the employee and with the agreement of the employer, an employee may be paid in lieu of taking a portion of long service leave.

(18) At the request of the employee and with the agreement of the employer, an employee may be paid in lieu of taking a portion of long service leave.

18.—SICK LEAVE

(1) This provision replaces subclause (7) of Clause 18.—Sick Leave of the Hospital Salaried Officers Award No. 39 of 1968.

The basis for the cumulative accrual of sick leave shall be—

	Leave On Full Pay Working Days
(a) On date of employment of the employee	5
(b) On completion by the employee of six months' service	5
(c) On completion by the employee of twelve months' service	10
(d) On completion of each additional twelve months' service by the employee	10

Provided that where an employee has accrued sick leave on half days pay prior to the date upon which this Agreement comes into effect those accrued half days shall be converted to the equivalent of full days sick leave and shall remain to the employee's credit until such time as they may be taken.

19.—TAKING OF ANNUAL LEAVE

This clause modifies the provisions of Clause 16.—Holidays and Annual Leave of the Hospital Salaried Officers Award No. 39 of 1968, in the manner and to the extent described in the provisions below.

(1) This subclause clause shall be read as if it were subclause (4A) of Clause 16.—Holidays and Annual Leave of the Hospital Salaried Officers Award No. 39 of 1968.

(a)(i) An employee is expected to take annual leave in the year immediately following the anniversary date upon which the leave became due and the employer will accommodate employees to take their leave in that year.

(ii) The scheduling of annual leave should be as a result of consultation between the employer and the employee.

(iii) If the employee refuses to enter into discussions in relation to the taking of annual leave the employer may roster the employee off for a period of annual leave providing at least four weeks notice is given.

(b) An employee, who has accumulated in excess of two year's annual leave entitlement and who has been advised accordingly by the employer, may be required to take sufficient leave prior to the next entitlement becoming due to ensure that their entitlement does not exceed two years entitlement.

(c) An employee who fails to take the leave as specified in paragraph (b) of this subclause may have any entitlements in excess of two years paid out at the current rate of pay provided that the employee shall be required to take at least two weeks leave in any anniversary year of employment.

(d) At the request of an employee and with the written agreement of the employer, an employee may be allowed to accumulate in excess of two years annual leave entitlement upon demonstrating an extraordinary or special reason to the Employer.

(e) Any employee who has accrued an excessive amount of leave (i.e. in excess of two years entitlement) may be required to clear any excessive accrued leave by taking double their entitlement of accrued leave in any one year until such time as their entitlement is less than two years entitlement.

(f) Where the employer and employee agree, an employee who has an entitlement in excess of two years may be paid out their annual leave at their current rate of pay, rather than proceeding on annual leave, provided that the employee has proceeded on two weeks leave in that anniversary year of employment.

(g) For the duration of this agreement annual leave will not be accessible until a minimum of 4 weeks annual leave entitlement has accrued, provided that at the request of the employee, an employee may take annual leave in periods of less than four weeks, provided that annual leave will not be taken in periods of less than one day.

(2) The loading on annual leave prescribed by subclause (13) of Clause 16.—Holidays and Annual Leave of the Hospital Salaried Officers Award No. 39 of 1968 will not be paid to employees for leave accrued during the period of this enterprise agreement instead the loading will be converted to three and one half days leave per annum.

(a) For the purpose of this clause one day shall equal 7.6 hours.

(b) Any leave loading outstanding from past credits will be paid out at the commencement of this agreement, provided that, subject to the leave not having been taken, an employee may elect to take the loading due on the four weeks of leave that fell due to be taken in their current anniversary year of employment as additional leave.

(c) The three and one half days leave in lieu of leave loading must be taken during the anniversary year in which it falls due, provided that:

(i) if such leave is not taken during the anniversary year in which it falls due, it will, at the option of the employer, be paid out automatically at the conclusion of that year;

(ii) the employer shall not refuse an employee any reasonable request to take such leave; and

(iii) at the option of the employee, such leave may be taken either separately or in conjunction with a period of annual leave.

(d) There will be no pro rata payments of leave in lieu of loading for partially completed years of service.

(e) An employee may apply, in writing, to have the additional three and one half days leave paid out in lieu of taking such leave.

(f) The ordinary rate of salary for a shift worker on annual leave includes the shift and weekend penalties the worker would have received had they not proceeded on annual leave. 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 leave.

20.—FAMILY, BEREAVEMENT AND PERSONAL LEAVE

This clause replaces Clause 17.—Short Leave of the Hospital Salaried Officers Award No. 39 of 1968.

(1) Family Leave

(a) In this subclause "family member" means the employee's spouse, defacto spouse, child, stepchild, parent, step-parent. This entitlement will also apply to another

person who lives with the employee as a member of the employee's family.

(b) The employee is entitled to use up to 38 hours of his/her personal accrued sick leave to care for an ill family member each year, providing the employee must maintain a minimum of 10 days of sick leave available for personal use in each year. Subject to subclause (e), all family leave taken is deducted from the employee's sick leave entitlement.

(c) Family leave is not cumulative from year to year.

(d) Medical certificate requirements are as per those for Sick Leave under the Award.

(e) Where an employee has insufficient accrued sick leave, by mutual agreement, up to five days of annual leave may be used for the purpose of family leave.

(2) Bereavement Leave

(a) An employee shall on the death of—

(i) the spouse of the employee;

(ii) the child or step-child of the employee;

(iii) the parent or step-parent of the employee;

(iv) the brother, sister, step brother or step sister; or

(v) any other person, who immediately before that person's death, lived with the employee as a member of the employee's family,

be eligible for up to two (2) days bereavement leave, provided that at the request of an employee the employer may exercise a discretion to grant bereavement leave to an employee in respect of some other person with whom the employee has a special relationship.

(b) The 2 days need not be consecutive.

(c) Bereavement leave is not to be taken during any other period of leave.

(d) An employee who claims to be entitled to paid leave under paragraph (a) of this subclause is to provide to the employer, if so requested, evidence that would satisfy a reasonable person as to—

(i) the death that is the subject of the leave sought; and

(ii) the relationship of the employee to the deceased person.

(e) An employee requiring more than two days bereavement leave in order to travel overseas in the event of the death overseas of a member of the employees immediate family may, upon providing adequate proof, in addition to any bereavement leave to which the employee is eligible, have immediate access to annual leave and/or accrued long service leave in weekly multiples and/or leave without pay provided all accrued leave is exhausted.

(3) Special Personal Leave

(a) Without Pay

The employer may upon the request of an employee, grant that employee special leave without pay for any special or personal reason.

(b) Use of Annual Leave

The employer may, upon the request of an employee and with sufficient cause being shown, which may in the circumstances be with little notice, grant that employee single days of annual leave for pressing personal emergencies.

(c) Use of Sick Leave

The employer may, upon the request of an employee and with sufficient cause being shown, which may in the circumstances be with little notice, grant that employee single days of sick leave for pressing personal emergencies, providing the employee must maintain a minimum of 10 days of sick leave available for personal use in each year

(d) Employees may be granted leave for the following—

* International sporting events
* Defence force reserves
* State emergency service volunteers

Employees must submit a written request for leave and the Employer shall consider the request having regard to patient care and operational requirements.

21.—PARENTAL LEAVE

This clause replaces the Clause 18A.—Maternity Leave of the Hospital Salaried Officers Award No. 39 of 1968. Subject to the terms of this clause employees are entitled to parental leave and / or to work part-time in connection with the birth or adoption of a child.

(1) Definitions

For the purpose of this clause—

(a) "Child" means a child of the employee under the age of one year except for adoption of a child where "child" means a person under the age of five years of age who is placed with the employee for the purpose of adoption, other than a child or step-child of the employee or of the spouse of the employee or child who has previously lived continuously with the employee for a period of six months or more.

(b) "Parental leave" means maternity, paternity or adoption leave taken in accordance with this clause.

(2) Basic entitlement

(a) Employees whose contract of service is by the month are entitled to 52 weeks unpaid parental leave in relation to the birth or adoption of their child. For females maternity leave may be taken and for males paternity leave may be taken. Adoption leave may be taken in the case of adoption.

(b) Parental leave is to be available to only one parent at a time, except that both parents may simultaneously access the leave in the following circumstances—

(i) for maternity leave and paternity leave, an unbroken period of one week at the time of the birth of the child—

(ii) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

(c) In order to demonstrate to the employer that, subject to paragraph (b), only one parent will be off on Parental leave at a time an employee shall, when applying for parental leave, provide the employer with a statutory declaration stating particulars of any period of parental leave sought or taken by his or her spouse.

(3) Maternity leave

(a) An employee will provide to the employer at least ten weeks in advance of the expected date of confinement—

(i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement; and

(ii) written notification of the date on which she proposes to commence maternity leave, and the period of leave to be taken.

(b) Subject to subclause (c) and unless agreed otherwise between employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of the birth.

(c) Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.

(d) Where the pregnancy of an employee terminates after 27 weeks and the employee has not commenced maternity leave, the employee may take unpaid leave (to be known as special maternity leave) for such period as a registered medical practitioner certifies as necessary, except that where an employee is suffering from an illness not related to the direct consequences of the delivery, an employee shall be entitled to access paid sick leave to which she is entitled, in lieu of, or in addition to, special maternity leave.

(e) Where leave is granted under subclause (3)(d), during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.

(f) 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.

(g) Where an employee then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed twelve months.

(4) Paternity leave

An employee will provide to the employer, at least ten weeks prior to each proposed period of paternity leave —

(a) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place; and

(b) written notification of the date on which he proposes to start and finish the period of paternity leave.

(5) Adoption leave

(a) The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.

(b) The employer may require an employee to provide confirmation from the appropriate government authority of the placement.

(c) The employer shall grant an employee who is seeking to adopt a child such unpaid leave as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee, the employer may require the employee to take such leave in lieu of unpaid leave.

(d) Where the placement of a child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from the date of notification for the employee's return to work.

(6) Variation of notice period

Notwithstanding the requirement to give at least 10 weeks notice of the date of commencement of parental leave, such notice may be for a greater or lesser period, where it is necessary to vary the date of commencement of parental leave due to a variation in the actual date of arrival of the child. Such variation does not count as a variation for the purposes of subclause (7) of this clause.

(7) Variation of period of parental leave

Unless agreed otherwise between the employer and employee, an employee may apply to their employer to change the period of parental leave on one occasion. Any such change shall be notified at least four weeks prior to the commencement of the changed arrangements.

(8) Parental leave and other entitlements

An employee may in lieu of or in conjunction with parental leave, access other paid leave entitlements which the employee has accrued, such as annual leave and long service leave, subject to the total amount of leave not exceeding 52 weeks.

(9) Transfer to a safe job

(a) Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

(b) If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee, to commence parental leave.

(10) Entitlement to Part-Time employment

(a) Where an employee is pregnant, and has a doctors certificate advising that it would be preferable for the employee to work part-time, or where an employee is eligible for parental leave, and the employer agrees, the employee may work part-time, the terms of which are to be agreed in writing, in one or more periods at any time until the child's second birthday or until the second anniversary of the placement of the child.

(b) The work to be performed part-time need not be the work performed by the employee in his or her former position.

(11) Returning to work after a period of parental leave or part time work.

(a) An employee will notify of their intention to return to work after a period of parental leave or part-time work entered into in accordance with this clause at least four weeks prior to the expiration of the leave or part-time work.

(b) An employee will be entitled to the position that they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to subclause (8), the employee will be entitled to return to the position they held immediately before such transfer. An employee who entered into part-time work in accordance with subclause (10) will be entitled to return to his or her former position.

(c) When such position no longer exists but there are other positions available, which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

(12) Replacement employees

(a) A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.

(b) A replacement employee will be informed of the temporary nature of the employment and of the rights of the employee who is being replaced.

(13) Notwithstanding any award, agreement or other provisions to the contrary—

(a) absence on parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of the Award or this Agreement.

(b) commencement of part-time employment in accordance with this clause, and return from part time to full time work under this clause, shall not break the continuity of service or employment.

22.—ALLOWANCES

Where an employee subject to this Agreement is paid an allowance as provided under the Hospital Salaried Officers Award No. 39 of 1968, which is calculated as a percentage of a salary rate prescribed by that Award, the allowance shall for the life of this Agreement, now be calculated using the salary rates as prescribed at Clause 29.—Salaries of this Agreement.

23.—OVERPAYMENTS

(1) Where an employee is paid for work not subsequently performed or is overpaid in any other manner, the employer is entitled to make adjustment to the subsequent wages or salaries of the employee.

(2) One-off Overpayments

Subject to subclauses (4) and (5), one-off overpayments may be recovered by the employer in the pay period immediately following the pay period in which the overpayment was made, or in the period immediately following the pay period in which it was discovered that overpayment has occurred.

(3) Cumulative Overpayments

Subject to subclauses (4) and (5), cumulative overpayments may be recovered by the employer at a rate agreed between the employer and the employee, provided that the rate at which the overpayment is recovered is not at a lesser rate than the rate at which it was overpaid or $50 per week, depending on which is the lesser amount per pay period.

(4) In exceptional circumstances, other arrangements for the recovery of overpayments may be agreed between the employer and the employee.

(5) The employer is required to notify the employee of their intention to recoup overpayment and to consult with the employee as to the appropriate recovery rate.

24.—MOBILITY

(1) This clause will apply to all current and prospective employees of the BDHB.

(2) The parties agree that the provision of appropriate levels of health care is better able to be facilitated where the workforce is prepared to be mobile in the sense of being able to work in more than one position and where appropriate able to move on a temporary or permanent basis to a different location and or position.

(3) It is agreed that employee mobility should;

(a) not impose unreasonable difficulties, out of pocket expenses, or otherwise impact adversely on employees; and

(b) subject to the provisions of this clause, be as far as practicable, voluntary.

(4) Staffing mobility, administered in accordance with the standards and principles contained in this clause, within the Brookton Health Service will benefit employees through providing:

(a) access to a greater variety of employment opportunities

(b) the opportunity to develop and acquire a wide range of skills, competencies and work experience;

(c) expanded opportunities in terms of career development; and

(d) improved employment security.

(5) Employees agree to be prepared to give reasonable consideration to any proposal in regard to their mobility which meets the principles and requirements of this clause.

(6) The parties agree that in giving effect to the mobility provisions of this clause, both the organisation's and employee's needs are to be considered including:

(a) ensuring that the careers of employees are not disadvantaged;

(b) consideration of family & career responsibilities;

(c) the availability of transport and its cost;

(d) the reimbursement of the employee for any reasonable costs incurred by the employee as a result of a temporary or permanent move made.

(e) matching skill level and professional suitability of any temporary job opportunity or permanent new position;

(f) the availability of training and support to assist the employee with any skills deficit in respect to the requirement of the temporary job opportunity or permanent new position.

(g) consideration of the employee's ability to cope with the temporary or permanent change;

(h) providing adequate support to assist the employee with dealing with the change involved in moving to another job on either a temporary or permanent basis.

(7) The parties acknowledge the above and any other reasonable considerations can only be properly assessed through consultation between the employer, employee and the union. When considering the reasonableness of any proposed move the level of the employee and the relative cost to the employee of any move will be taken into account. Subject to family and social commitments and the suitability of the position, the higher the classification of the employee, the more the employee can be expected to demonstrate flexibility in regard to mobility.

(8) The parties agree that they will assist in the introduction of this initiative on the following basis:

(a) Relief:

It is agreed that all positions, which for operational reasons are required to be relieved, will be relieved.

(i) Relief is defined as: "Planned relief" which is relief in positions for which a minimum of four weeks notice can reasonably be given. It is likely that planned relief will usually be for the cover of leave, higher duties and relief for vacancies caused by special projects and the like. "Unplanned relief" which is relief at short notice for unplanned absences such as sick leave, family leave, urgent operational requirements and the like.

(ii) Employees may agree to relieve in positions at the request of their supervisor to meet short-term operational requirements.

(iii) Where possible, all such relief will be provided on a voluntary basis, and vacancies will be notified and open to all eligible employees and awarded on the basis of merit.

(iv) Where no suitable employee has volunteered, and it is not reasonable to recruit from outside the health service, or in exceptional circumstances, following consultation with the employee, an employee may be required to relieve in a position provided that—

(aa) the position is suitable;

(bb) due consideration is given to the employees personal commitments;

(cc) the employee will not be financially disadvantaged;

(v) Where an employee has been directed to relieve in a position on more than two occasions in a calendar month, the employee may seek a review of the decision.

(vi) The relieving employee has the right to return to their substantive position at the end of the period of relief, as does the person whose position is being relieved.

(b) Temporary Transfer. Subject to agreement between the employer and employee, an employee may be transferred to another position within the Boddington District Hospital Board on a temporary basis, provided that:

(i) the employer and employee mutually agree the decision to transfer;

(ii) the period of time is defined;

(iii) the transfer is at a comparable classification level; and

(iv) the employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee.

(v) where an employee has agreed to a temporary transfer the employee may not capriciously withdraw their agreement to that transfer.

(c) Permanent Transfer. Subject to agreement between the parties, an employee may be transferred to another position within the Brookton Health Service on a permanent basis, provided that:

(i) the employer and employee mutually agree the decision to transfer;

(ii) the transfer is at a comparable classification level; and

(iii) the employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee.

(d) Restructure. Where the requirement for mobility arises out of an organisational restructure the relevant provisions of the award together with the relevant legislation applies.

25.—SKILLS ACQUISITION, TRAINING AND EMPLOYEE DEVELOPMENT

(1) This clause is to be read in conjunction with Clause 28.—Mobility.

(2) The purpose of these clauses is to—

(a) recognise that change is a constant factor within the work environment, that the workplace of tomorrow will not be the same workplace today, and that employees can be expected to work in several different types of job during their working life;

(b) recognise that both employees and employers share obligations to ensure that the organisation and the employees are able to adapt to continuous change;

(c) facilitate the creation of a mobile, skilled, efficient, effective and adaptable workforce;

(d) facilitate the training and development of staff so that they are best able to meet the present and future needs of the Government Health Industry;

(e) assist in ensuring that employers are able to attract, develop and retain the best possible staff;

(f) facilitate the deployment of employees within the operations of the employer to best effect; while at the same time respecting the individual needs, security, expectations and reasonable requirements of employees, and not imposing, either directly or indirectly, unnecessary or unreasonable costs on them.

(3) The parties agree that the provision of appropriate levels of health care is better able to be facilitated where the workforce is appropriately trained and skilled both for present needs and for reasonably expected future requirements including career development and opportunities within the Government Health Industry.

(4) It is agreed that skills acquisition, training and employee development will;

(a) not impose unreasonable difficulties, out of pocket expenses, or otherwise impact adversely on employees;

(b) be subject to the provisions of this clause, be as far as practicable, voluntary;

(5) Skills acquisition, training and employee development, administered in accordance with the standards and principles contained in this clause, within the BHS health service region will benefit employees through providing;

(a) access to a greater variety of employment opportunities;

(b) the opportunity to develop and acquire a wide range of skills, competencies and work experience;

(c) expanded opportunity in terms of career development; and

(d) improved employment security.

(6) Employees agree to be prepared to give reasonable consideration to any proposal in regard to their skills acquisition, training and development which meets the principles and requirements of this clause.

(7) The parties agree that in giving effect to the provisions of this clause, both the organisation's and employee's needs and reasonable expectations are to be considered including—

(a) ensuring that the careers of employees are enhanced and that they are not disadvantaged;

(b) consideration of the possible impact of any course study requirements, training, training schedule, employee development and or succession plan on family and carer responsibilities;

(c) reimbursement of the employee for any reasonable costs incurred by the employee as a result of attendance at or participation in any training, course of study or development activities at the direction of the employer;

(d) the skill level, aptitude, aspirations and suitability of the employee for the proposed skills acquisition, training or development program;

(e) the relevance of any proposed skills acquisition, training or development program to the needs of the employer, and

(f) that attendance by the employee does not unduly affect or inconvenience the operations of the employer.

The parties acknowledge the above and any other reasonable considerations can only be properly assessed through consultation between the employer, employee and, where appropriate, the union.

(8) For the purposes of this clause, an "approved course" or "approved training" is an accredited or industry recognised course of study, conference or workshop undertaken by the employee which in the employer's view;

(a) is relevant to the business outcomes to be achieved by the employee

(b) is relevant to the current and emerging business needs of the employer; and/or

(c) enhances the career development of the employee.

(9) The parties agree that they will assist in the introduction of this initiative on the following basis—

(10) Training and Short Courses

(a) An employee may be required to attend a training course or short course directly related to their work during ordinary working hours.

(b) Attendance at such courses shall be at no expense to the employee.

(c) An employee shall not unreasonably refuse to participate in any course of study where the subject matter is relevant to the current or emerging business needs of the employer, provided the course of study is conducted in ordinary working hours and is paid in accordance with the terms of the Agreement.

(d) The employer may grant leave with pay to participate in an approved short course or training course. The amount of leave may be up to 38 hours within a 12 month period.

(e) Where attendance is paid for by the employer, the employee may be required to;

(i) provide evidence to the employer of attendance and satisfactory progress with studies.

(ii) report to other employees on the course or training or to impart the knowledge gained to other employees.

(f) The employer may, where the short course or training is not an approved course or training, grant an employee leave to attend the short course or training during the employee's hours of duty and may require the employee to make up the hours or the employer may grant unpaid leave for such purpose.

(11) Multiskilling

(a) Employees agree that they will assist in the introduction of this policy on the following basis;

(i) Job Rotation

(aa) Employer and Employee mutually negotiate the decisions.

(bb) The period of time for any job rotation cycle is defined.

(cc) Prior to commencement of a job rotation arrangement, agreement is reached regarding the employee's continuity of service, tenure of employment in their substantive position or placement, at the completion of the rotation.

(ii) Job Enlargement and Enrichment

(aa) Decisions are mutually agreed by employee and supervisor.

(bb) The purpose, progression and outcomes from the enlargement/enrichment process are clearly defined.

(cc) The period of time is defined, where possible.

(dd) The employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee.

(ee) The employee is provided with adequate support and mentoring to ensure they have an adequate opportunity to learn and become expert in the new duties and responsibilities.

(b) Any job specific training required will be provided by the BHS. A training programme will be developed to allow employees to gain a high level of understanding of the new position and will take into account the continuity of customer service and the career development of the employee.

(c) While as far as practicable, participation in multi-skilling will be voluntary, where, subject to the considerations set out in this clause, the employee unreasonably refuses a multi-skilling opportunity, the employer may direct the employee to undertake the placement.

For the purposes of this paragraph, "unreasonably" is defined as an employee who can be seen to be damaging their own employment by refusing to multi-skill, and/or the

employer can demonstrate significant operational need for the employee to be multi-skilled.

(12) Staff Development Program

(a) BHS will develop at an organisational level staff development programs.

(b) The staff development program will be directed to meeting the current and future staffing needs of the BHS and will be based on the identified staffing needs and succession plans of the hospitals, health services, and health units, which make up the BHS area.

(c) The staff development program(s);

(i) may be focused at the health service or BHS level as appropriate.

(ii) will involve staff who either nominate or are nominated to participate in the scheme, but whose participation shall be voluntary.

(iii) where, due to the number of nominations a quota is necessary selection for participation will be on merit.

(iv) will be focused on meeting the current and future staffing needs of the Health Service and Government Health Industry; and

(v) may be based either or both on the job training and formal training.

(d) All reasonable expenses incurred by an employee arising out of participation in a staff development program will, subject to the presentation of adequate proof, be reimbursed by the employer.

(13) Formal Part-time or Full-time Post Secondary Study

The provisions of this clause shall not diminish the rights of employees who undertake formal post secondary study in an approved course.

(14) Notwithstanding, any provisions contained above in this clause, the employer can limit access to training and development courses based upon financial grounds.

(15) The BHS will review the application of skills acquisition, training and employee development programs during the life of this agreement. The parties agree to review the application of this clause as a result of that review.

26.—SALARY PACKAGING

This clause is an agreement entered into in accordance with Clause 44 Salary Packaging of the Award and shall be read in conjunction with that clause.

(1) At the request of an employee, an employer and employee may agree to enter into a salary packaging arrangement.

(2) BHS shall not require an employee to enter into a salary packaging arrangement, provided that this clause will not impinge on any additional employer provided benefits.

(3) The salary packaging arrangement entered into shall be by separate written agreement with the employer which sets out the terms and conditions of the arrangement provided that the terms of such agreement shall comply with the terms of this clause.

(4) Such agreement shall be formulated on the basis that, on balance, there shall be no material disadvantage of the employee concerned, and shall be cost neutral in relation to the total employment cost the employer.

(5) 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.

(6) An employee may elect to cancel any salary packaging arrangement by giving a minimum of four weeks notice.

(7) The employer may elect to cancel any salary packaging arrangement by giving minimum of four weeks notice if the employer incurs a liability to pay fringe benefits tax or any other tax in respect of the non-cash benefits provided, provided that the employer cannot retrospectively cancel any salary packaging arrangement.

(8) Notwithstanding subclauses (6) and (7) the employer and the employee may agree to forgo the notice period.

(9) The cancellation of salary packaging will not cancel or otherwise effect the operation of this Agreement.

(10) Any dispute arising from the operations of this clause will be dealt with in accordance with the relevant dispute settlement provisions."

27.—ESTABLISHMENT OF LEVEL 1 & 2 COMPETENCIES

(1) The BHS agrees to investigate the potential for the progressive introduction and implementation of competency based job descriptions for Levels 1 and 2 employees.

(2) As a first step, the parties agree that they will review the outcomes of the processes set out under clause 33 of the Hospital Salaried Officers Metropolitan Health Service Board Enterprise Agreement 1999.

(3) It is agreed, subject to the agreement of the MHSB, the BHS may participate as an observer in the HSOA/MHSB competency review process.

28.—RURAL RECRUITMENT AND RETENTION ISSUES

(1) Recruitment and retention of suitably qualified and / or experienced employees, particularly Allied Health professionals, is a significant issue for Country Health Services including Brookton Health Service. These issues have significant cost, quality, efficiency, effectiveness, flexibility, service, and patient care implications , as does their resolution.

(2) The parties agree to investigate ways of removing obstacles to the recruitment and retention of suitably qualified and / or experienced employees.

(3) As a first step to addressing these matters the parties agree to consider—

(a) appropriateness and flexibility of the current classification system;

(b) training and professional development opportunities;

(c) support systems and mentoring;

(d) career paths;

(e) incentive schemes;

(f) flexible leave arrangements; and

(g) work practices and arrangements.

(4) To address these issues, the parties agree that the Health Service will establish a working party to make recommendations aimed at improving recruitment and retention of employees. The working party will report back to the Health Service and Hospital Salaried Officers Association by no later than 31 September 2000. Terms of reference for the working party will be established jointly by the Health Service and the Hospital Salaried Officers Association.

(5) The parties agree to consider the report of the Working Party by 28 February 2001 with a view to reaching agreement on the implementation of a package of recruitment and retention strategies.

29.—SALARIES

This clause replaces Schedule A—Minimum Salaries of the Hospital Salaried Officers Award No. 39 of 1968.

(1) Subject to the provision of Clause 9.—Salaries of the Award and to the provisions of this Clause the minimum annual salaries for employees bound by this Agreement are set in this Clause and shall apply from 16 November 1999 until the expiry of this Agreement.

(2) Minimum salaries as follows; for all callings other than those specified in subclause (3);

	Previous EBA Rates Salary P/Annum	4% From 16.11.99 Salary P/Annum	1.50% From 1/01/00 Salary P/Annum	2% From 1/07/00 Salary P/Annum	1.25% From 1/01/01 subject to Clause 10(4) Salary P/Annum
	$	$	$	$	$
LEVEL 1					
under 17 years of age	12,237	12,726	12,917	13,176	13,340
17 years of age	14,289	14,861	15,083	15,385	15,577
18 years of age	16,680	17,347	17,607	17,960	18,184
19 years of age	19,306	20,078	20,379	20,787	21,047
20 years of age	21,681	22,548	22,886	23,344	23,636
1st year of full-time equivalent adult service	23,816	24,769	25,140	25,643	25,964

	Previous EBA Rates Salary P/Annum	4% From 16.11.99 Salary P/Annum	1.50% From 1/01/00 Salary P/Annum	2% From 1/07/00 Salary P/Annum	1.25% From 1/01/01 subject to Clause 10(4) Salary P/Annum
	$	$	$	$	$
2nd year of full-time equivalent adult service	24,551	25,533	25,916	26,434	26,765
3rd year of full-time equivalent adult service	25,282	26,293	26,688	27,221	27,562
4th year of full-time equivalent adult service	26,011	27,051	27,457	28,006	28,356
LEVEL 2	26,742	27,812	28,229	28,793	29,153
	27,475	28,574	29,003	29,583	29,952
	28,317	29,450	29,891	30,489	30,870
	28,900	30,056	30,507	31,117	31,506
	29,760	30,950	31,415	32,043	32,443
LEVEL 3	30,777	32,008	32,488	33,138	33,552
	31,567	32,830	33,322	33,989	34,413
	32,399	33,695	34,200	34,884	35,320
	33,724	35,073	35,599	36,311	36,765
LEVEL 4	34,418	35,795	36,332	37,058	37,522
	35,459	36,877	37,431	38,179	38,656
	36,527	37,988	38,558	39,329	39,821
	38,047	39,569	40,162	40,966	41,478
LEVEL 5	38,838	40,392	40,997	41,817	42,340
	39,926	41,523	42,146	42,989	43,526
	41,045	42,687	43,327	44,194	44,746
	42,196	43,884	44,542	45,433	46,001
LEVEL 6	44,414	46,191	46,883	47,821	48,419
	46,060	47,902	48,621	49,593	50,213
	48,400	50,336	51,091	52,113	52,764
LEVEL 7	49,651	51,637	52,412	53,460	54,128
	51,237	53,286	54,086	55,167	55,857
	52,880	54,995	55,820	56,937	57,648
LEVEL 8	55,280	57,491	58,354	59,521	60,265
	57,248	59,538	60,431	61,640	62,410
LEVEL 9	60,226	62,635	63,575	64,846	65,657
	62,298	64,790	65,762	67,077	67,915
LEVEL 10	64,566	67,149	68,156	69,519	70,388
	68,214	70,943	72,007	73,447	74,365
LEVEL 11	71,128	73,973	75,083	76,584	77,542
	74,091	77,055	78,210	79,775	80,772
LEVEL 12	78,154	81,280	82,499	84,149	85,201
	80,899	84,135	85,397	87,105	88,194
	84,029	87,390	88,701	90,475	91,606
CLASS 1	88,764	92,315	93,699	95,573	96,768
CLASS 2	93,498	97,238	98,696	100,670	101,929
CLASS 3	98,231	102,160	103,693	105,766	107,089
CLASS 4	102,965	107,084	108,690	110,864	112,249

(a) An employee, who is 21 years of age or older on appointment to a classification equivalent to Level 1, may be appointed to the minimum rate of pay based on years of service, not on age.

(b) A Medical Typist or Medical Secretary shall be paid a medical terminology allowance of $1000 per annum.

For the purposes of this subclause 'Medical Typist' and 'Medical Secretary' shall mean those workers classified on a classification equivalent to Level 1,2, or 3 who spend at least 50% of their time typing from tapes, shorthand, and/or Doctor's notes of case histories, summaries, reports or similar material involving a broad range of medical terminology.

(3) Minimum salaries for Specified Callings and Other Professionals are detailed as follows;

(a) Employees, who possess a relevant tertiary level qualification, or equivalent as agreed between the HSOA and the employers, and who are employed in the callings of Architect, Audiologist, Bio Engineer, Chemist, Dietitian, Engineer, Medical Scientist, Librarian, Occupational Therapist, Physiotherapist, Physicist, Pharmacist, Clinical Psychologist, Psychologist, Research Officer, Scientific Officer, Social Worker, Speech Pathologist, Podiatrist, Medical Imaging Technologist, Nuclear Medicine Technologist, Radiation Therapist, Orthotist, Certified Clinical Perfusionist, or any other professional calling as agreed between the HSOA and employers, shall be entitled to Annual Salaries as follows—

	Previous EBA Rates Salary P/Annum	4% From 16.11.99 Salary P/Annum	1.50% From 1/01/00 Salary P/Annum	2% From 1/07/00 Salary P/Annum	1.25% From 1/01/01 subject to Clause 10(4) Salary P/Annum
	$	$	$	$	$
LEVEL 3/5	30,777	32,008	32,488	33,138	33,552
	32,399	33,695	34,200	34,884	35,320
	34,418	35,795	36,332	37,058	37,522
	36,527	37,988	38,558	39,329	39,821
	39,926	41,523	42,146	42,989	43,526
	42,196	43,884	44,542	45,433	46,001
LEVEL 6	44,414	46,191	46,883	47,821	48,419
	46,060	47,902	48,621	49,593	50,213
	48,400	50,336	51,091	52,113	52,764
LEVEL 7	49,651	51,637	52,412	53,460	54,128
	51,237	53,286	54,086	55,167	55,857
	52,880	54,995	55,820	56,937	57,648
LEVEL 8	55,280	57,491	58,354	59,521	60,265
	57,248	59,538	60,431	61,640	62,410
LEVEL 9	60,226	62,635	63,575	64,846	65,657
	62,298	64,790	65,762	67,077	67,915
LEVEL 10	64,566	67,149	68,156	69,519	70,388
	68,214	70,943	72,007	73,447	74,365
LEVEL 11	71,128	73,973	75,083	76,584	77,542
	74,091	77,055	78,210	79,775	80,772
LEVEL 12	78,154	81,280	82,499	84,149	85,201
	80,899	84,135	85,397	87,105	88,194
	84,029	87,390	88,701	90,475	91,606
CLASS 1	88,764	92,315	93,699	95,573	96,768
CLASS 2	93,498	97,238	98,696	100,670	101,929
CLASS 3	98,231	102,160	103,693	105,766	107,089
CLASS 4	102,965	107,084	108,690	110,864	112,249

(b) Subject to paragraph (d) of this sub clause, on appointment or promotion to the Level 3/5 under this sub clause—

(i) Employees, who have completed an approved three-year academic tertiary qualification, relevant to their calling, shall commence at the first year increment;

(ii) Employees, who have completed an approved four-year academic tertiary qualification, relevant to their calling, shall commence at the second year increment;

(iii) Employees, who have completed an approved Masters or PhD Degree relevant to their calling shall commence on the third year increment;

Provided that employees who attain a higher tertiary level qualification after appointment shall not be entitled to any advanced progression through the range.

(c) The employer and the HSOA shall be responsible for determining the relevant acceptable qualifications for appointment for the callings covered by this sub clause and shall maintain a manual setting out such qualifications.

(d) The employer in allocating levels pursuant to paragraph (b) of this sub clause may determine a commencing salary above Level 3/5 for a particular calling/s.

(4) The following conditions shall apply to employees in the callings detailed below—

Engineers—

Employees employed in the calling of Engineer and who are classified Level 3/5 under this Agreement shall be paid a minimum salary at the rate prescribed for the maximum of Level 3/5 where the employee is an "experienced engineer" as defined.

For the purposes of this paragraph "experienced engineer" shall mean—

(a) An engineer appointed to perform professional engineering duties and who is a Corporate Member of The Institution of Engineers, Australia, or who attains that status during service.

(b) An engineer appointed to perform professional duties who is not a Corporate Member of the Institution of Engineers, Australia but who possesses a degree

or diploma from a University, College, or Institution acceptable to the employer on the recommendation of the Institution of Engineers, Australia, and who—

(i) having graduated in a four or five academic year course at a University or Institution recognised by the employer, has had four years experience on professional engineering duties acceptable to the employer since becoming a qualified engineer, or

(ii) not having a University degree but possessing a diploma recognised by the employer, has had five year's experience on professional engineering duties, recognised by the employer since becoming a qualified engineer.

30.—AWARD CONSOLIDATION

(1) The parties agree to the consolidation of the award during the life of this agreement.

(2) In order to facilitate the consolidation process, the BHS may seek the assistance of the HDWA in negotiating the consolidation, or to work through the Health Department of Western Australia, as its agent.

(3) The amendments to the Award are outlined in Attachment 2—Award Amendments.

31.—CONTRACT OF SERVICE—PROBATION

This Clause replaces subclauses (1) of Clause 8.- Contract of Service, of the Hospital Salaried Officers Award No. 39 of 1968.

(1) (a) Every new employee appointed to the employ of the BHS shall be on probation for a period of three (3) months.

(b) At any time during the period of probation the BHS may annul the appointment and terminate the service of the employee by the giving of two weeks notice.

(c) At any time during the period of probation the employee may resign by giving two (2) weeks notice.

(d) A lesser period of notice may be agreed, in writing between the BHS and the employee.

(e) On the completion of three months employment the period of probation may be extended for a further and final period of three months at the discretion of the BHS. The provisions of subclause (b), (c) and (d) of this clause still apply during the period of probation.

(f) Where an employee's period of probation has been extended for a further period of three months, the BHS shall notify the employee in writing of the extension and provide justification for the extension of probation.

(g) An employee shall not be deemed to be employed by the month until he/she has completed his/her probationary period or extended probationary period of employment as the case may be.

32.—TRAVELLING ALLOWANCE

(1) At the option of the employer, which option shall be notified in writing to the employee before it is exercised and before the employee has made the travel arrangements for which the allowance is to be claimed, this clause may replace Clause 21.—Travelling to the Hospital Salaried Officers Award No. 39 of 1968

(2) Subject to clauses (1) and (3), an employee who is required to travel on official business will be reimbursed for reasonable accommodation, meals and incidental expenses based on actual reasonable costs incurred as demonstrated by the production of receipts, provided that reasonable payment will be made for incidental expenses for which receipts are not available and that the maximum amount payable will not be greater than the amounts allowed for accommodation, incidental expenses and meal allowances, as the case may be, in the relevant area as set out in Clause 24A of the Award.

(3) At the request of the employee required to travel in the course of his or her duties, the employer shall provide the employee with sufficient funds to cover reasonably expected out of pocket expenses prior to the employee travelling.

(4) The provisions of this clause do not apply to an employee who is relieving or who has been temporarily transferred to a position for a period exceeding five (5) working days.

33.—RATIFICATION

The signatories that follow testify to the fact that this Agreement shall come into effect as of the date of registration.

Toni Farrell

……Signed…… …25/9/00…

(Signature) (Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Dan Hill

……Signed…… …25/9/00…

(Signature) (Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

The Common Seal of the Boddington District Hospital Board is affixed hereto pursuant to a resolution of the Board

Rita Hobbs

……Signed…… …18/9/00…

(Signature) (Date)

Chairman for and on behalf or the Brookton Health Service Board

ATTACHMENT 1—MODEL FOR IDENTIFYING PRODUCTIVITY INCREASES

The following model is to be used as a guide only and it is expected that it will be modified to meet the needs of BHS as required.

A Model for Identifying Productivity Increases

The primary focus of Enterprise Bargaining in the workplace will be on best practice, efficiency, effectiveness, competitiveness and cost saving.

Employees to focus on the following areas—

- **Productivity improvements which can be made:** Identification of all possibilities for improving productivity through looking at possible changes in what work is done, who does the work, who could better do the work, when the work is done, whether the work should be done (i.e. whether a particular task can be performed less often and still achieve a satisfactory output 0 possibilities for multi- skilling and opportunities to reduce costs (including financial costs) and reduce waste.
- **Barriers to Productivity Improvements**: Identification of any significant barriers to improving productivity, such as, need for training, need for equipment, problems with computer programs, demarcation problems and arguments about who should do what, award constraints, information or guidelines problems, problems in regard to supervision, whether too much or not enough, or of poor quality, opportunities and barriers to self management, physical barriers such as the location of various functions which interact with each other and barriers to communication.

Employers, in consultation with their Employees, to focus on all of the above plus macro issues impacting on productivity—

- **Structural Matters**: Management may need to look at the structures within which the work is done and how they can be improved upon.
- **Management Style**: Management style and its appropriateness may need to be examined at both an organisational and departmental level.
- **Best Practice, Benchmarking, Continuous Improvement and New Opportunities**: Initiatives in these areas will in general need to be initiated by management. This is an important area given that one of its outcomes should be improved competitiveness.

  Where barriers to competitiveness beyond the control of the employer/health service are identified, these should be drawn to the attention of the Health Department so that they can be addressed on an industry basis.

- **Culture and Environment**: Management culture and organisational culture may need to be examined in light of the overall direction of health management and where appropriate programs and training be introduced to address any identified problems.

Quality of Employment—Issues to be Examined by Both Employees and Employers—

This area does not necessarily impact on productivity, as such, but may have a positive impact financially and/or an improvement in the non-wage rewards of employment and is therefore a very valuable, win-win, area for both employees and employers. Matters to be examined under this heading include, but are not confined to—

- Occupational Health and Safety
- Unplanned Absences
- Health and Welfare of the Workforce
- Family needs and other demands on workers: better ways to accommodate and acknowledge that these without losing focus on the main objectives in regard to responsibility for service to the employer.
- Use of Leave
- Equal Opportunity
- Career paths, including access to special project work, providing opportunities for development and recognition
- Employee Recognition, through feedback, support, acknowledgment, enablement, empowerment, consultation and non-financial rewards
- Training and Development
- Equity Issues

ATTACHMENT 2—AWARD AMENDMENTS

Consolidation of the Hospital Salaried Officers Award No. 39 of 1968 to be completed during the life of this agreement.

(1) The consolidation is to consolidate into the award a number of conditions and arrangements currently being provided in accordance with Administrative Instructions and / or Operational Instructions of the Health Department;

(2) The conditions and arrangements it is agreed to introduce are to be introduced on a no-win/no-loss basis.

(3) The consolidation includes the removal of gender biased and inconsistent language, the removal of inconsistencies, the updating of provisions to reflect current practice and usage, the removal of redundant provisions, updating of allowances as expressed in the Award and the modernisation of provisions.

(4) The clarification of provisions to improve administration and interpretation of the Award and to bring it into line with the new health service structures provided that the area of coverage and scope of the Award will not be amended by the consolidation.

In addition to and/or in association with the consolidation a number of amendments including the following are to be made to the Hospital Salaried Officers Award No. 39 of 1968—

(1) Definitions to be updated.

(2) Hours clause to be updated and clarified so that it adopts the Enterprise Bargaining clause and includes a provision to permit shifts of up to 12 hours to be worked.

(3) Holidays and Annual Leave clause to be amended to—

(a) permit leave to be taken in single days; and

(b) include simplified formulas for accrual of annual leave and calculation of leave on termination and pro rata leave.

(4) Parental Leave to be included.

(5) Long service leave clause to be amended to include calculation of entitlement on the basis of 13 weeks rather than 3 months, and to be taken in multiples of a week, the clause to be similar to that to be included in the S41 Agreements but to retain the right to 13 weeks leave after 7 years of service but with no pro rata leave except as currently specified in the Award clause.

(6) There will be additional changes as the details of the consolidation are finalised.

The agreement for Consolidation and Amendment of the Hospital Salaried Officers Award No.39 of 1968 is a package agreement.

INSURANCE COMMISSION OF WESTERN AUSTRALIA ENTERPRISE BARGAINING AGREEMENT 2000-2002.
No. PSA AG 55 of 2000.

2000 WAIRC 00535

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES	CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED APPLICANT - V - MANAGING DIRECTOR, INSURANCE COMMISSION OF WESTERN AUSTRALIA RESPONDENT
CORAM	COMMISSIONER A R BEECH
DELIVERED	THURSDAY, 24 AUGUST 2000
FILE NO	PSAAG 55 OF 2000

Result Registration of Enterprise Bargaining Agreement

Order.

HAVING heard Mr J.L. Ross on behalf of the Civil Service Association of Western Australia Incorporated and Mr G. Speight on behalf of the Insurance Commission of Western Australia and by consent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders—

THAT the Insurance Commission of Western Australia Enterprise Bargaining Agreement 2000-2002 as filed in the Commission on 21 August 2000 be registered on and from 24 August 2000.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Insurance Commission of Western Australia Enterprise Bargaining Agreement 2000-2002.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope
4. Parties to this Agreement
5. Number of Employees Covered by this Agreement
6. Definitions
7. Date and Period of Operation of this Agreement
8. No Further Claims
9. Relationship to Parent Award and Agreements
10. Single Bargaining Unit
11. Implementation of Agreement
12. Insurance Commission Mission Statement
13. Objectives and Principles
14. Productivity Improvement
15. Employee Grievance Resolution
16. Dispute Settlement Procedures
17. Consultation
18. Salary

19. Annual Performance Based Salary Increments
20. Ceremonial/Cultural Leave
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22. Paid Parental Leave
23. Parental Leave
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26. Public Holidays
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28. Bereavement Leave
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31. Military Leave
32. Witness and Jury Service Leave
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34. Sick Leave
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36. Child Care Arrangements
37. Hours of Duty
38. Higher Duties Allowance
39. Overtime
40. Payout of Leave
41. Contract of Service
42. Availability of Agreement
43. Time and Salaries Record
44. Signatures of Parties to the Agreement

Schedule A: Salaries

Schedule B: Productivity Measurement Matrix

Schedule C: Overtime Meal Allowances

Schedule D: Grievance Resolution Policy/Procedure

Schedule E: Flexible Working Hours Policy

3.—SCOPE

This Agreement shall apply throughout the State of Western Australia to all Insurance Commission Employees, who are members of, or eligible to be members of, the Civil Service Association of Western Australia Incorporated.

4.—PARTIES TO THIS AGREEMENT

This Agreement shall be binding upon the following parties—

(a) Civil Service Association of Western Australia Incorporated;

(b) The Insurance Commission of Western Australia;

5.—NUMBER OF EMPLOYEES COVERED BY THIS AGREEMENT

At the date of registration of this Agreement the approximate number of employees covered by this Agreement is 65.

6.—DEFINITIONS

"Agreement" means the *Insurance Commission of Western Australia—Enterprise Bargaining Agreement* 1998.

"Employee" means for the purpose of this Agreement, someone who is referred to at Clause 3.—Scope.

"Employer" means the Insurance Commission of Western Australia.

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

"SBU" means the Single Bargaining Unit referred to at Clause 10—Single Bargaining Unit.

"Government" means the State Government of Western Australia.

"Managing Director" means the Managing Director of the Insurance Commission of Western Australia or delegated officer.

"Minister" means the Minister or Ministers of the Crown responsible for the administration of the Insurance Commission.

"Board" means the Governing Body of the Insurance Commission of Western Australia.

"WAIRC" means the Western Australian Industrial Relations Commission.

"Award" means the *Government Officers (State Government Insurance Commission) Award,* 1987.

"Workplace Delegate" means an Employee elected from the financial membership of the Union who is appointed with the duties and responsibilities as detailed by those rules applicable to the Union.

"Workplace Deputy Delegate" means an Employee elected from the financial membership of the Union who is appointed, in the absence of the Workplace Delegate, with the same duties and responsibilities of the Workplace Delegate.

7.—DATE AND PERIOD OF OPERATION OF THIS AGREEMENT

(a) This Agreement shall come into effect from date of registration and shall remain in force for 2 years from registration. This Agreement replaces the *Insurance Commission Enterprise Bargaining Agreement 1998 No.* PSA AG 94 of 1998.

(b) The parties will review this Agreement and commence negotiations for a new Agreement no later than six (6) months prior to the expiration of this Agreement.

(c) The parties will assess achievements in performance, productivity and efficiency during the term of this Agreement.

(d) The pay quantum and conditions of employment achieved as a result of this Agreement will remain and form the new base pay rates for future Agreements, or continue to apply in the absence of a further Agreement, except where the Award rate is higher in which case the Award shall apply.

(e) This Agreement will continue in force after the expiry of its term until such time it is either replaced by another Agreement, or either of the parties withdraws from the Agreement by notification in writing to the other party and to the WAIRC in such a form as is required by the Regulations of the WAIRC at that time.

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

(g) This Agreement may be varied, renewed, replaced or cancelled as appropriate within the term of this Agreement, by consent between the parties.

8.—NO FURTHER CLAIMS

The parties to this Agreement undertake that for the duration of this Agreement there shall be no further salary or wage increases sought or granted, except for those provided under the terms of this Agreement or provided for in a National or State Wage Case Decision.

9.—RELATIONSHIP TO PARENT AWARD AND AGREEMENTS

This Agreement shall be read and interpreted wholly in conjunction with the provisions of the *Government Officers (State Government Insurance Commission) Award, 1987* and Agreements which apply to the parties bound by this Agreement. In the case of any inconsistencies, this Agreement shall have precedence to the extent of the inconsistencies.

10.—SINGLE BARGAINING UNIT

(a) This Agreement has been negotiated through a Single Bargaining Unit (SBU), comprising of Employer and Union representatives.

(b) The SBU will review the terms and conditions of this Agreement six (6) months prior to the expiration of this Agreement to commence negotiations for a new Agreement.

11.—IMPLEMENTATION OF AGREEMENT

The parties will develop an agreed process for the implementation of the initiatives outlined in this Agreement.

The SBU will be the peak forum to monitor, review and have input into the progress of the implementation of this Agreement and to actively share information and consult on corporate strategic issues affecting the Insurance Commission's business operation.

The SBU will consist of senior management, a Union Official and an Employee representative from the Union. Union representatives will have sufficient time off during working hours to perform this function including time to consult with members and access to facilities including phone, fax, e-mail and photocopying.

12.—INSURANCE COMMISSION MISSION STATEMENT

To achieve best practice in—

(a) Providing both Motor Vehicle Personal Injury and Industrial Disease Compensation Insurance; and

(b) Managing the Western Australian Public Sector's self-insurance arrangements; through the promotion of risk management and the commitment and professionalism of its Employees.

13.—OBJECTIVES AND PRINCIPLES

The shared objectives of the parties are to—

(a) Satisfy the requirements of clients and customers through the provision of reliable, efficient and competitive services.

(b) Achieve the Insurance Commissions Mission Statement and improve productivity and efficiency at the SGIC through ongoing improvements.

(c) Promote the development of trust and motivation and to continue to foster enhanced Employee relations.

(d) Facilitate greater flexibility in decision making and allocation of human and other resources.

(e) Promote increased satisfaction from jobs and secure employment opportunities.

(f) Develop and pursue changes on a co-operative continuing basis by using participative practices.

(g) Promote health, safety, welfare and equal opportunity for all Employees.

14.—PRODUCTIVITY IMPROVEMENT

The Parties agree to adopt the Productivity Measurement Matrix attached at Schedule B.

The Agreement provides for a maximum 6% productivity based salary increase to be paid as follows—

Up to 3% payable from 1 September 2000; or from date of registration, whichever is the latter (for the 1999/2000 financial year) and

Up to 3% payable from 1 September 2001.

The quantum of the productivity based salary increases actually paid will be dependent upon the achievement of the targets in the Productivity Measurement Matrix, detailed in Schedule B. The measurement period for the first payment will be the 1999/2000 financial year and the 2000/2001 financial year for the second payment.

The measures and targets in the Productivity Measurement Matrix, Schedule B, apply only for the 1999/2000 financial year. The 2000/2001 Matrix cannot be updated to determine the second stage salary increase, until the budget and business planning cycle for 2000/2001 is finalised. Accordingly, the revised Matrix to be used for the 2000/2001 financial year will be developed and endorsed by December 2000. The Matrix used to measure productivity for the 2001/2002 financial year will be developed and endorsed by December 2001, however, any salary increase that may be due based on 2001/2002 performance will not be paid within the life of this Agreement.

The salary scales in Schedule A are indicative of those rates which will be payable from 1 September 2000 or date of registration whichever is the latter and 1 September 2001 if the full 3% increases are achieved.

Subject to Government approval, the Matrix may be revised by the Insurance Commission while in operation in the event of unforeseen external circumstances arising resulting in any of the measures or targets no longer being appropriate or relevant. The aim of any such changes will be to nullify any unforeseen external impact so as to have the resultant Matrix replicate as closely as possible the intentions of this Matrix. Representatives from both the SBU and JCC will be consulted as part of the review of the 1999/2000 Matrix and development of the 2000/2001 Matrix.

15.—EMPLOYEE GRIEVANCE RESOLUTION

When an Employee has a grievance, the matter shall be acted on in accordance with the Insurance Commissions Grievance Resolution Policy/Procedure, (Schedule D).

16.—DISPUTE SETTLEMENT PROCEDURES

Subject to the provisions of the *Public Sector Management Act 1994*, the following procedures are to be followed in connection with questions, disputes or difficulties arising under this Agreement.

(a) The Union Representative and/or Employee/s concerned shall discuss the matters with the Immediate Supervisor in the first instance. An Employee may be accompanied by the Union Representative. The Supervisor may be accompanied by a representative nominated by the Employer.

(b) If the matter is not resolved within 5 working days following the discussion in accordance with paragraph (a) hereof the matter shall be referred by the Union Representative or Employee to the Employee's manager -once-removed- or his/her nominee for resolution.

(c) If the matter is not resolved within 5 working days following the discussion in accordance with paragraph (b) above, the matter shall be referred by the Union Representatives or the Employers nominee to the Managing Director or his nominee for resolution.

(d) If the matter is not resolved within five working days following the discussion in accordance with paragraph (c) above, the matter may be referred by either party to the WAIRC.

17.—CONSULTATION

(a) As part of the decision making process the Employer will consult with the Union on significant matters which impact on Employees working lives. Such decisions may include, but are not limited to, the organisational structure or technology that are likely to have significant effects on the Unions membership.

(b) Significant effects include but are not limited to redundancy and significant changes in the composition, operation or size of the Employers workforce.

(c) The Employer recognizes the rights of Unions to organise and represent their members and supports the Union's role in contributing to a harmonious industrial relations environment within the Insurance Commission.

(d) The General Secretary or a duly authorised representative of the Union will on notification to the Employer have the right to enter, subject to the Insurance Commissions security requirements, the Insurance Commissions premises during working hours, including meal breaks, for the purposes of discussing with Members of the Union, the legitimate business of the Union, or for the purpose of investigating complaints concerning the application of this Agreement, but shall in no way interfere with the work of Employees.

18.—SALARY

An employee's annual salary will commence at the Level set out in this Agreement (Schedule A) and will be paid in fortnightly instalments. A fortnights salary shall be computed by dividing the annual salary by 313 and multiplying the result by 12.

The Agreement provides for a maximum 6% productivity based salary increase (as outlined in Clause 14) to be paid as follows—

Up to 3% payable from 1 September 2000, or from date of registration, whichever is the latter (for the 1999/2000 financial year) and

Up to 3% payable from 1 September 2001.

The salary scales in Schedule A are indicative of those rates which will be payable from 1 September 2000 or from date of registration whichever is the latter and 1 September 2001 if the full 3% increases are achieved.

Other than for Special Contract Employees, annual increments of the Employee's salary will be paid to the Employee in accordance with the salary scales set out in Schedule A.

The Board of Commissioners will review the remuneration of those Senior Employees on Special Contract arrangements on 1 July of each year.

Salaries will be paid by direct funds transfer to the credit of an account nominated by the employee at a Bank, Building Society or Credit Union approved by the employer. In special circumstances payment by cheque may be arranged.

19.—ANNUAL PERFORMANCE BASED SALARY INCREMENTS

(a) An Employee shall qualify for an annual increment in his/her salary level, if one is available, subject to—

(i) The Employee accumulating 12 months' of continuous service with the public sector since last receiving a salary increment; and

(ii) a satisfactory report in respect of the Employee's level of performance, efficiency, diligence and conduct.

(b) Before any increase in salary is paid, the Employee's immediate supervisor shall, no later than 12 months since the Employee's last increment, complete a report in respect of the Employee's level of performance, based on the most recent Performance Management & Development System Review.

(c) Where the Employer is satisfied with the assessment the increase in salary will be paid. The increment can be deferred or withheld if an Employee's performance is considered substandard.

(d) Where the assessment is adverse to the Employee—

(i) The assessment shall be brought to the notice of the Employee and shall be signed and dated by him/her;

(ii) If the Employee desires to give an explanation for the assessment or give any reasons for disagreeing with the assessment, the Employee shall put the explanation or reasons in writing;

(iii) The Employer shall consider the assessment and the Employee's explanation; and

(iv) The Employer shall notify the Employee of the decision within 28 clear days of receipt of the assessment.

(e) Where an increase is not paid for a specific period, the Employer shall complete a further assessment before the expiry of that period and the provisions of subclauses 19.2, 19.3 and 19.4 shall apply.

(f) The non-payment of an increase will change the normal anniversary date of any further increase to 12 months after the last increase was paid.

(g) For the purposes of this clause, continuous service, except where an increment is payable due to age, shall not include—

(i) any continuous period exceeding 14 calendar days during which the Employee is absent on leave without pay, in which case the entire period is to be excised;

(ii) any continuous period exceeding 6 months during which the Employee is absent on workers' compensation. Only the period which exceeds 6 months is to be excised; and

(iii) any continuous period exceeding 3 months during which the Employee is absent on sick leave without pay. Only the period which exceeds 3 months is to be excised.

20.—CEREMONIAL/CULTURAL LEAVE

(a) An Employee who is legitimately required to be absent from work for their tribal/ceremonial/cultural purposes shall be entitled to take accrued annual leave entitlements, short leave entitlements or up to 5 days leave without pay.

(b) Ceremonial/cultural leave may be taken as single day absences or part of a single day.

(c) Such ceremonial/cultural leave shall include leave to meet the Employee's customs, traditional law and to participate in ceremonial/cultural activities.

21.—FAMILY LEAVE

(a) For the purposes of this clause family member means the Employee's spouse, de facto spouse, child, step-child, parent, step-parent, grandparent, sibling or another person who lives in the Employee's household.

(b) An Employee with responsibilities in relation to members of their household or immediate family shall be entitled up to five (5) days family leave per annum without loss of pay to provide care and support for such persons when they are ill or otherwise to attend to urgent family responsibilities.

(c) Family leave entitlements shall be deducted from accrued annual leave, accrued sick leave or short leave entitlements.

(d) Family leave may be taken as single day absences or part of a single day.

(e) The Employee shall, wherever practical give the Employer notice of the intention to take family leave and the estimated length of absence. If it is not practicable to give prior notice of absence the Employee shall notify the Employer as soon as possible on the day of absence.

(f) The Employee shall provide, where required by the Employer, evidence to establish the requirement to take family leave.

22.—PAID PARENTAL LEAVE

(a) An employee who has completed 12 months' service with the employer will be entitled to four weeks paid parental leave.

(b) Paid leave of four weeks will be available to the employee whose partner gives birth, or where an employee adopts a child, provided that for the period of leave the employee is the child's primary care giver.

(c) Should the birth or adoption result in other than the arrival of a child, and the employee concerned has commenced paid parental leave, the entitlement to paid leave remains intact.

(d) An employee who has completed more than 40 weeks, but less than 12 months service with the employer at the date of birth or adoption, will be eligible for paid parental leave on the basis of the following formula—

4 * (number of weeks completed service/52) number of weeks paid parental leave.

All other conditions relating to parental leave apply as per clause 23 of this Agreement.

23.—PARENTAL LEAVE

(a) Definitions

"Replacement Employee" is an Employee specifically engaged to replace an Employee proceeding on parental leave.

(b) Eligibility for Parental Leave

(i) An Employee is entitled to a period of up to fifty two (52) consecutive weeks parental leave in respect of the birth of a child to the Employee or the Employee's spouse/partner.

(ii) Where the Employee applying for the leave is the partner of a pregnant spouse one week's leave may be taken at the birth of the child concurrently with parental leave taken by the pregnant Employee.

(iii) An Employee seeking to adopt a child under the age of five (5) years shall be entitled to three (3) weeks' parental leave at the placement of the child and a further period of parental leave up to a maximum of fifty two (52) weeks. Where both partners are employed by the Insurance Commission , the three week period may be taken concurrently.

(iv) An Employee seeking to adopt a child shall be entitled to two days unpaid leave for the Employee to attend interviews or examination required for the adoption procedure. Employees working or residing outside the Perth metropolitan area are entitled to an additional days leave. The Employee may take any paid leave entitlement in lieu of this leave.

(v) Subject to paragraph (ii) of this sub-clause, where both parties are employed by the Employer the leave shall not be taken concurrently except under special circumstances and with the approval of the Employer.

(c) Other Leave Entitlements

(i) An Employee proceeding on parental leave may elect to utilise any accrued annual leave or accrued long

service leave for the whole or part of the period of parental leave or extend the period of parental leave with such leave.

(ii) An Employee may extend the maximum period of parental leave with a period of leave without pay subject to the Employers approval.

(iii) An Employee on parental leave is not entitled to paid sick leave and other paid award absences.

(iv) Where the birth or adoption of a child results in other than the arrival of a child, the Employee shall be entitled to such period of sick leave certified as necessary by a registered Medical Practitioner.

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

(d) Notice of Variation

(i) The Employee shall give not less than four weeks notice in writing to the Employer of the date the Employee proposes to commence parental leave stating the period of leave to be taken.

(ii) An Employee proceeding on parental leave may elect to take a shorter period of parental leave and may at any time during that period of leave elect to reduce or extend the period stated in the original application provided four week's written notice is provided.

(iii) An Employee seeking to adopt a child shall not be in breach of sub-clause (d) (i) by failing to give the required period of notice if such failure is due to the requirement of the adopting agency to accept earlier or later placement of a child, or other compelling circumstances.

(e) Transfer to Safe Job

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

(ii) If the transfer to a safe position is not practicable, the Employee may take leave for such period as is certified necessary by a registered Medical Practitioner.

(f) Replacement Employee

Prior to engaging a replacement Employee the Employer shall inform the person of the temporary nature of the employment and the entitlements relating to return to work of the Employee on parental leave.

(g) Return to Work

(i) An Employee shall confirm the intention of return to work by notice in writing to the Employer not less than four weeks prior to the expiration of the period of parental leave.

(ii) An Employee on return to work from parental leave shall be entitled to the position which the Employee occupied immediately prior to proceeding on parental leave. Where an Employee was transferred to a safe job pursuant to sub-clause (e) hereof the Employee is entitled to return to the position occupied immediately prior to the transfer.

(iii) An Employee may return on a part time basis to the same position occupied prior to the commencement of leave or to a different position at the same classification level in accordance with clause 35.—Part-time Work of this Agreement.

(iv) Where the position occupied by the Employee no longer exists the Employee shall be entitled to a position of the same classification with duties similar to that of the abolished position.

(v) An Employee who has returned on a part time basis may revert to full-time work at the same classification level within two years of the recommencement of work.

(h) Effect of Leave on the Employment Contract

(i) Fixed Term Contract

An Employee employed for a fixed term contract shall have the same entitlement to parental leave, however the period of leave granted shall not extend beyond the term of that contract.

(ii) Continuous Service

Absence on parental leave shall not break the continuity of service of an Employee but shall not be taken into account in calculating the period of service for any purpose under the relevant Award or this Agreement.

(iii) Termination of Employment

(aa) An Employee on parental leave may terminate employment at any time during the period of leave by written notice in accordance with the relevant Award or Agreement.

(bb) An Employer shall not terminate the employment of an Employee on the grounds of the Employee's application for parental leave or absence on leave but otherwise the rights of the Employer in respect of termination of employment are not affected.

24.—ANNUAL LEAVE

(a) Definitions

(i) Accrued annual leave is the leave an Employee is entitled to from a previous calendar year.

(ii) Pro-rata annual leave is the proportion of leave that an Employee is entitled to in the current year, either from the date of commencement, or to the date of cessation.

(b) Entitlement

(i) Each Employee is entitled to four week's paid leave for each year of service. Annual leave shall be calculated on a calendar year basis commencing on January 1 in each year.

(ii) An Employee employed on a fixed term contract for a period greater than twelve (12) months, be credited with the same entitlement as a permanent Employee. An Employee employed on a fixed term contract for a period less than twelve (12) months, shall be credited with the same entitlement on a pro-rata basis for the period of the contract.

(iii) On written application, an Employee shall be paid salary in advance when proceeding on annual leave.

However, such payment in advance will only be made for full pay periods which occur whilst the employee in on annual leave.

(iv) The provisions of this clause do not apply to casual employees.

(c) Pro-rata Annual Leave

(i) Entitlement

(aa) An Employee who is appointed to the Insurance Commission on or after January 1 is entitled to pro-rata annual leave for that year, calculated in accordance with the following formula—

Completed Calendar Months of Service	Pro-rata Annual Leave (Working Days)
1	2
2	3
3	5
4	7
5	8
6	10
7	12
8	13
9	15
10	17
11	18

(bb) Provided that in the first and last months of an Employee's service the Employee is entitled to pro-rata annual leave of one working day for each two completed weeks' of service.

(cc) For the purposes of this sub-clause, an Employee who commences on the first WORKING day of a month and works for the remainder of the month and an Employee who has worked throughout a month and terminates on the last working day of a month shall be regarded as having completed that calendar month of service.

(ii) 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 Employer.

(iii) 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.

(d) Part-time Entitlement

A part-time Employee shall be granted annual leave in accordance with this clause, however payment to a part-time Employee proceeding on annual leave shall be calculated having regard for any variations to the Employee's ordinary working hours during the accrual period.

(e) An Employee who, during an accrual period was subject to variations in ordinary working hours or whose ordinary working hours during the accrual period are less than the Employee's ordinary working hours at the time of commencement of annual leave, may elect to take a lesser period of annual leave calculated by converting the average ordinary working hours during the accrual period to the equivalent ordinary hours at the time of commencement of annual leave.

(f) Portability

(i) Where an Employee was, immediately prior to being employed by the Insurance Commission, employed in the Public Service or any Western Australian State body of statutory authority the Employer shall approve portability of accrued and pro-rata annual leave entitlements held at the date the Employee ceased that previous employment, provided that—

(aa) the Employee's employment with the Insurance Commission commenced no later than one week after ceasing the previous employment; and

(bb) the Employee was not paid out all or part of the accrued and pro-rata annual leave entitlements held at the time of ceasing that previous employment.

(g) The Employer may direct an Employee to take accrued annual 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.

(h) Leave Loading

(i) Subject to the provisions of sub-clause (h)(ii) and (h)(vi) of this clause, a loading equivalent to 17.5% of normal salary is payable to Employees proceeding on annual leave, including accrued annual eave.

(ii) Maximum Loading

(aa) Subject to the provisions of paragraphs (iv) of this sub-clause the loading is paid on a maximum of four weeks' annual leave.

(bb) Maximum payment shall not exceed the Average Weekly Total Earnings of all Males in Western Australia, as published by the Australian Bureau of Statistics, for the September quarter of the year immediately preceding that in which the leave commences.

(iii) Annual leave commencing in any year extending without a break into the following year attracts the loading calculated on the salary applicable on the day the leave commences.

(iv) The loading payable on approved accrued annual leave shall be at the rate applicable at the date the leave is commenced. Under these circumstances an Employee can receive up to the maximum loading for the approved accrued annual leave in addition to the loading for the current years entitlement.

(v) A pro-rata loading is payable on periods of approved annual leave less than four weeks.

(vi) The loading is calculated on the rate of the normal fortnightly salary including any allowances which are paid as a regular fortnightly or annual amount. Any allowance paid to an Employee for undertaking additional or higher level duties is only included if the allowance is payable during that period of normal annual leave as provided in sub-clauses (f) and (g) of Clause 38.—Higher Duties Allowance of this Agreement.

(vii) Where payment in lieu of accrued or pro-rata annual leave is made on the death or retirement of an Employee, a loading calculated in accordance with the terms of this clause is to be paid on accrued and pro-rata annual leave.

(viii) When an Employee resigns, or ceases employment, or where an Employee is dismissed, an annual leave loading shall be paid as follows—

(aa) Accrued entitlements to annual leave—

A loading calculated in accordance with the terms of this clause for accrued annual leave is to be paid.

(bb) Pro-rata annual leave—

No leave loading is to be paid.

(ix) Part-time Employees shall be paid a proportion of the annual leave loading at the salary rate applicable, provided that the maximum loading payable shall be calculated in accordance with the following—

$$\frac{\text{Hours of work per fortnight}}{76} \times \frac{\text{Maximum loading in accordance with (h)(ii) of this clause}}{1}$$

(x) An Employee who has been permitted to proceed an annual leave and who ceases duty other than by resignation or dismissal as a result of disciplinary action before completing the required continuous service to accrue the leave must refund the value of the unearned pro-rata portion of Leave Loading but no refund is required in the event of the death of an Employee.

(xi) An Employee who has been permitted to proceed on annual leave and who resigns or is dismissed as a result of disciplinary action must refund the value of the loading paid for leave other than accrued leave.

25.—LONG SERVICE LEAVE

(a) Each Employee who has completed a period of seven (7) years of continuous service but not including any service by an Employee under the age of 18 years prior to 8/1/93, shall be entitled to 13 weeks of long service leave on full pay.

(b) Each Employee is entitled to an additional 13 weeks of long service leave on full pay for each subsequent period of 7 years of continuous service completed by him or her.

(c) A part-time Employee shall have the same entitlement to long service leave as full-time Employees however payment made during such periods of long service leave shall be adjusted according to the hours worked by the Employee during that accrual period.

(d) For the purpose of determining an Employee's long service leave entitlement, the expression "continuous service" includes any period during which the Employee is absent on full pay or part pay from duties in the Public Sector, but does not include—

(i) any period exceeding two weeks during which the Employee is absent on leave without pay or

maternity leave, except where Leave Without Pay is approved for the purpose of fulfilling an obligation by the Government to provide staff for a particular assignment external to the Public Sector of Western Australia;

(ii) any period during which an Employee is taking long service leave entitlement or any portion thereof except in the case of sub-clause (k) when the period excised will equate to a full entitlement of 13 weeks;

(iii) any service by an Employee who resigns, is dismissed or whose services are otherwise terminated other than service prior to such resignation, dismissal or termination when that prior service has actually entitled the Employee to the long service leave under the clause;

(iv) any period of service that was taken into account in ascertaining the amount of a lump sum payment in lieu of long service leave; and

(v) any service of the Employee under the age of 18 years prior to 8/1/93.

(e) Any Public Holiday or Public Service Holiday occurring during an Employees absence on long service leave and extra days in lieu thereof shall not be granted.

(f) The Employer 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.

(h) Long service leave is to be taken in multiples of one week, with a minimum period of two weeks to be taken at any one time. Any other arrangements must be approved by the employer.

(i) Long service leave shall be paid at the substantive salary applying at the time the leave is taken, except where the provisions of Clause 38.—Higher Duties Allowance applies.

(j) The employee must either clear or have commenced clearance of their long service leave entitlement within one year of it becoming due. This leave can be cleared by taking the leave, opting for payment of leave or a combination of both subject to the provisions of Clause 40.—Payout of Leave.

(ii) The employer may approve deferment of long service leave in special circumstances subject to any condition, which the Employer may determine. Such circumstances shall include retirement within five years of the date of the entitlement accruing.

(iii) If an employee has not cleared such an entitlement or has not commenced clearance within one year of it becoming due, and no approval to defer the clearance of such leave has been obtained by the Employee, then the entitlement will be paid out at that point in time.

(iv) Employees with an existing accrued long service leave entitlement will have one year from the registration of the agreement to clear this leave on the understanding that the Employee may, where special circumstances exist, apply to the Employer to defer the leave subject to any condition which the Employer may determine.

(k) An Employee who has elected to retire at or over the age of 55 years and who will complete not less than 12 months continuous service before the date of retirement may take application to the Employer to take pro-rata long service leave before the date of retirement, based on continuous service of a lesser period than that prescribed by this clause for a long service entitlement.

(l) Compaction of leave

(i) An Employee who, during an accrual period was subject to variations in ordinary working hours or whose ordinary working hours during the accrual period are less than the Employee's ordinary working hours at the time of commencement of long service leave, may elect to take a lesser period of long service leave calculated by converting the average ordinary working hours during the accrual period to the equivalent ordinary hours at the time of commencement of long service leave.

(ii) Notwithstanding sub-clause (f) of this clause an Employee who has elected to compact an accrued entitlement to long service leave in accordance with paragraph (k) (i) of this clause, shall only take such leave in any period on full pay, and the period excised as "continuous service" shall be 13 weeks.

(m) Portability

(i) Where an Employee was, immediately prior to being employed by the Insurance Commission employed in the service of—

Any Public Service Agency;

The Commonwealth of Australia;

Any other State Government of Australia;

Any Western Australian State body of statutory authority;

and the period between the date when the Employee ceased previous employment and the date of commencing employment in the Insurance Commission does not exceed one week, that Employee shall be entitled to long service leave determined in the following manner—

(aa) the pro-rata portion of long service leave to which the Employee would have been entitled up to date of appointment with the Insurance Commission, shall be calculated in accordance with the provisions that applied to the previous employment referred to, but in calculating that period of pro-rata long service 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

(bb) the balance of the long service leave entitlement of the Employee shall be calculated upon appointment to the Insurance Commission in accordance with the provisions of this clause;

(ii) Nothing in this clause confers or shall be deemed to confer 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 in the Insurance Commission.

26.—PUBLIC HOLIDAYS

(a) The following days shall be allowed as holidays with pay—

(i) New Years' Day, Australia Day, Good Friday, Easter Monday, Christmas Day, Boxing Day, Anzac Day, Queen's Birthday, Foundation Day, Labour Day provided that the Employer may approve another day to be taken as a holiday in lieu of any of the above mentioned days;

(ii) Such Public Service Holidays as are prescribed by Regulations;

(b) When any of the days mentioned in sub-clause (a) of this clause falls on a Saturday or on a Sunday, the holiday shall be observed on the next succeeding Monday.

When Boxing Day falls on a Sunday or a Monday, the holiday shall be observed on the next succeeding Tuesday.

In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

(c)(i) Each Employee will be entitled to two days paid leave in lieu of two repealed Public Service Holidays.

(ii) One day of leave shall accrue on the first working day after the New Years Public Holiday and one day shall accrue on the day after the Easter Monday Public Holiday.

(iii) Part-time Employees shall accrue the leave if these are days the Employee worked or would have normally worked.

(iv) The taking of this leave must occur during the same calendar year as it falls due and the timing of this shall be by agreement between the Employer and the Employee.

27.—LEAVE WITHOUT PAY

(a) Subject to the provisions of sub-clause (b) of this clause, the Employer may grant an Employee leave without pay for any period and is responsible for that Employee on his or her return;

(b) Every application for leave without pay will be considered on its merits and may be granted provided that the following conditions are met—

(i) The work of the Insurance Commission is not inconvenienced; and

(ii) All other leave credits of the Employee are exhausted.

(c) An Employee on a fixed term appointment may not be granted leave without pay for any period beyond that Employee's approved period of appointment;

(d) Leave Without Pay for Full-Time Study

The Employer may grant an Employee leave without pay to undertake full-time study, subject to a yearly review.

(i) The course of study is directly related to the Employee's official duties; or

(ii) The course is not available on a part time basis; or

(iii) There is an identified shortage of individuals with skills in the area addressed by the particular course of study; or

(iv) It is critical to the continued operation of the Insurance Commission for the Employee to undertake the particular course of study.

(e) Leave without pay for (d)(i) and (d)(ii) will not count as qualifying service for leave purposes.

Leave without pay for (d)(iii) and (d)(iv) may count as qualifying service for leave purposes.

(f) Leave Without Pay for Australian Institute of Sport Scholarships

Subject to the provisions of sub-clause (b) of this clause, the Employer may grant an Employee who has been awarded a sporting scholarship by the Australian Institute of Sport, leave without pay.

Leave without pay for this purpose shall count as qualifying service for all purposes except Annual leave.

28.—BEREAVEMENT LEAVE

(a) On the death of—

(i) the spouse or de facto spouse of an Employee; or

(ii) the child or step-child of an Employee; or

(iii) (aa) the parent or step-parent of an Employee;

(bb) the parent or step-parent of an Employee's spouse or de facto spouse; or

(iv) any other person who, immediately before that person's death, lived with the Employee as a member of the Employee's family; or

(v) any other of the Employee's identified significant extended family,

the Employee is entitled to paid bereavement leave of up to 2 days.

(b) The 2 days need not be consecutive.

(c) Bereavement leave is not to be taken during a period of any other kind of leave.

(d) An Employee who claims to be entitled to paid bereavement leave is to provide to the Employer, if so requested by the Employer, evidence that would satisfy a reasonable person as to—

(i) the death that is the subject of the leave sought; and

(ii) the relationship of the Employee to the deceased person.

(e) By agreement with the Employer, the Employee may be extended further paid or unpaid leave as is legitimately required.

29.—SHORT LEAVE

(a)(i) The Employer may, upon sufficient cause being shown, grant an Employee short leave on full pay not exceeding 15.2 consecutive working hours, but any leave granted under the provisions of this clause shall not exceed, in the aggregate, 22.8 hours in any one calendar year.

(ii) Part-time Employees are eligible for short leave in accordance with this clause, on a pro-rata basis calculated with the following formula—

$$\frac{\text{Hours worked per fortnight}}{76} \times \frac{22.8 \text{ hours}}{1}$$

(iii) An Employee employed on a fixed term contract of more than twelve months shall be eligible for short leave in accordance with this clause, and an Employee employed on a fixed term contract of less than twelve months shall be eligible for pro-rata short leave in accordance with this clause.

30.—STUDY LEAVE

The provisions of the Insurance Commission's Employee Education Assistance Scheme shall apply.

31.—MILITARY LEAVE

(a) Subject to Insurance Commission convenience, leave of absence may be granted by the Employer to an Employee who is a volunteer member of the Defence Force Reserves or the Cadet Force for the purpose of attending a training camp, school, class or course of instruction subject to the conditions set out hereunder—

(i) Application for leave of absence for the above reasons, shall, in all cases, be accompanied by evidence of the necessity for attendance. At the expiration of the leave of absence granted, the Employee shall furnish a certificate of attendance to the Employer;

(ii) An Employee who is a member of the Defence Force Reserves and the Cadet Force may only be granted leave for attendance at one camp of continuous training and one additional special school, class or course of instruction in the 12 month period;

(iii) On written application, an Employee shall be paid salary in advance when proceeding on such leave;

(b) Attendance at a camp for Annual Continuous Obligatory Training

(i) An Employee may be granted leave for a period not exceeding 76 hours on full pay in any period of twelve months commencing on July 1, in any year;

(ii) If the Officer-in-Charge of a military unit certifies that it is essential for an Employee to be at the camp in an advance or rear party, a maximum of 30.4 extra hours on full pay may be granted in the twelve month period;

(c) Attendance at One Special School, Class or Course of Instruction

(i) In addition to the leave granted under sub-clause (b) of this clause a period not to exceed sixteen calendar days in any period of twelve months commencing on July 1, in each year may be granted by the Employer, provided the Employer is satisfied that the leave required is for a special purpose, and not for a further routine camp.

(ii) In this circumstance, an Employee may elect to utilise annual leave credits. However, if the leave is not taken from the annual leave, salary during the period shall be at the rate of the difference between the normal remuneration of the Employee and the defence force payments to which the Employee is entitled if such payments do not exceed normal salary. In calculating the pay differential, pay for Saturdays, Sundays, Public Holidays and Public Service Holidays and special rostered days off is to be excluded, and no account is to be taken of the value of any board or lodging provided for the Employee.

(iii) Leave without pay shall be granted if the defence force payments exceed the normal pay of the Employee.

(e) The provision of this clause does not apply to casual employees.

(f) Part-time Employees shall receive the same entitlement as full-time Employees, but payment shall only be made for those hours that would normally have been worked but for the leave.

32.—WITNESS AND JURY SERVICE LEAVE

1 WITNESS

(a) An Employee subpoenaed or called as a witness to give evidence in any proceeding shall as soon as practicable notify the Manager/Supervisor who shall notify the Employer.

(b) Where an Employee is subpoenaed or called as a witness to give evidence in an official capacity that Employee shall be granted by the Employer leave of absence with pay, but only for such period as is required to enable the Employee to carry out duties related to being a witness. If the Employee is on any form of paid leave, the leave involved in being a witness will be reinstated, subject to the satisfaction of the Employer. The Employee is not entitled to retain any witness fee but shall pay all fees received into the Insurance Commissions Revenue Fund. The receipt for such payment with a voucher showing the amount of fees received shall be forwarded to the Employer.

(c) An Employee subpoenaed or called as a witness to give evidence in an official capacity shall, in the event of non-payment of the proper witness fees or travelling expenses as soon as practicable after the default, notify the Employer.

(d) An Employee subpoenaed or called as a witness on behalf of the Crown, not in an official capacity shall be granted leave with full pay entitlements. If the Employee is on any form of paid leave, this leave shall not be reinstated as such witness service is deemed to be part of the Employee's civic duty. The Employee is not entitled to retain any witness fees but shall pay all fees received into the Insurance Commissions Revenue Fund.

(e) An Employee subpoenaed or called as a witness under any other circumstances other than specified in sub-clause 1(b) and 1(d) of this clause shall be granted leave of absence without pay except when the Employee makes an application to clear accrued leave in accordance with award provisions.

2 JURY

(a) An Employee required to serve on a jury shall as soon as practicable after being summoned to serve, notify the Manager/Supervisor who shall notify the Employer.

(b) An Employee required to serve on a jury shall be granted by the Employer leave of absence on full pay, but only for such period as is required to enable the Employee to carry out duties as a juror.

(c) An Employee granted leave of absence on full pay as prescribed in sub-clause 2(a) of this clause is not entitled to retain any jurors fees but shall pay all fees received into the Insurance Commissions Revenue Fund. The receipt for such payment shall be forwarded with a voucher showing the amount of jurors fees received to the Employer.

33.—LEAVE FOR INTERNATIONAL SPORTING EVENTS

(a) Special leave with pay may be granted by the Employer to an Employee chosen to represent Australia as a competitor or official, at a sporting event which meets the following criteria—

(i) it is a recognised international amateur sport of national significance; or

(ii) it is a world or international regional competition; and

(iii) no contribution is made by the sporting organisation towards the normal salary of the Employee.

(b) The Employer shall make enquiries with the Ministry of Sport and Recreation—

(i) whether the application meets the above criteria;

(ii) the period of leave to be granted.

34.—SICK LEAVE

(a) Entitlement

(i) The Employer shall credit each permanent 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

(ii) An Employee employed on a fixed term contract for a period greater than 12 months, shall be credited with the same entitlement as a permanent officer. An Employee employed on a fixed term contract for a period less than 12 months, shall be credited with the same entitlement on a pro-rata basis for the period of the contract;

(iii) A Part-time Employee shall be entitled to the same sick leave credits, on a pro-rata basis according to the number of hours worked each fortnight. Payment for sick leave shall only be made for those hours worked each fortnight. Payment for sick leave shall only be made for those hours that would normally have been worked had the Employee not been on sick leave;

(iv) The provisions of this clause do not apply to casual Employees;

(b) Medical Certificate

(i) An application for sick leave exceeding two consecutive working days shall be supported by the certificate of a registered Medical Practitioner or, when the nature of the illness consists of a dental condition and the period of absence does not exceed five consecutive working days, by the certificate of a registered dentist;

(ii) The amount of sick leave granted without the production of the certificate required in paragraph (i) of this sub-clause shall not exceed, in the aggregate, 38 hours in any one credit year.

(c) Where the Employer has occasion for doubt as to the cause of the illness or the reason for the absence, the Employer may arrange for a registered Medical Practitioner to visit and examine the Employee, or may direct the Employee to attend the Medical Practitioner for examination. If the report of the medical Practitioner does not confirm that the Employee is ill, or if the Employee is not available for examination at that time of the visit of the Medical Practitioner, or fails, without reasonable cause, to attend the Medical Practitioner when directed to do so, the fee payable for the examination, appointment or visit shall be paid by the Employee.

(d) If the Employer has reason to believe that an Employee is in such a state of health as to render a danger to fellow Employees or the public, the Employee may be required to obtain and furnish a report as to his/her condition from a registered Medical Practitioner or be examined by the Executive Director, Public Health and Scientific Support Services, Health Department of Western Australia or a registered Medical practitioner nominated by the Executive Director. The fee for any such examination shall be paid by the Insurance Commission.

(e) Where an Employee is ill during the period of annual leave or long service leave and produces at the time, or as soon as practicable thereafter, medical evidence to the satisfaction of the Employer that as a result of the illness the Employee was confined to his/her place of residence or a hospital for a period of at least seven (7) consecutive calendar days in the case of annual leave or 14 consecutive calendar days in the case of long service leave, the Employer may grant sick leave for the period during which the Employee was so confined and reinstate the leave equivalent to the period of confinement.

(f) An Employee who is absent on leave without pay is not eligible for sick leave during the currency of that leave without pay.

(g) 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.

(h) Where an Employee who has been retired from the Insurance Commission on medical grounds resumes duty therein, sick leave credits at the date of retirement shall be reinstated. This provision does not apply to an Employee who has resigned from the Insurance Commission and is subsequently reappointed.

(i) Workers Compensation

Where an Employee suffers a disability within the meaning of section 5 of the *Workers' Compensation and Rehabilitation Assistance Act, 1981* which necessitates that Employee being absent from duty, sick leave with pay shall be granted to the extent of sick leave credits. In accordance with section 80(2) of the *Workers' Compensation and Rehabilitation Assistance 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.

(j) War Caused Illnesses

(i) An Employee who produces a certificate from the Department of Veterans Affairs stating that the Employee suffers from war caused illnesses, may be granted special leave credits of 112 hours 30 minutes (15 standard hour days) per annum on full pay in respect of that war caused illness in addition to the Employee's standard sick leave entitlements. These credits shall accumulate up to a maximum credit of 337 hours and 30 minutes (45 standard hour days), and shall be recorded separately to the Employee's sick leave credit.

(ii) Every application for sick leave for war caused illnesses shall be supported by a certificate from a registered Medical Practitioner as to the nature of the illness.

(a) Portability

(i) The Employer shall credit an Employee additional sick leave credits up to those held at the date that Employee ceased previous employment provided—

(aa) immediately prior to commencing employment in the Insurance Commission, the Employee was employed in the service of—

The Commonwealth Government of Australia; or

Any other state of Australia; or

In a state body or statutory authority; and

(bb) the Employee's employment with the Public Service of Western Australia commenced no later than one week after ceasing previous employment.

(ii) The maximum break in employment permitted by subparagraph (i)(bb) of this sub-clause, may be varied by the approval of the Employer provided that where employment with the Insurance Commission commenced more than one week after ceasing the previous employment, the period in excess of one week does not exceed the amount of accrued and pro-rata annual leave paid out at the date the Employee ceased with the previous Employer.

35.—PART TIME WORK

(a) The parties agree to establish a process to identify ways in which to improve access to part-time work arrangements within the Insurance Commission and develop strategies to facilitate more flexible work arrangements.

(b) Definitions

(i) Permanent part-time employment is defined as regular and continuing employment for a minimum of 15.2 hours per week, and a maximum of 30.4 hours per week.

(ii) A part-time position shall be one which has discrete functions and responsibilities, but arranged in such a way as to be consistent with job redesign and multi-skilling.

(c) Part-time Agreement

(i) Each permanent part-time arrangement shall be confirmed in writing and shall include the agreed period of the arrangement, and the agreed hours of duty in accordance with sub-clause (e) of this clause.

(ii) The conversion of a full-time Employee to part-time employment can only be implemented with the written consent or by written request of the Employee. No Employee may be converted to part-time employment without the Employee's prior agreement.

(d) Hours of Duty

(i) Except as agreed between the Employer and the union, the parameters for the working of "ordinary hours" shall be 7.00am to 7.00pm.

(ii) The Employer shall specify in writing before a part-time Employee commences duty, the prescribed weekly and daily hours of duty for the officer including starting and finishing times each day ("ordinary hours").

(iii) The Employer shall give an officer one (1) month's notice of any proposed variation to the Employee's starting and finishing times and/or particular days worked, provided that the Employer shall not vary the officer's total weekly hours of duty without the Employee's prior written consent, a copy of which shall be sent to the Union.

(iv) There may be exceptional reasons for temporary variations to an Employee's working hours. Since the usual reasons for seeking part-time employment are because of other commitments, any variations must be agreed to in writing by the part-time Employee.

If agreement is reached to vary an Employee's ordinary working hours pursuant to this sub-clause—

(aa) Time worked to seven hours and thirty six minutes on any day is not to be regarded as overtime but an extension of the contract hours for that day and should be paid at the normal rate of pay.

(bb) Overtime shall not be payable unless the total time worked on any day exceeds 8 hours.

(cc) Additional days worked, up to a total of five days per week, are also regarded as an extension of the contract and should be paid at the normal rate.

(e) Salary and Annual Increments

(i) An Employee who is employed on a part-time basis shall be paid a proportion of the appropriate full-time salary dependent upon time worked. The salary shall be calculated in the following manner—

$$\frac{\text{Hours worked per fortnight}}{76} \times \frac{\text{Full-time fortnightly salary}}{1}$$

(ii) A part-time Employee shall be entitled to annual increments, subject to meeting the usual performance criteria.

(f) Leave

(i) A part-time Employee shall be entitled to the same leave and conditions prescribed in this Agreement for full-time officers.

(ii) Payment to an Employee proceeding on accrued annual leave or long service leave shall be calculated on a pro-rata basis having regard for any variations to the officer's ordinary working hours during the accrual period.

(iii) Sick leave and any other paid leave shall be paid at the current salary, but only for those hours or days that would normally have been worked had the Employee not been on such leave.

(g) Holidays

A part-time Employee shall be allowed the prescribed Public Holidays and Public Service Holidays without deduction of pay in respect of each holiday which is observed on a day ordinarily worked by the part-time Employee.

(h) Right of Reversion of Employee

(i) Where a full-time Employee is permitted, at the Employee's initiative, to work part-time for a period no greater than 12 months in the position the Employee occupied on a full-time basis before becoming part-time, that Employee has a right (upon written application) to revert to full-time hours in that position or a position of equal classification as soon as is deemed practicable by the Employer, but no later than the expiry of the agreed period.

The Employer will endeavour to place the employee in a position with similar duties, skills, experience and knowledge as the full-time position previously held by the employee. However, the parties recognise that this is not always possible.

(ii) A full-time Employee who is permitted at the Employee's initiative to work part-time for a period greater than 12 months in the position the Employee occupied on a full-time basis before becoming part-time, may apply to revert to full-time hours in that position but only as soon as is deemed practicable by the Employer.

This should not prevent the transfer of the Employee to another full-time position at a salary commensurable with that of the Employee's previous full-time position.

The Employer will endeavour to place the employee in a position with similar duties, skills, experience and knowledge as the full-time position previously held by the employee. However, the parties recognise that this is not always possible.

(iii) A part-time Employee who was previously a full-time Employee within the organization, who occupies a part-time position which was the initiative of management and who desires to revert to full-time employment will be required to seek a promotion or transfer to a full-time position by—

(aa) application for advertised vacancies; and/or

(bb) by notification in writing to the Employer of the Employee's desire to revert to full-time employment.

(iv) Nothing in paragraph (iii) of this sub clause shall prevent the Employer, with the written consent of the Employee, transferring that Employee to a full-time position at a level not less than the Employee's substantive level.

Prior to effecting the transfer of an Employee under paragraph (iii) of this subclause the Employer shall—

(aa) notify the Employee of the specific position to which the Employer proposes to transfer the Employee; and

(bb) obtain the written consent of the Employee to transfer to that position.

(i) The number or proportion of part-time Employees employed in departments shall not exceed any number or proportion that may be agreed in writing between the Union and the Employer.

36.—CHILD CARE ARRANGEMENTS

(a) During the term of this Agreement the parties agree that through the Joint Consultative Committee (JCC) a joint working party will be established to conduct an analysis on the issue of child care, to ascertain the requirements of Employees and make recommendations to the JCC as to the best way the Employer can assist Employees access to high quality child care.

37.—HOURS OF DUTY

The Employee's normal hours of work will be an average of either 38 or 40 hours per week. These hours are to be worked in accordance with the Insurance Commissions Flexible Working Hours Policy set out in Schedule E.

Employees wishing to change their choice of working hours during the term of this Agreement must obtain the written approval from the Employer.

38.—HIGHER DUTIES ALLOWANCE

(a) Where an Employee is directed by the Employer to act in an office which is classified higher than the Employee's own substantive position for five or more consecutive working days, that Employee will be entitled to a higher duties allowance.

(b) The allowance will be calculated by subtracting the Employee's salary from the salary he/she would receive if appointed to the acting position permanently.

(c) If an Employee does not perform all the duties and responsibilities of the position, or shares the duties with another Employee, the payment will be calculated on the proportion of duties performed by each Employee. Provided that the employee is informed prior to the commencement of the acting of the duties to be carried out, the responsibilities to be accepted and the allowance to be paid.

(d) Subject to satisfactory performance, any increments will be paid as if the Employee was appointed to the acting position permanently. All previous acting at an equivalent level or higher during the preceding eighteen months will aggregate as qualifying service for the purposes of achieving the increment.

(e) Where an Employee who has qualified for payment of a higher duties allowance is required to act in another position at a higher level than his/her own for periods of up to 10 working days without any break in acting service, the Employee shall be paid an allowance for such periods. The allowance would then be calculated based on the highest rate the Employee has been paid during the term of continuous acting, or at the rate applicable to the position in which the Employee is currently acting, whichever is the lesser.

(f) Where a higher duties allowance is being paid and the Employee proceeds on any period of normal annual leave, or any other approved leave of absence of not more than 4 weeks, the allowance continues to be paid during the period of such leave if the Employee—

(g) has been receiving an allowance for a continuous period of 12 months or more; or

(h) has not been receiving an allowance for 12 months and no other Employee acts in the position during his/her absence and he/she continues to act in the position on returning from leave.

(i) Where a higher duties allowance is being paid when an Employee proceeds on any period of annual leave in excess of the normal, or any other approved leave of absence of more than 4 weeks, the allowance ceases while on such leave, unless otherwise approved by the Managing Director.

39.—OVERTIME

(a) In this clause the following expressions shall have the following meaning—

"Prescribed hours of duty" means the Employee's normal working hours as prescribed in Clause 37.—Hours of Duty or written instruction issued out of that clause.

"Public holiday" means the days prescribed in Clause 26.—Public Holidays of this Agreement.

"Ordinary travelling time" means the time which an Employee would ordinarily spend in travelling by public transport once daily from the Employee's home to the Employee's usual headquarters and home again. It is the time elapsing between the time of departure from home and the official time of commencement of duty and the official time of cessation of duty and arrival at home. Where an Employee has a continuing approval to use a vehicle for official business, ordinary travelling time means the time spent in travelling by that vehicle from home to headquarters and home again each day.

"A day" shall mean from midnight to midnight.

(b) When and as often as it is necessary to overcome arrears of work or to meet pressure of business, any Employee may be required by the Employer to perform overtime duty at times other than the ordinary hours of attendance applicable to that Employee.

(c)(i) All work performed by an Employee whose hours of attendance are determined in accordance with sub-clause (a) of Clause 37.—Hours of Duty of this Agreement by direction of the Employer—

(aa) before or after the prescribed hours of duty on a weekend; and

(bb) on a Saturday, Sunday or public holiday, shall be classed as overtime and, subject to the provisions of this clause, shall be paid for at the hourly rate prescribed by paragraph (ii) of this sub-clause.

(ii) payment for overtime shall be calculated on an hourly basis in accordance with the following formula—

Weekdays—

For the first three hours on any week day—

$$\frac{\text{Fortnightly salary}}{76} \times \frac{3}{2}$$

After the first three hours on any one week day—

$$\frac{\text{Fortnightly salary}}{76} \times \frac{2}{1}$$

Saturdays—

For the first three hours on any Saturday—

$$\frac{\text{Fortnightly salary}}{76} \times \frac{3}{2}$$

After the first three hours or after 12.00 noon, whichever is the earlier, on any Saturday—

$$\frac{\text{Fortnightly salary}}{76} \times \frac{2}{1}$$

Sundays—

$$\frac{\text{Fortnightly salary}}{76} \times \frac{2}{1}$$

Public Holidays—

During prescribed hours of duty

$$\frac{\text{Fortnightly salary}}{76} \times \frac{3}{2}$$

in addition to the normal day's pay.

During hours outside of prescribed hours of duty—

$$\frac{\text{Fortnightly salary}}{76} \times \frac{5}{2}$$

(aa) For the purposes of this clause, fortnightly salary shall not include any district allowances, personal allowances, service allowances. Special allowances or higher duties allowance, unless otherwise approved by the Employer.

Provided that a special allowance or higher duties shall be included in "fortnightly salary" when overtime is worked on duties for which these allowances are specifically paid.

(iii) Subject to prior agreement in writing, time off in lieu of payment may be granted by the Employer. Such time off in lieu to be determined on an hourly basis by dividing the normal hourly rate of pay into the amount to which the Employee would otherwise have been entitled at the prescribed rate in accordance with paragraph (ii) of this sub-clause.

The Employee shall be required to clear accumulated time off in lieu within two months of the overtime being performed. If the Employer is unable to release the Employee to clear such leave, then the Employee shall be paid for the overtime worked.

Provided that by agreement between the Employer and the Employee, time off in lieu of overtime may be able to be accumulated beyond two months from the time the overtime is performed so as to be taken in conjunction with periods of leave.

(iv) Any commuted allowance and/or time off in lieu of overtime, other than that provided in paragraph (iii) of this sub-clause shall be only negotiated between the Employer and the Union.

(v) No claim for payment or time off in lieu under the provisions of this clause shall be allowed in respect of any day on which the additional time worked amounts to less than 30 minutes.

(vi) Where an Employee having received prior notice, is required to return to duty—

(aa) On a Saturday, Sunday or public holiday otherwise than during prescribed hours of duty the Employee shall be entitled to payment at the rate in accordance with paragraph (ii) of this sub-clause for a minimum period of three hours.

(bb) Before or after the prescribed hours of duty on a weekend the Employee shall be entitled to payment at the rate in accordance with paragraph (ii) of this sub-clause for a minimum period of one hour 30 minutes;

(cc) For the purposes of this paragraph, where an officer is required to return to duty more than once, each duty period shall stand alone in respect to the application of minimum period payment except where the second or subsequent return to duty is within any such minimum period.

(vii) The provisions of paragraph (vii) of this sub-clause shall not apply in cases where it is customary for an Employee to return to the Employee's place of employment to perform a specific job outside the officers prescribed hours of duty or where the overtime is continuous (subject to a meal break) with the completion or commencement of prescribed hours of duty.

(viii) When an Employee is directed to work overtime at a place other than the usual headquarters, and provided that place where the overtime is to be worked is situated in the area within a radius of 50 kilometres from the usual headquarters, and the time spent in travelling to and from that place is in excess of the time which an Employee should ordinarily spend in travelling to and from the usual headquarters, and provided such travel is undertaken on the same day as the overtime is worked, then such excess shall be deemed to form part of the overtime worked.

(ix) Except as provided in paragraph (ii) of sub-clause (e) and paragraph (ii) of sub-clause (a) of this clause when an Employee is directed to work overtime at a place other than the usual headquarters and provided that the place where the overtime is to be worked is situated outside the area within the radius of 50 kilometres from the usual headquarters and the time spent in travelling to and from that place is in excess of the time which an Employee would ordinarily spend in travelling to and from the usual headquarters, then the Employee shall be granted time off in lieu of such excess time spent in actual travel in accordance with sub-clause (f).

(x) Except as provided in paragraph (xii) of this sub-clause, payment for overtime, or the granting of time off in lieu of overtime or travelling time, shall not be approved in the following cases—

(aa) Employee's whose maximum salary or maximum salary and allowance in the nature of salary exceeds the gross annual equivalent to the salary paid from time to time in respect of Level 5 as contained in Clause 18.—Salary of this Agreement;

(bb) Employees whose work is not subject to close supervision;

(xi) Notwithstanding the provision of paragraph (ix) of this sub-clause, where from the nature of the duties required or from other relevant circumstances it appears just and reasonable, any such Employee as is referred to in that paragraph shall, with the special approval of the Employer be paid overtime or granted time off in lieu as prescribed by paragraph (ii) or paragraph (iii) respectively of this sub-clause and where in any such case the Employer declines to

give such special approval the matter may be referred to the Western Australian Industrial Relations Commission. When an Employee not subject to close supervision is directed by the Employer to carry out specific duties involving the working of overtime, and provided such overtime can be reasonably determined, then the Employee shall be entitled to payment or time off in lieu or overtime worked in accordance with paragraph (ii) or paragraph (iii) of this sub-clause.

(xii) (aa) Where an Employee performs overtime duty after the time at which the Employee's normal hours of duty end on one day and before the time at which the Employee's normal hours of duty are to commence on the next succeeding day which results in the Employee not being off duty between these times for a continuous period of not less than ten hours, the Employee is entitled to be absent from the duty without loss of salary from the time of ceasing overtime duty, until the Employee has been off duty for a period of ten hours;

(bb) Provided that where an Employee is required to return to or continue work without the break provided in subparagraph (aa) of this paragraph then the Employee shall be paid at double the ordinary rate until released from duty or until the Employee has had ten consecutive hours off duty without loss of salary for ordinary working time occurring during such absences;

(cc) the provisions of this paragraph shall not apply to Employees included in sub-clause (d) of this clause.

(xiii) Where an Employee is required to work a continuous period of overtime which extends past midnight into the succeeding day the time worked after midnight for the purpose of calculation of payment provided for in paragraph (ii) of this sub-clause.

(d)(i) For the purpose of this sub-clause—

"Standby" shall mean a written instruction to an Employee to remain at the Employee's normal hours of duty, and to perform certain designated tasks periodically or on a ad hoc basis. Such Employees shall be provided with appropriate facilities for sleeping if attendance is overnight, and other personal needs, where practicable.

Other than in extraordinary circumstances, officers shall not be required to perform more than two periods of standby in any rostered week.

This provision shall not replace normal overtime or shift work requirements.

"On Call" shall mean a written instruction to an Employee rostered to remain at the Employee's residence or to otherwise be immediately contactable by telephone or paging system outside the Employee's normal hours of duty in case of a call out requiring an immediate return to duty.

"Availability" shall mean a written instruction to an Employee to remain contactable, but not necessarily in immediate proximity to a telephone or paging system, outside the Employee's normal hours of duty and be available and in a fit state at all times for recall for duty.

"Availability" will not include situations in which Employees carry paging devices or make their telephone numbers available only in the event that they may be needed for casual contact or recall to work. Subject to paragraph (ix) of sub-clause (c) of this clause recall to work under such circumstances would constitute emergency duty in accordance with sub-clause (e) of this clause.

(ii) Except as otherwise agreed between the Employer and the union, an Employee who is required by the Employer 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

$$\text{Level 2 (minimum) weekly rate*} \times \frac{1}{38} \times \frac{38}{100}$$

On Call

$$\text{Level 2 (minimum) weekly rate*} \times \frac{1}{38} \times \frac{19}{100}$$

Availability

$$\text{Level 2 (minimum) weekly rate*} \times \frac{1}{38} \times \frac{19}{100} \times \frac{50}{100}$$

* As per Schedule A of this Agreement.

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 sub-clause (c) of this clause when the Employee is recalled to work.

(iii) Where an Employee is required to be "on call" or "availability" and the means of contact is to be by telephone the Employer shall—

(aa) Where the telephone is not already installed, pay the cost of such installation;

(bb) Where an Employee pays or contributes towards the payment of the rental of such telephone, pay the Employee 1/52nd of the annual rental paid by the Employee for each seven days or part thereof on which an Employee is rostered to be "on call" or "availability";

(iv) An Employee shall be reimbursed the cost of all telephone calls made on behalf of the Employer as a result of contact pursuant to paragraph (i) of this clause.

(v) Where the Employee rostered for on "on call" or "availability" is recalled for duty during the period for which the Employee is "out of hours contact" then the Employee shall receive payment for hours worked in accordance with paragraph (ii) of sub-clause (c) of this clause.

(vi) Time spent in travelling to and from the place of duty where an Employee rostered on "on call" or "availability" is actually recalled to duty, shall be included with actual duty performed for purposes of overtime payment.

(vii) Minimum payment provisions do not apply to an Employee rostered for "out of hours contact" duty.

(viii) An Employee in receipt of an "out of hours contact" allowance and who is recalled to duty shall not be regarded as having performed emergency duty in accordance with sub-clause (e) of this clause.

(ix) Employees subject to this clause shall, where practicable, be periodically absented from any requirement to hold themselves on "standby", "on call" or "availability."

(e) (i) (a) Where an Employee is called on duty to meet an emergency at a time when the Employee would not ordinarily have been on duty and no notice of such call was given prior to completion of usual duty on the last day of work prior to the day on which the Employee is called on duty, then, if called to duty—

(aa) on a Saturday, Sunday or public holiday otherwise than during the prescribed hours of duty the Employee shall be entitled to payment at the rate in accordance with paragraph (ii) of sub-clause (c) of this clause for a minimum period of three hours;

(bb) before or after the prescribed hours of duty on a weekend the Employee shall be entitled to payment at the rate in accordance with paragraph (ii) of sub-clause (c) of this clause for a minimum period of two hours 30 minutes;

(f) For the purpose of this sub-clause, where an Employee is recalled more than once, each period of emergency duty shall stand alone in respect to the application of the minimum period of payment, subject to paragraph (iii) of this sub-clause.

(ii) Time spent in travelling to and from the place of duty where the Employee is actually recalled to perform emergency duty shall be included with actual duty performed for purposes of overtime payment.

(iii) An Employee recalled to work to perform emergency duty shall not be obliged to work for the minimum period if the work is completed in less time, provided that an Employee called out more than once within any such minimum period shall be entitled to any further payment for the time worked within that minimum period.

(g) An Employee eligible for payment of overtime in accordance with paragraph (x) of sub-clause (c) of this clause, who is required to travel on official business outside of the Employee's normal working hours and away from the Employee's usual headquarters, shall be granted time off in lieu of such actual time spent in travelling at equivalent or ordinary rates on weekdays and at time and one half rates on Saturday, Sundays and public holidays, provided—

(i) Such travel is undertaken at the direction of the Employer.

(ii) Such travel shall not include—

(aa) time spent in travelling by an Employee on duty at a temporary headquarters to the Employee's home for weekends for the Employee's own convenience;

(bb) time spent in travelling by plane between the hours of 11.00pm and 6.00am;

(cc) time spent in travelling by train or coach between the hours of 11.00pm and 6.00am;

(dd) time spent in travelling by ship when meals and accommodation are provided;

(ee) time spent in travelling resulting from the permanent transfer or promotion of an Employee to a new location;

(ff) time in travelling in which an Employee is required by the Employer to drive, outside ordinary hours of duty, an Employers vehicle or to drive the Employee's own motor vehicle involving the payment of motor vehicle allowance but such time shall be deemed to be overtime and paid in accordance with paragraph (ii) of sub-clause (c) of this clause.

(iii) Time off in lieu will not be granted for periods of less than thirty minutes.

(iv) Where such travel is undertaken on a normal working day, time off in lieu is granted only for such time spent in travelling before and/or after the usual hours of duty, and where the circumstances of travel compel an Employee to travel during the Employee's usual lunch interval such additional travelling time is not to be taken into account in computing the number of hours of travelling time due.

(v) Where such travel is undertaken on a normal working day, time off in lieu is granted only for such time spent in travelling before and/or after the usual hours of duty which is in excess of the Employee's ordinary travelling time.

(vi) Except as provided in paragraph (ii) of this subclause, all time spent in actual travel on Saturdays, Sundays and public holidays provided in Clause 26.—Public Holidays of this Agreement, shall be deemed to be excess travelling time.

(h)(i) A break of 30 minutes, shall be made for meals between 11.30am and 2.30pm and between 5.00pm and 7.00pm when overtime duty is being performed. Except in the case of emergency, an Employee shall not be compelled to work more than five hours duty without a meal break. At the conclusion of a meal break the calculation of the five hours limit recommences.

(ii) An Employee required to work overtime who purchases a meal shall be reimbursed for each meal purchased at the rate prescribed for that meal in Schedule C to this Agreement.

Provided that the overtime worked when such a meal is purchased totals not less than two hours, such reimbursement shall be in addition to any payment for overtime to which the Employee is entitled.

(iii) If an Employee, having received prior notification of a requirement to work overtime, is no longer required, then the Employee shall be entitled, in addition to any other penalty, to reimbursement for a meal previously purchased.

40.—PAYOUT OF LEAVE

If the Employee applies to receive payments rather than taking periods of accrued long service leave such application may be approved by the Employer, subject to the following—

(a) 10 consecutive days leave must be taken in a calendar year for any application to be approved;

(b) payment in lieu of leave will not exceed the equivalent of 13 weeks long service leave in any one calendar year. However, applications to have greater amounts of leave paid out will be considered by the Employer where special circumstances exist;

(c) the payment will be at the substantive salary rate payable if the leave had been taken;

(d) the balance of the long service leave entitlement remaining after any payout must be taken within one year of the entitlement becoming due e.g. 13 weeks long service leave entitlement could be broken down to a 4-week payout and a 9-week period of long service leave.

41.—CONTRACT OF SERVICE

(a) Period of Probation

(i) Every new employee appointed to the Insurance Commission, unless being transferred or promoted from another Western Australian public sector agency, shall be on probation for a period of up to six months, unless otherwise determined by the Managing Director.

(ii) At any time during the period of probation the Managing Director may annul the appointment and terminate the services of the employee by the giving of one weeks notice or payment in lieu thereof and reasons provided to the employee in writing.

(iii) Prior to the expiry of the period of probation, the Managing Director shall have a report completed by the relevant manager or supervisor in respect to the employee's level of performance, efficiency and conduct, to be noted by the employee, and—

- annul the appointment; or
- confirm the permanent appointment, or
- extend the period of probation by up to six months, to a maximum period of probation of 12 months.

(b) Termination of Employment.

(i) An employee shall give the Managing Director written notice of intention to resign of not less than—

- one month, or
- such other period as specified in the Employee's contract of service, where applicable.

(ii) An employee who fails to give the required written notice forfeits the sum of $500, unless agreement is reached between the employee and the Managing Director for a shorter period of notice than that specified.

(iii) One months written notice shall be given by the employer to an officer whose services are no longer

required. Provided that the employer may pay the officer one months salary in lieu of said notice.

(iv) The employer may summarily dismiss an officer deemed guilty of gross misconduct or neglect of duty and the officer shall not be entitled to any notice or payment in lieu of notice.

42.—AVAILABILITY OF AGREEMENT

Every Employee shall be entitled to have access to a copy of this Agreement, which may include access through the Employers Intranet. This Agreement shall be kept in an easily accessible place in each department.

43.—TIME AND SALARIES RECORD

(a) The Employer shall keep or cause to be kept a time and salaries record showing—

(i) the name of each Employee;

(ii) the nature of the work performed;

(iii) the hours worked each day;

(iv) the salary, allowances and overtime paid to each Employee.

Any system of automatic recording by means of machines shall be deemed to comply with the provision to the extent of the information recorded.

(b)(i) An accredited representative of the Union upon giving reasonable notice to the Employer, may be granted access to records of its members. However, the Employer may restrict access to protect an employee's privacy.

(ii) The Union shall—

(aa) give prior notification to the Employer on when it proposes to inspect the records of its members;

(bb) not conduct interviews during normal working hours in circumstances which will result in the Employers business being unduly interrupted or otherwise hampered; and

(cc) treat with confidentiality any information obtained from time and salary records of its members.

(iii) The Employers office shall be deemed to be a convenient place for the purposes of inspecting records and if for any reason the time and salary record is not available when the duly accredited official of the Union calls to inspect it, the record will be made available for inspection at a mutually convenient time at the Employers office.

(iv) Where the Employer maintains a personal or other file on an Employee, the employee shall be entitled to examine all material maintained on that file and take photocopies during normal business hours subject to the employee not removing the file from the Human Resources Division.

44.—SIGNATURES OF PARTIES TO THE AGREEMENT

Signed for and on behalf of the—

CIVIL SERVICE ASSOCIATION of WESTERN AUSTRALIA INCORPORATED—

(Signed) D. ROBINSON

DAVE ROBINSON
BRANCH SECRETARY

DATE: 18/08/00

INSURANCE COMMISSION OF WESTERN AUSTRALIA

(Signed) V. EVANS

VIC EVANS
MANAGING DIRECTOR

DATE: 17/08/00

SCHEDULE A

INSURANCE COMMISSION
of WESTERN AUSTRALIA

SALARY SCHEDULE

Enterprise Bargaining Agreement
2000/2002 Salary Rates

		38 Hour Week			40 Hour Week		
Level		**1 Sept. 1999**	**1 Sept. 2000****	**1 Sept. 2001***	**1 Sept. 1999**	**1 Sept. 2000****	**1 Sept. 2001***
Level 1	P016-92%	$11,942	$12,300	$12,669	$12,539	$12,915	$13,303
	P016-96%	$12,461	$12,835	$13,220	$13,084	$13,477	$13,881
	L116	$12,981	$13,370	$13,772	$13,630	$14,039	$14,460
	P017-92%	$13,956	$14,375	$14,806	$14,654	$15,093	$15,546
	P017-96%	$14,563	$15,000	$15,450	$15,291	$15,750	$16,222
	L117	$15,169	$15,624	$16,093	$15,927	$16,405	$16,897
	P018-92%	$16,280	$16,768	$17,271	$17,094	$17,607	$18,135
	P018-96%	$16,987	$17,497	$18,022	$17,836	$18,371	$18,923
	L118	$17,695	$18,226	$18,773	$18,580	$19,137	$19,711
	P019-92%	$18,843	$19,408	$19,991	$19,785	$20,379	$20,990
	P019-96%	$19,663	$20,253	$20,860	$20,646	$21,265	$21,903
	L119	$20,482	$21,096	$21,729	$21,506	$22,151	$22,816
	P020-92%	$21,161	$21,795	$22,449	$22,219	$22,885	$23,572
	P020-96%	$22,082	$22,744	$23,426	$23,186	$23,881	$24,598
	L120	$23,003	$23,693	$24,404	$24,153	$24,878	$25,624
	P011-92%	$23,248	$23,946	$24,664	$24,411	$25,143	$25,897
	P011-96%	$24,258	$24,986	$25,736	$25,471	$26,235	$27,022
	TRAINEE	$15,282	$15,740	$16,213	$16,046	$16,527	$17,023
	TR 21& OVER	$18,923	$19,491	$20,075	$19,869	$20,465	$21,079
	L121	$25,270	$26,028	$26,809	$26,534	$27,330	$28,149
	L122	$26,047	$26,828	$27,633	$27,349	$28,170	$29,015
	L123	$26,823	$27,628	$28,457	$28,164	$29,009	$29,879
	L124	$27,597	$28,425	$29,278	$28,977	$29,846	$30,742
	L125	$28,372	$29,223	$30,100	$29,791	$30,684	$31,605
	L126	$29,151	$30,026	$30,926	$30,609	$31,527	$32,473
	L127	$30,045	$30,946	$31,875	$31,547	$32,494	$33,468
	L128	$30,662	$31,582	$32,529	$32,195	$33,161	$34,156
	L129	$31,578	$32,525	$33,501	$33,157	$34,152	$35,176
Level 2	L21	$32,672	$33,652	$34,662	$34,306	$35,335	$36,395
	L22	$33,511	$34,516	$35,552	$35,187	$36,242	$37,329
	L23	$34,394	$35,426	$36,489	$36,114	$37,197	$38,313
	L24	$35,327	$36,387	$37,478	$37,093	$38,206	$39,352
	L25	$36,303	$37,392	$38,514	$38,118	$39,262	$40,440
Level 3	L31	$37,642	$38,771	$39,934	$39,524	$40,710	$41,931
	L32	$38,686	$39,847	$41,042	$40,620	$41,839	$43,094
	L33	$39,764	$40,957	$42,186	$41,752	$43,005	$44,295
	L34	$40,868	$42,094	$43,357	$42,911	$44,199	$45,525
Level 4	L41	$42,386	$43,658	$44,967	$44,505	$45,840	$47,216
	L42	$43,575	$44,882	$46,229	$45,754	$47,126	$48,540
	L43	$44,796	$46,140	$47,524	$47,036	$48,447	$49,900
Level 5	L51	$47,151	$48,566	$50,022	$49,509	$50,994	$52,524
	L52	$48,740	$50,202	$51,708	$51,177	$52,712	$54,294
	L53	$50,394	$51,906	$53,463	$52,914	$54,501	$56,136
	L54	$52,111	$53,674	$55,285	$54,717	$56,358	$58,049

* Based on a maximum 3% Increase

** Based on a Maximum 3% increase and to be effective from 1 September 2000 or date of registration, whichever is the latter.

SCHEDULE B

INSURANCE COMMISSION of WESTERN AUSTRALIA

PRODUCTIVITY MEASUREMENT MATRIX 1999/2000

Key Operational Objective	Key	Productivity Measure	Unit	Result	Result	-2	-1	0	1	2	3	4	5	(b) Weight	Final Audited	(c) Rating	(d) Weighted
				1997/98	*1998/99*			Base Line			1999/2000 Target				Result		Rating
Business Process	1	**CORPORATE** Total direct Administration expenses equal to or less than Budget	$ 0	26,084	29,463	36,041	35,591	35,141	34,691	34,241	33,791 (Budget)	33,341	32,891	1.5			0
Risk Management	2	Lost time injury incidence rate compared with target	Rate	0.673	0	1.66	1.33	1	0.66	0.33	0	0	0	1.5			0
People	3	Average Employee Sick Leave Days Lost not supported by a Medical Certificate	Avg. Days	n/a	1.6	2	1.8	1.6	1.5	1.4	1.3	1.2	1.1	1.25			0
People	4	PMDS Participation Rates,Total Staff completing full cycle.	% of Staff	50	83.7	77.5	80	82.5	85	87.5	90	92.5	95	1.5			0
Business Process	5	**MVPI** Number of Claims' Closures	Claims	6,225	6,020	5,391	5,461	5,531	5,601	5,671	5,741	5,811	5,881	1			0
Customer Service	6	Average number of years to	Years	4	4.02	4.97	4.87	4.77	4.67	4.57	4.47	4.37	4.27	0.75			0
Customer Service	7	**RISKCOVER** Extent to which agencies rate RiskCover's services as Very Good / Excellent (External Survey)	%	45	60	58.4	59.2	60	60.8	61.6	62.4	63.2	64	1.5			0
Business Process	8	Average number of months to claim payment for Motor Vehicle and F & G	Months	2.37	2	2.76	2.73	2.7	2.67	2.64	2.61	2.58	2.55	0.25			0
Business Process	9	Average number of years to claim payment for Workers' Compensation insurance	Years	2.36	2.4	2.46	2.43	2.4	2.37	2.34	2.31	2.28	2.25	0.75			0
													Weighting Total	10		Weighted Ratings Total	0

Performance Index Weighted Ratings Total divided by Weighting Total

Performance Index 0

SCHEDULE C

INSURANCE COMMISSION
of WESTERN AUSTRALIA

OVERTIME MEAL ALLOWANCE RATES

OVERTIME

Meals Allowance

Breakfast	$ 6.25	per meal
Lunch	$ 7.70	per meal
Evening Meal	$ 9.25	per meal
Supper	$ 6.25	per meal

The rates prescribed in this schedule shall be subject to any amendments issued from time to time by the Department of Productivity and Labour Relations in Circulars to Departments and Authorities.

SCHEDULE D

INSURANCE COMMISSION
of WESTERN AUSTRALIA

GRIEVANCE RESOLUTION POLICY/PROCEDURE

Policy 901

Employee Grievance Resolution

All employees have a right to express concerns about issues affecting them in their work without the fear of victimisation in the workplace.

Our employee grievance procedure has been developed to safeguard this right, while working to restore and promote an effective, safe working environment and positive relationship between employees.

The Insurance Commission of Western Australia is committed to providing a work environment where all employees are treated fairly and have their work related grievances dealt with professionally, sensitively and confidentially.

Work related grievances include, but are not limited to—

- problems with work practices;
- not being treated equitably;
- difficulties working with a manager or another employee.

The Insurance Commission of Western Australia supports the employee's right to have work related grievances dealt with fairly and promptly to address the employee's concerns and to minimise disruption to the work place. The utmost care will be taken to handle grievances impartially and confidentially.

Grievances are referred initially to the relevant Manager or Supervisor for informal resolution. It is expected that most grievances will be resolved at this early stage. However, if the grievance is not resolved, the matter progresses to formal methods of resolution.

Where there are formal appeal processes or legislative requirements, grievances will be dealt with according to the relevant provisions.

To ensure that all grievances are resolved equitably the following requirements must be complied with—

- processes are documented, equitable,
- applied consistently and accessible to all employees of the Insurance Commission;
- the process is not subject to unnecessary delays;
- lodgement of a grievance must not result in unfair treatment of the complainant;
- decisions and processes embody the principles of natural justice;
- decisions are documented and capable of review; and
- appropriate confidentiality is observed

DEFINITIONS

Grievance

A grievance is a question or concern about any matter which affects the employee in performing their work or with the relationship between the employer and the employee. These matters may include issues of policy, working conditions, procedure or staff matters.

Complainant

The complainant is the person with the grievance.

Respondent

The respondent is the person whom the complainant has a grievance with.

Manager or Supervisor

An employee's Manager or Supervisor is the person with the day to day responsibility for the management of the employee.

Contact Officer

Contact Officers have been appointed and trained to listen, advise and assist complainants resolve their grievance in accordance with these guidelines. It is not the role of the Contact Officer to mediate grievances.

Good Faith

Good faith means that the employee lodging the grievance is not motivated by ill-will or malice towards the person against whom the complaint is made.

Natural Justice

Natural justice essentially means a "fair go" all round. The rules for fair play include;

- Decision makers must act fairly and without bias.
- A person should not be judge in his or her own cause.
- All parties to the matter should have the opportunity to put their case and all relevant arguments considered before a decision is made.
- All persons need to be informed of the basis of a decision, where that decision affects them.

PRINCIPLES OF RESOLVING GRIEVANCES

The principles of natural justice must be applied to the resolution of all employee grievances.

- The rights of all parties involved in the grievance resolution process must be respected.
- All grievances will be dealt with quickly and fairly.
- An employee raising a grievance shall do so without prejudice and in good faith.
- Any grievance made against an employee through this grievance process shall be made known to that employee.

At the formal stage, an employee may have a support person of their choice present.

- Neither party shall knowingly take any action which may jeopardise the successful operation of these procedures.
- To facilitate the resolution of grievances, it is expected that no stoppage of work or other bans or limitations on the performance of work, shall occur whilst the negotiating and conciliation process is being followed.
- *Confidentiality must be maintained at all times in the resolution of a grievance.*

GUIDELINES FOR RESOLVING GRIEVANCES INFORMALLY

The following Guidelines outline a process to assist with the informal resolution of grievances.

Few people find it easy to lodge a formal grievance and doing so is an indication of the importance of the matter to them.

Confidentiality must be maintained at all times. All parties involved must be treated according to the principles of natural justice and according to the principles of grievance resolution as outlined in this Policy. Decisions should not be made until all of the facts have been established.

Arrange Meeting

A meeting should be arranged within two working days after the grievance has been raised.

Confidentiality

An employee should be advised—

- that confidentiality will be maintained by limiting the involvement to only those with a need to know, unless the safety or wellbeing of other people is endangered, and that this will be discussed with them.
- the matter must remain confidential as breaches of confidentiality may cause disruptive rumours, misunderstandings or leave employees liable to civil proceedings.

Determine the Facts of the Grievance

An employee should be—

- Asked to describe the grievance as clearly as possible.
- Asked to provide any documentation they may have on the matter.
- Asked to clarify the facts of the grievance.
- Asked for specific examples and instances.
- Asked for names of people who may be able to substantiate the grievance.

Discuss and Develop Options

If necessary, advice can be sought from the Human Resources Division.

- Ensure the critical issues of the grievance have been identified.
- Discuss and develop as many options as possible that will lead to a resolution of the grievance. (This may also include the option of no further action.)
- Discuss the possible outcomes of each of the options.
- Allow time to consider the options and outcomes fully.

If the grievance is not resolved with informal resolution then it will progress to formal resolution procedures.

Resolution

Informal resolution of grievances should take place within five working days of the first meeting date unless there are exceptional circumstances which delay the process.

These circumstances will be made known to all parties.

Records

Personal or diary notes should be retained but should be kept in a secure place and not be available to anyone else for formal use with due regard to the *Freedom of Information Act 1992*.

Information on follow up action, e.g. training courses or counselling is to be placed on the relevant Performance Management and Development System file but should not identify the nature of the grievance or personal details relating to the grievance.

GUIDELINES FOR RESOLVING GRIEVANCES FORMALLY

If the grievance is not resolved at the conclusion of the informal resolution process, it proceeds to the formal resolution process.

In general, an unresolved grievance should be put in writing to the appropriate Divisional Manager in the first instance.

Few people find it easy to lodge a formal grievance and doing so is an indication of the importance of the matter to them.

Confidentiality must be maintained at all times. All parties involved must be treated according to the principles of natural justice and according to the principles of grievance resolution as outlined in this Policy. Decisions should not be made until all of the facts have been established.

Step 1 Arrange a Meeting

Within two working days of receiving the grievance in writing, a meeting should be arranged.

- An employee may have a support person of their choice present if they wish. This may be a Contact Officer, work colleague or a union representative.
- Review the written grievance. Clarify the written grievance where necessary. Discuss what has been done already to resolve the grievance.
- Do not discuss the matter with other people who do not have a legitimate role in the resolution process. This is to ensure natural justice for all involved.

Step 2 Meet with the Respondent (if any)

If the grievance relates to another person, discuss the grievance with them and give them an opportunity to respond.

- Meet with the respondent as soon as possible.
- The aim is to resolve the grievance and the discussion is not a disciplinary matter (at this stage) nor will any decision be made until all facts are known. All employees have the right to raise grievances through this procedure.
- Advise the respondent that they may have a support person present if they wish. (Contact Officer, work colleague or union representative)
- The nature of the grievance should be outlined with details as provided by the employee.
- If the written grievance contains information not directly related to the respondent, the respondent must only be provided excerpts from the written complaint. Only give information which relates to that person.
- Allow the respondent time to think about their response. When faced with a grievance against them, most people become defensive and angry. Do not necessarily expect a clear and well thought out response immediately.
- If they require time, ask the respondent to come back within a specified time period to discuss their response or to provide a written response.
- If the response is verbal, take notes and make sure the respondent agrees with what is written. They should sign the documentation to indicate agreement.

Remind the respondent about confidentiality.

Step 3 Seeking Assistance

- Having heard the grievance and spoken to other parties involved, a Manager or Supervisor may require information about policies, practices, awards or particular technical operations.
- If necessary, advice can be sought from the Human Resources Division.
- It is not necessary to disclose the names or particulars of the employees involved when seeking advice.

Step 4 Achieving A Resolution

- For some grievances it may be appropriate to have a meeting with others involved in the grievance to discuss the resolution (e.g. policy and practice interpretation, poor communication between the parties). Everyone involved in the meeting should be clear on the purpose and desired outcomes of the meeting.
- Try to achieve a resolution which is acceptable to all involved.
- If the complainant and respondent work closely together, work out a contingency plan for their being able to continue working without disruption while the resolution process is in progress. Be very wary of moving any of the parties out of the situation, even temporarily, as it may be perceived as a form of punishment or reward.
- The complainant and respondent (if applicable) should be informed of the resolution or the decision on the appropriate course of action. If part of the resolution is disciplinary action or performance management for a particular person, confidentiality by all involved is essential. Disciplinary action should be in accordance with Insurance Commission's procedures for Performance Management and Discipline.
- Monitor the implementation of outcomes.

Records

Documentation relating to a formal grievance must be kept secure and should include—

- details of the grievance;
- action taken in investigating the matters;
- records of any interviews;
- facts established;
- recommendations for action;
- the decision of the officer responsible for the relevant stage of the process;
- suggested reply to the complainant;
- written response from the complainant on the outcome of the process;
- any correspondence that may result from further action (such as an approach to the Public Sector Standards Commission).

If Resolution is Achieved

Resolution of formal grievances should occur within 10 working days of the first meeting date unless there are valid circumstances which prevent resolution. These circumstances will be made known to all parties.

When a formal grievance is resolved—which may be at any stage of the process—the following occurs—

- the employee indicates in writing their acceptance of the decision of the employer. This may be a signature confirming acceptance on the bottom of the outcomes.
- The original complaint and formal actions and agreed outcomes can then be forwarded to the Manager Human Resources Division for confidential and secure storage.

If Resolution is Not Achieved

Where the grievance is not resolved, the action taken should be documented by the officer responsible for that stage of the process and reasons given.

The employee is advised of the decision and is given the reasons in writing.

Withdrawal of a Formal Grievance

An employee may withdraw a formal grievance at any time. Formal grievances must be withdrawn in writing and forwarded to the person responsible for that stage of the process.

All parties involved will be advised that the grievance has been formally withdrawn.

Resolving Grievances Outside of the Insurance Commission

If the employee is not satisfied with the outcome of the process they may use appropriate outside agencies.

This may include putting their case to—

- Public Sector Standards Commission
- Equal Opportunity Commission
- The Union
- The Parliamentary Commissioner for Administrative Investigations (Ombudsman)
- The Western Australian Industrial Relations Commission

ROLES AND RESPONSIBILITIES

Employees

It is the responsibility of each employee to—

- Follow the Grievance Procedures where a work related grievance is affecting their work performance;
- Co-operate and participate in attempting to resolve the grievance;
- Support agreed actions from the resolution process.

Managers and Supervisors

It is the role and responsibility of all Managers and Supervisors to ensure that—

- Employees are advised of the process for grievance resolution;
- Human resource management practices are maintained at all times;
- Grievances are dealt with professionally, sensitively, confidentially and where possible, within the recommended time frames;
- Where grievances cannot be resolved the Divisional Manager decides on the course of action and advises the employee of the outcome.

Contact Officers

Contact Officers have delegated written authority from the Managing Director of the Insurance Commission to listen to, advise and assist complainants in relation to harassment or grievances in the workplace.

In essence the role of a Contact Officer is to—

- Provide general information and advice on harassment and grievance resolution procedures;
- Listen to the complainant;
- Provide information on possible alternative courses of action for the complainant;
- Support or accompany the complainant in his/her endeavours to resolve the complaint with the appropriate people if the need arises;
- Support and empower employees to help themselves rather than intervening and resolve the conflict for the employee;
- Advise the complainant that confidentiality is guaranteed unless the safety or wellbeing of others is endangered. In these circumstances the matter must be referred to the Manager Human Resources Division by law; and
- Protect the interests and rights of both parties

CHECKLIST FOR MANAGERS AND SUPERVISORS

- Remember the principles of natural justice especially the right of reply and to be fair and impartial with all concerned at all times.
- Explain to employees the processes available to them, their rights, the requirement to maintain confidentiality, and what the procedure will be while you deal with their grievance.
- Don't forget the right for employees to have present a support person at the formal resolution stage. Don't forget to offer counselling if you think that it is needed.
- Do you need advice? Don't hesitate to seek help from your Human Resources Division.
- Select an appropriate venue for interviews.
- Prepare your questions: Who, Where, What, When, Why? Identify the issues and get all the facts you can so that you can make an informed decision.
- Don't forget to consult with employee(s) about a desirable outcome. Help them to take responsibility for solving their problems.
- Keep comprehensive, objective and confidential records.

CHECKLIST FOR EMPLOYEES

- Remember the principles of natural justice.
- Ensure your grievance is work related and is raised in good faith and without prejudice.
- Make sure you understand the need for confidentiality at every stage of the process to protect the rights of all involved.
- Contact Officers and the Human Resources Division are available to advise you on a confidential basis.
- Try and have all of your facts prepared, i.e.;

  Who?
  Where?
  What?
  When?
  Why?
- What is the critical issue in your opinion?

- Informal resolutions are the desired outcome for all grievances.
- Keep written records, personal or diary notes.
- Think about some options for solutions rather than just raising a grievance.

SCHEDULE E

INSURANCE COMMISSION
of WESTERN AUSTRALIA

FLEXIBLE WORKING HOURS POLICY

Policy 306

Flexible Working Hours

The Insurance commission will adopt a flexible working hours policy to—

i. Enhance customer service;
ii. Meet the operational needs of the organisation; and
iii. Recognise Employee's family responsibilities enabling them to better balance their work and family commitments through the opportunity of flexibility in working hours.

Definitions

Flexible working hours means that Employees have the opportunity to choose their hours of work with some flexibility, subject to the Flexible Working Hours Policy and the terms and conditions of the Workplace Agreement or Enterprise Bargaining Agreement.

A settlement period for the benefit of this Policy is four weeks.

Hours of Duty

Employees may agree with their supervisor their start and finish times on a day to day basis. A minimum of 30 minutes must be taken each day for lunch.

Recording Attendance

All employee attendance at work must be recorded on TARDIS to ensure appropriate timekeeping and compliance with salary and audit requirements. All absences from the workplace for non work-related matters must be recorded on TARDIS.

Responsibilities

Flexible working hours can be beneficial to both the Insurance Commission and the individual employee and is essentially an arrangement of trust.

The Flexible Working Hours Policy should be employed and managed in the context of the—

- responsibilities of the individual employee with regard to the performance if their job and their contribution to the work team;
- operational needs of the work team and the Insurance Commission;
- service requirements of both our internal and external customers; and
- occupational safety and health, corporate security, building and computer access policies and guidelines.

Credit Hours

Employees may accumulate credit hours—

- to meet short term operational requirements; and/or
- for use at an agreed time in the future.

Employees should not accumulate credit hours in excess of their elected normal weekly hours, ie 40 hours or 38 hours, for each settlement period, without the approval of their supervisor.

Hours worked in excess of those stated without supervisor approval will not be accumulated by TARDIS.

Subject to the above, any hours worked in excess of their elected normal weekly hours at the end of a settlement period, will be paid in accordance with the relevant Agreement following the Managing Directors approval.

Deficit Hours

Employees are permitted to have deficit hours at the end of any settlement period, however an employee shall be required to work the additional hours required to break even by the end of the following settlement period.

An employee may seek approval from the supervisor to have all or part of the deficit hours deducted from their pay in the next available pay period.

Extended Leave

Employees proceeding on extended leave eg—

- Parental Leave
- Leave without Pay
- Long Service Leave/Extended Annual Leave

are required to achieve a zero balance in Flexi hours prior to commencing such leave.

Termination of Employment

When an employee ceases employment with the Insurance Commission, eg. retires, resigns, is dismissed, is redeployed or accepts voluntary severance, TARDIS hours are to be managed to a zero balance by the last day of employment.

An amount equivalent to any deficit hours as at termination date will be deducted from the termination payment.

General Managers may approve the payment of credit hours not able to be cleared by the termination date.

Overtime

All overtime is to be authorised in advance by the relevant General Manager. Where an employee is required to work overtime to meet an Insurance Commission priority, then overtime rates in accordance with any existing Workplace Agreement or Enterprise Bargaining Agreement will be paid.

Hours of overtime worked will not form part of the flexible working hours credit.

Managing Directors Prerogative

The option of flexible working hours may be suspended or withdrawn by the Managing Director at any time if an employee breaches this Policy, is guilty of a breach of discipline; or it is not operationally convenient for the Insurance Commission to provide flexible working hours.

Breaches of this Policy may be viewed as misconduct or gross misconduct in accordance with the Insurance Commissions Disciplinary Policy and Procedure.

READS RIGGERS AND ERECTORS/BLPPU AND THE CMETU COLLECTIVE AGREEMENT 2000. No. AG 209 of 2000.

2000 WAIRC 00608

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	THE WESTERN AUSTRALIAN BUILDERS' LABOURERS, PAINTERS & PLASTERERS UNION OF WORKERS V DARRELL JAMES READ AND JULIE ANNE READ TRADING AS READS RIGGERS & ERECTORS
CORAM	CHIEF COMMISSIONER W S COLEMAN
DELIVERED	MONDAY, 11 SEPTEMBER 2000
FILE NO.	AG 209/2000

Result	Agreement registered
Representation	
Applicant	Mr P Joyce on behalf of the Union
Respondent	No appearance

Order.

HAVING heard Mr P Joyce on behalf of The Western Australian Builders' Labourers, Painters & Plasterers Union of Workers and there being no appearance by the Respondent

the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Reads Riggers and Erectors/BLPPU Collective Agreement 2000 in the terms of the following schedule be registered on the 11th day of September, 2000.

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

1.—TITLE

This agreement shall be known as the Reads Riggers & Erectors/ BLPPU and the CMETU Collective Agreement 2000.

2.—ARRANGEMENT

	Clause No.
Title	1
Arrangement	2
Parties and Persons Bound	3
Application	4
Relationship to Parent Award	5
Period of Operation	6
Classification Structures & Rates of Pay	7
Industry Standards	8
Sick Leave	9
Negotiation of a Subsequent Agreement	10
Application of Project Agreements	11
Fares and Travelling Allowance	12
Seniority	13
All In Payments	14
Pyramid Sub-Contracting	15
Dispute Settlement Procedure	16
Safety Dispute Resolution	17
Amenities	18
Training and Related Matters	19
Drug & Alcohol, Safety & Rehabilitation Program	20
Clothing & Safety Footwear	21
Income Protection	22
Accident Pay	23
Union Membership	24
Y2K	25
Signatories to the Agreement	26
Appendix A—Drug & Alcohol, Safety and Rehabilitation	
Appendix B—Site Allowance	

3.—PARTIES AND PERSONS BOUND

This agreement shall be binding on Darren James Read and Julie Anne Read trading as Reads Riggers & Erectors (hereinafter referred to as "the company"), the Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and the Construction Mining Energy Timberyards Sawmills and Woodworkers Union of Australia—WA Branch (hereinafter referred to as "the unions") and all employees of the company eligible to be members of the unions.

4.—APPLICATION

This agreement shall apply to all employees of the company engaged on work in or in connection with construction, alteration, maintenance, repair or demolition of buildings or other structures of any kind whatsoever where the principal contract has an informal or formal agreement with the Unions.

This agreement shall apply in Western Australia only. There are approximately 5 employees covered by this agreement.

5.—RELATIONSHIP TO PARENT AWARD

1. This agreement is supplementary to, and shall be read and interpreted wholly in conjunction with, the Building Trades (Construction) Award 1987, Award No. R14 of 1978 (hereinafter referred to as "the award").

2. In the event of any inconsistency between the award and an express provision of this agreement, the terms of this agreement shall prevail to the extent of such inconsistency, unless the express provision of the agreement provides otherwise.

6.—PERIOD OF OPERATION

This agreement shall come into force from the first pay period commencing on or after November 1st 1999 and shall remain in force until the 1st of November, 2002.

7.—CLASSIFICATION STRUCTURE & RATES OF PAY

1. All employees working under this agreement shall be paid according to the wage rates set out below.

2. Wage Rates (per hour at ordinary time)

	Previous EBA Rate Hourly Rate $	1st November 1999 Hourly Rate $	1st November 2000 Hourly Rate $	1st November 2001 Hourly Rate $
Labourer Group 1	17.15	18.01	18.91	19.86
Labourer Group 2	16.56	17.39	18.26	19.17
Labourer Group 3	16.12	16.93	17.78	18.67
Plaster, Fixer	17.82	18.71	19.65	20.63
Painter, Glazier	17.42	18.29	19.20	20.16
Signwriter	17.80	18.69	19.62	20.63
Carpenter/Roofer	17.93	18.85	19.79	20.78
Bricklayer	17.75	18.63	19.61	20.59
Refractory Bricklayer	20.38	21.40	22.47	25.59
Stonemason	17.93	18.82	19.76	20.75
Rooftiler	17.62	18.50	19.43	20.40
Marker/Setter Out	18.46	19.38	20.35	21.37
Special Class T	18.69	19.62	20.61	21.64

APPRENTICE RATES

	Previous EBA Rate Hourly Rate $	1st November 1999 Hourly Rate $	1st November 2000 Hourly Rate $	1st November 2001 Hourly Rate $
Plasterer, Fixer				
Year 1	7.48	7.86	8.25	8.66
Year 2 (1/3)	9.81	10.29	10.81	11.35
Year 3 (2/3)	13.37	14.03	14.74	15.47
Year 4 (3/3)	15.69	16.46	17.29	18.15
Painter. Glazier				
Year 1 (.5/3/5)	7.32	7.68	8.06	8.47
Year 2 (1/3), (1.5/3.5)	9.58	10.06	10.56	11.09
Year 3 (2/3), (2.5/3.5)	13.06	13.72	14.40	15.12
Year 4 (3/3), (3.5/3.5)	15.33	16.10	16.90	17.74
Signwriter				
Year 1 (.5/3.5)	7.48	7.85	8.24	8.66
Year 2 (1/3, 1.5/3.5)	9.78	10.28	10.79	11.35
Year 3 (2/3. 2.5/3.5)	13.35	14.02	14.72	15.47
Year 4 (3/3, 3/5/3.5)	15.66	16.45	17.27	18.15
Carpenter/Roofer				
Year 1	7.54	7.92	8.31	8.73
Year 2 (1/3)	9.86	10.37	10.88	11.43
Year 3 (2/3)	13.45	14.14	14.84	15.59
Year 4 (3/3)	15.78	16.59	17.42	18.29
Bricklayer				
Year 1	7.46	7.82	8.24	8.65
Year 2 (1/3)	9.76	10.25	10.79	11.32
Year 3 (2/3)	13.31	13.97	14.71	15.44
Year 4 (3/3)	15.62	16.39	17.26	18.12
Stonemason				
Year 1	7.54	7.92	8.31	8.73
Year 2 (1/3)	9.86	10.37	10.88	11.43
Year 3 (2/3)	13.45	14.14	14.84	15.59
Year 4 (3/3)	15.78	16.59	17.42	18.29
Rooftiler				
6 months	10.04	10.54	11.07	11.62
2nd 6 months	11.04	11.59	12.17	12.78
Year 2	12.90	13.55	14.23	14.94
Year 3	15.14	15.90	16.70	17.54

3. All expense related allowances not specifically mentioned in this agreement will be paid as per the award as varied from time to time.

4. Site allowances relating to particular sites shall be paid in accordance with Appendix B of this Agreement.

5. An additional payment will be made to compensate for the impact of the Goods and Services Tax on the Consumer Price Index. In the circumstance that the CPI limit below is exceeded the appropriate additional payment will be made to

the wage rates. The CPI figure for the applicable dates will be the official figure released by the ABS for the preceding year.

Date	CPI Limit	Additional Payment
June 2001	5%	1% (paid 1/9/2001)
June 2001	6%	2% (paid 1/9/2001)
June 2002	5%	1% (paid 1/9/2002)
June 2002	6%	2% (paid 1/9/2002)

8.—INDUSTRY STANDARDS

Redundancy

The company shall increase redundancy contributions on behalf of each employee to the following sums on a weekly basis—

Rate on signing	$50
Rate as of 1/05/2001	$60

Superannuation

(i) The Company will make a payment of $75 per week per employee or the percentage rate that is prescribed under the Superannuation Guarantee Charge, whichever is the greater. On 1st July 2002 the Company will make a payment of $90 per week per employee.

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

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

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

In the event that the employee and the Company reach an agreement pursuant to section 49C(2)(d) of the Act to change the complying superannuation fund or scheme the Company will, within seven days of the employee and the Company reaching such an agreement, advise the Union in writing of the agreement. The employer 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.

9.—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.

(c) Where the Company has signed a previous Agreement with the Union that also allowed for the conversion to cash payment on termination for accrued sick leave, that accrued sick leave will be treated as if is accrued under this agreement.

(d) Sick leave shall accrue, for the purposes of this clause, at the rate of one day at the beginning of each of the first ten calendar months of each year.

(e) Employees shall have the option of converting to a cash payment all sick leave entitlements over 5 days. Payment shall be made on the last pay period prior to the Christmas closedown.

10.—NEGOTIATION OF A SUBSEQUENT AGREEMENT

The parties agree to commence negotiations for a new collective agreement to succeed this agreement at least 3 months before the nominal expiry date. The parties intend to conclude these negotiations prior to the nominal expiry date. These negotiations shall be conducted on a collective basis between all of the parties with the negotiated outcome being subject to approval of a vote of the employees collectively.

11.—APPLICATION OF PROJECT AGREEMENTS

1. This agreement shall apply to all persons employed in the employer's business and every part thereof throughout Western Australia until **1st November 2002** except where the company commences work on a project where a site agreement to which the union is a party exists that provides for higher rates of pay and conditions.

2. The conditions contained in any such site agreement will take precedence over this agreement for the duration of the project.

12.—FARES AND TRAVELLING ALLOWANCE

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.

13.—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 Company 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 16—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.

14.—ALL IN PAYMENTS

1. All-in payments to employees will not be made. All-in payments are defined as an hourly rate or piece work rate which is meant to cover wages and all allowances, such as annual leave, sick leave, etc., on which tax is being paid using the Prescribed Payments System.

2. It is agreed that where a breach of this clause is discovered, the employer shall continue paying the "all-in" rate as the employees hourly rate, but shall pay all award and other entitlements on top of this amount, back-dated to the commencement of the all-in rate arrangement. The company shall not be entitled to offset any amount in excess of the ordinary hourly rate against any other entitlement in this agreement.

3. This clause shall not be applied to prevent the employer subletting specialised work outside of the normal scope of work which the employer performs. The union shall be notified when specialist sub-contractors are to be engaged.

15.—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.

16.—DISPUTE SETTLEMENT PROCEDURE

1. Disputes over any work related or industrial matter should be dealt with as close to its source as possible.

2. An employee or the union delegate should initially submit any work related grievance and/or industrial matter to the site foreperson, supervisor or other appropriate site representative of the company.

3. If the matter remains unresolved the union delegate may then submit the matter to the appropriate senior management person.

4. If still not resolved the delegate shall refer the matter to an appropriate official of the union, who shall discuss the matter with the nominated representative of the employer.

5. Whilst the above procedures are being followed work should continue as normal.

6. This procedure is to be followed in good faith and without unreasonable delay by any party.

7. Should the matter remain unresolved it shall be dealt with in one of the following ways as agreed to between the parties—

- referred to the Western Australian Industrial Relations Commission for conciliation and if required arbitration. The Commissions decision will be accepted by all parties subject to legal rights of appeal; or
- referred to a disputes board for determination; or
- referred to a private arbitrator agreed to between the parties, for determination.

8. This dispute settlement procedure does not apply to health and safety issues.

17.—SAFETY DISPUTE RESOLUTION

1. The parties to this agreement are committed to the safe operation of plant and equipment, to the observance of safe working practices, and the provision by the employer and correct use of all personal protective equipment. The company recognises its responsibilities to provide a safe and healthy workplace.

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 safety officer or workers' safety representative to be dealt with in accordance with the following procedures—

(i) Where any employee becomes aware of an unsafe situation, that employee will immediately notify the company safety officer or the workers' safety representative.

(ii) The company safety officer and the workers' safety representative will take immediate action to have the unsafe situation rectified.

(iii) Should the company safety officer consider that no safety precautions are necessary, he/she will notify the workers' safety representative accordingly as soon as possible.

(iv) While there is disagreement on the ruling of the company safety officer, the company safety officer will arrange for the immediate transfer of all employees from the disputed area.

(v) Should the company safety officer be of the opinion that no action is necessary and the worker's safety representative disagrees, an appropriate inspector from Worksafe/Workcover will be requested to undertake an inspection of the disputed area for the purpose of resolving any such matter.

(vi) If disagreement still exists the chief inspector or his/her nominee will be called in to assist in the resolution of the dispute.

(vii) If no agreement can be reached between the parties the matter will be dealt with in accordance with the dispute resolution procedure of this agreement.

(viii) 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.

(ix) 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.

18.—AMENITIES

1. The parties agree that it is the responsibility of the company to ensure that the amenities prescribed by the Award are provided as a minimum. Where, however, that standard is not maintained due to an action or event beyond the control of the company, the union agrees that the company should be allowed reasonable time in which to rectify the problem. If the company acts promptly to rectify the problem, there should be no interruption to work from industrial stoppages, bans and limitations.

2. In all instances, the following procedure shall be observed—

3. A uniformly high standard of amenities and facilities such as ablution blocks, change rooms, crib sheds, etc. shall be provided.

4. All Sheds shall be weatherproof and soundly constructed to an approved standard with sufficient windows and doors, adequate ventilation and lighting. They must have a floor above ground level and be lined on ceilings and walls.

5. Mess Shed/s fitted with fly screens are provided for exclusive use of workers and not for the storage of employers' equipment, tools and materials.

6. Shed/s shall provide not less that 0.75 square metres of floor space per person employed at any one time, provided that the area be not less than 4.65 square metres. Fixtures, other than tables and chairs, shall not be included when calculating floor space.

7. Where 5 or more persons are employed at one time, the floor area shall not be less than 9 square metres.

8. Adequate facilities are to be provided for warmth and for drying clothes eg. strip heaters.

9. Provided that 20 or more persons are employed on the site at any one time, the employer shall provide a separate shed or sheds for messing, which shall be of such dimension as to provide not less than 0.75 square metres of floor space per person.

10. Where less than 20 persons are employed on site, Regulation 3.20—Workplace Facilities of the Occupational Safety and Health Regulations 1996 shall apply to provisions of messing and changing facilities.

11. In the changing facilities, separate clothes-hanging facilities for each person employed are to be provided (coat hooks only to be used).

12. In the changing facilities, sufficient seating accommodation for the changing of work apparel is to be provided.

13. In the messing facilities, sufficient tables with fixed washable laminated or vinyl surface, and seating for the taking of meals, are to be provided.

14. Food warming facilities to be supplied, together with a supply of cool, clean water conveniently accessible, as well as boiling water at meal/rest breaks.

15. Receptacle for garbage with bin liner and rat and fly proof is to be supplied in mess area, and emptied regularly.

16. A washable vinyl floor surface in all facilities is to be provided.

17. Shelving is to be supplied in the mess shed for storage (cups, lunch bags, etc).

18. All facilities are to be cleaned and disinfected on a regular basis.

19. All mess sheds shall be supplied with reverse cycle air-conditioning.

20. Toilet blocks shall be soundly constructed and roofed with weatherproof material. The floor of each toilet shall be well-drained and constructed of concrete, bricks and cement, or other approved materials which shall be impervious to water. Every toilet shall be well lighted by natural or artificial light and shall be ventilated. Each toilet shall have a hinged door, capable of being fastened on the inside, lift seats/flaps and toilet paper.

21. Where practicable, toilets to be connected to sewerage before commencement of the job.

22. Toilet/urinal location to be conveniently accessible to employees, but not so close as to cause a nuisance to those persons.

23. Where necessary, portable water seal toilets of an approved standard are to be provided and regularly serviced.

24. Conveniently accessible toilets and urinals are to be distributed every 5th floor on multi-storey constructions.

25. Toilets and urinals are to be washed daily with disinfectant and kept in clean, hygienic condition.

26. Adequate washing facilities, suitably drained, and was basins/troughs are to be supplied with running water.

27. Soap and towels are to be supplied.

28. The following toilet/urinal ratio shall be applied in respect to all employees—

Employees	Toilets	Urinals
1-5	1	Nil
6-10	1	1
11-20	2	2
21-35	3	4
36-50	4	6
51-75	5	7
76-100	6	8

NB. For each additional 20 persons or part thereof up to 200 persons or part thereof up to 200 persons, one additional urinal and one additional toilet is required. For each additional 35 persons or part thereof in excess of 200 persons, one additional urinal and one additional toilet is required. If a slab urinal is provided, each 600mm shall be regarded as one urinal.

19.—TRAINING AND RELATED MATTERS

1. A training allowance of $13.00 per week per worker shall be paid by the employer to the Union Education and Training Fund. This shall increase to $14.00 per week on 1 November 2000 and a further increase to $15.00 per week on 1 November 2001.

2. Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calender year pro-rata to attend courses conducted or approved by the NBCITC. The employers approval shall not be unreasonably withheld.

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

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

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

20.—DRUG & ALCOHOL, SAFETY & 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.

21.—CLOTHING AND SAFETY 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, to 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.

22.—INCOME PROTECTION

The Company agrees to insure employees covered by this Agreement for injury and sickness. The scheme is to be negotiated between the parties

23.—ACCIDENT PAY

1. The Company agrees to pay each employee accident pay where the employee receives an injury for which weekly payments or compensation are payable by or on behalf of the Company pursuant to the provisions of the Workers' Compensation and Rehabilitation Act 1981, as amended.

2. "Accident Pay" means a weekly payment of an amount being the difference between the weekly amount of compensation paid to the employee pursuant to the Workers Compensation and Rehabilitation Act and the employee's ordinary wage under this Agreement.

3. The Company shall pay accident pay during the incapacity of the employee arising from any one injury for a total of 39 weeks whether the incapacity is in one continuous period or not.

24.—UNION MEMBERSHIP

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

25.—Y2K

On the following key dates the Company will issue written records of accrued entitlements to each employee. The accrued entitlements will include annual leave, sick leave, any accruing productivity bonuses, redundancy payments and Superannuation payments and also on each employees anniversary date—

- 31 December 1999
- 28 February 2000
- 31 December 2000
- 28 February 2001

26.—SIGNATORIES

BLPPU .....
Date: / /

CMETU .....
Date: / /

The Company: .....
Signature

Company Seal .....
Print Name

APPENDIX A—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

1. PRINCIPLE

People dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

2. FOCUS

- Site safety and the involvement of the site safety committee
- Peer intervention and support
- Rehabilitation

3. WORKPLACE POLICY

a) A person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.

b) The decision on a persons ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/employer representatives.

c) There will be no payment of lost time to a person unable to work in a safe manner.

d) If this happens 3 times the worker shall be given a written warning and made aware of the availability of treatment/counselling. If the worker refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.

e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.

f) A worker having problems with alcohol and or other drugs—

- Will not be sacked if he/she is willing to get help.
- Must undertake and continue with the recommended treatment to maintain the protection of this program.
- Will be entitled to sick leave or leave without pay while attending treatment.

4. IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will—

a) Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.

b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Program to address a meeting of employees to discuss and endorse the program.

c) Authorise the attendance of appropriate company personnel eg. Safety delegate/officer, safety committee members, union delegate, consultative committee members(s) at the two hour BTG Drug and Safety in the Workplace training course.

APPENDIX B—SITE ALLOWANCE

1. This agreement is between the parties referred to in Schedule A and shall apply to construction work undertaken by principal contractors who are members of CCA and 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 relevant building construction awards as nominated in schedule 'B' as well as any industrial or certified agreements made in conjunction with those awards which do 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 $2.17 m	$1.95
Above	$2.17m to $4.55m	$2.30
Over	$4.55m	$2.90

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17 m	$1.75
Above	$2.17m to $4.55m	$1.95
Over	$4.55m	$2.50

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 $2.17 m	$1.75
Above	$2.17m to $4.55m	$1.95
Over	$4.55m	$2.50

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17 m	$1.65
Above	$2.17m to $4.55m	$1.85
Over	$4.55m	$2.10

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

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

Project Contractual Value		Site Allowance
Up to	$1 m	NIL
Above	$1 m to $2.17 m	$1.35
Above	$2.17m to 6m	$1.65
Above	$6m to $11.98m	$1.90
Above	$11.98m to $24.43m	$2.10
Above	$24.43m to $60.5m	$2.40
Over	$60.5m	$2.60

"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. (Refer attached Map 1).

"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. (Refer attached Map 2).

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

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

5. The site/project allowance and project contractual value detailed in this agreement shall be adjusted on 1 January each year by the total C.P.I. movements for Perth during the

preceding four quarters ending 30 September and accordingly, the site allowance amounts shall be adjusted up or down to the nearest five cents. Provided that where adjustment equates to less than two cents, existing allowance levels shall be maintained.

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 September. 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 BTA 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 contractor and the building trades group of unions for that project that may include matters regularly addressed within the industry, such as, but not limited to, the following—

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

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

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

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

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

12. It is agreed between the parties that this agreement will operate for a period of 12 months from the date the agreement is signed. However, the agreement will continue to operate beyond this date unless either party gives the other three (3) months written notice of intention to withdraw therefrom.

13. 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.

14. This agreement shall only apply to building contracts entered into on or tendered for on or after 1 January 2000.

15. **Application to Apprentices**

a) The rates prescribed in clause 4 of this agreement shall apply to **all** apprentices commencing employment after 31 December 1998 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%

b) Fares and Travel Allowances—Apprentices shall receive 100% of all fares and travel allowances paid.

16. **Provision of Canteen**

It is agreed that a staffed canteen 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. The Canteen shall come into operation when on site worker levels exceed 50 and to cease when the worker levels reduce to below 50.

17. **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 notwithstanding that forecasts may have been below that level. The nurse shall commence duties when staffing levels reach 50 (fifty) and shall terminate when levels reduce to 50 (fifty). The requirement for the provision of a nurse shall be waived if the project is adjacent to a hospital with a public emergency department.

18. **Apprentice Ratio to Tradespersons**

There shall be at least one apprentice employed on site to every 6 tradespersons employed on site.

ST JOHN OF GOD HEALTH CARE BUNBURY HSOA AGREEMENT 2000.
No. AG 201 of 2000.

2000 WAIRC 00634

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	ST JOHN OF GOD HEALTH CARE BUNBURY (A DIVISION OF THE ST JOHN OF GOD HEALTH CARE SYSTEM INC) APPLICANT *v.* HOSPITAL SALARIED OFFICERS ASSOCIATION OF WESTERN AUSTRALIA (UNION OF WORKERS) RESPONDENT
CORAM	COMMISSIONER P E SCOTT
DELIVERED	WEDNESDAY, 20 SEPTEMBER 2000
FILE NO/S	AG 201 OF 2000

Result	Agreement Registered
Representation	
Applicant	Mr I Oakley appeared on behalf of the applicant
Respondent	Ms C Thomas appeared on behalf of the respondent

Order.

HAVING heard Mr I Oakley on behalf of St John of God Health Care Bunbury and Ms C Thomas on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers), and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the St John of God Health Care Bunbury HSOA Agreement 2000 in the terms of the following schedule be registered on the 8th day of September 2000).

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

Schedule.

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1.—PARTIES

The parties to this Agreement shall be St John of God Health Care Bunbury (a division of the St John of God Health Care System Inc.) ("the hospital") and the Hospital Salaried Officers' Association of Western Australia (Union of Workers).

2.—AREA AND SCOPE

(1) This Agreement shall apply to all employees eligible for membership of the Hospital Salaried Officers Association of Western Australia (Union of Workers) employed by the hospital throughout the State of Western Australia.

(2) Pursuant to s. 41(A)(1a) of the *Industrial Relations Act* 1979 (WA), it is estimated that 20 employees will be bound by this Agreement upon its registration.

3.—TERM

The term of this Agreement shall from date of registration for a period of two years.

4.—REPLACEMENT

(1) Notwithstanding the provisions of Clause 3—Term, this Agreement shall continue to operate until it is replaced by a new Agreement.

(2) Provided that the parties may at any time agree to vary or cancel the Agreement in accordance with the provisions of the *Industrial Relations Act 1979.*

5.—INTERPRETATION

(1) "Accrued Time Off" means paid time off accruing to an employee resulting from an entitlement to the 38 hour week;

(2) "casual" means an employee engaged on an hourly basis with no guarantee of continual or additional employment. A casual shall not be continuously rostered for a period exceeding 4 weeks;

(3) "ordinary rate" means the rate of pay prescribed in Schedule A of this Agreement.

(4) "ordinary time earnings" means the ordinary rate and shift and weekend penalties.

(5) "part-time" refers to an employee regularly employed to work less hours than those prescribed for full time employees in any weekly period;

(6) "public holiday" means New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Anzac Day, Foundation Day, Queen's Birthday, Christmas Day and Boxing Day.

Where any public holiday prescribed by this Agreement falls on a Saturday or a Sunday, such holiday shall be observed on the next succeeding Monday and where Boxing Day falls on a Sunday or Monday, such holiday shall be observed on the next succeeding Tuesday. Provided that—

(a) a day observed in lieu of the holiday may be appointed by proclamation published in the *Gazette* under the *Public and Bank Holidays Act 1972*;

(b) another day may be observed in lieu of the holiday by agreement between the employee and the hospital.

(7) "temporary" means an employee engaged for a specific period not exceeding 12 months.

(8) "union" means the Hospital Salaried Officers Association of Western Australia (Union of Workers).

6.—SEPARATION

(1) **Hospital Giving Notice**

(a) The contract of service may be terminated by the hospital 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.

(b) The required period of notice shall be—

Employee's period of continuous service with the hospital	**Period of notice**
Not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

The required period of notice is increased by one week if the employee is over 45 years old and has completed at least 2 years continuous service with the hospital.

(c) Provided that the contract of service of an employee engaged as a casual may be terminated by the hospital giving the employee one hour's notice. Such notice need not be in writing.

(d) Payment in lieu of the required period of notice may be made by the hospital if the required notice is not given.

The hospital may terminate the contract of service by providing part of the required notice and payment in lieu of the balance.

(2) **Employee Giving Notice**

(a) The contract of service may be terminated on any day by the employee giving to the hospital two weeks notice in writing and the contract shall expire at the end of that period of notice.

Where there is written agreement between the hospital and the employee a longer period of notice up to and including four weeks may be required.

(b) Provided that the contract of service of an employee engaged as a casual may be terminated by the employee giving the hospital 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 hospital 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.

(d) An employee shall not be disadvantaged as a result of providing a longer period of notice than required by this clause.

(3) The employee and the hospital may agree in writing upon a longer period of notice than prescribed in this clause.

(4) The required notice may be dispensed with by agreement in writing between the hospital and employee.

(5) Nothing in this clause affects the hospital's right to dismiss an employee without notice for serious misconduct, which justifies instant dismissal.

Certificate of Service

(6) Where an employee whose service terminates requests a certificate of service, a certificate signed by the hospital stating the name of the employee, the period of service, whether the service was full time or part time and the classifications in this Agreement in which work has been carried out, shall be provided.

7.—COMMITMENT TO IMPROVED PRODUCTIVITY AND FLEXIBILITY

(1) The parties agree that in giving effect to the provisions of this clause, both organisation and employee needs are to be considered including;

(a) ensuring that the careers of employees are not disadvantaged;

(b) consideration of the employee's personal commitments, family needs and carer responsibilities; and

(c) that sufficient annual leave remains available for the employee to have the opportunity of adequate rest and recreation.

(2) *Commitment to Improved Productivity*

(a) The parties to this Agreement recognise that with increased competition in the health industry, the wage increases and other benefits contained in this Agreement can only be sustained through improvements in productivity.

(b) Accordingly the Hospital and Caregivers covered by this Agreement commit to actively co-operate in implementing changes in work and staffing practices designed to improve productivity (including matching staffing levels to patient needs), especially at the department, ward or unit level.

(c) The parties to this Agreement are committed to the continuous quality improvement process through the use of appropriate efficiency strategies. A co-operative spirit will prevail to ensure quality outcomes are achieved and barriers to improved performance are identified through the consultation process.

(3) *Flexibility*

It is envisaged that productivity improvements necessary to support this Agreement will primarily be met at the department, ward or unit level as a result of the implementation of innovative and efficient work and staffing practices. Measures to be implemented at department, ward or unit level may include but not be limited to—

- self-rostering
- time off in lieu
- leave without pay
- rostered annual leave at low activity times
- short notice annual leave
- deployment of staff to busier areas
- variable shift lengths
- work practice changes

8.—PROBATION

The first three months of employment will be on a probationary basis during which time and notwithstanding the provision of Clause 6, either party may terminate the contract by giving one weeks notice in writing (one hour in the case of casuals) or payment or forfeiture in lieu thereof.

The hospital shall provide the employee with an appraisal of his or her performance during the probationary period.

9.—TIME NOT WORKED

The employee shall not be entitled to payment for any period of unauthorised absence.

10.—RIGHT OF TRANSFER

The employee shall be required to comply with any reasonable request to transfer to another suitable position or place of work within the hospital (within the limits of the employee's skill, competence and training).

11.—CONFIDENTIALITY

Information relating to the hospital, its customers or activities may not be released or divulged by the employee to a third party other than in the proper performance of the employee's obligations under this Agreement. This shall not prevent the employee from seeking representation by an accredited official of his or her union.

12.—PART-TIME

(1) A part-time employee shall accrue annual leave, long service leave, sick leave and bereavement leave in the same ratio as the ordinary weekly hours relate to full time employees.

(2) A part-time employee shall be remunerated at a weekly rate pro rata to the rate prescribed for the class of work on which he/she is engaged in the proportion which his/her ordinary weekly hours averaged over the qualifying period, bear to 38, or 40 in the case of an employee in receipt of accrued time off.

(3) An employee appointed part-time may by agreement work additional hours at ordinary rates subject to the normal rostering parameters of a full time employee and the provisions of this clause.

13. —CASUAL

(1) A casual shall be paid 1/40th of the total rate prescribed in Schedule B of this Agreement, for each hour worked, plus 25% additional loading.

(2) A casual shall not receive any of the leave entitlements prescribed in this Agreement.

14.—TEMPORARY APPOINTMENTS

(1) An employee appointed on a temporary contract shall accrue and be paid the same benefits as a permanent employee.

(2) Where a temporary contract exceeds 6 months the hospital shall give consideration to granting permanency.

15.—HOURS

(1) Ordinary hours may be worked over any day of the week, Monday to Sunday inclusive, and shall be arranged by the hospital to meet its needs.

(2) Ordinary hours shall not exceed 38 hours in any weekly period. Provided that an employee who, at the date of this Agreement, was in receipt of accrued days off shall continue to be employed on the basis of working an average of 38 hours per week with the actual hours worked being 40 per week.

(3) Ordinary hours may not be rostered over more than 6 consecutive days except by agreement between the employee and the hospital.

(4) A minimum of two days off duty shall be taken consecutively unless otherwise agreed between the employee and the employer.

(5) Ordinary hours shall not exceed 10 in any shift.

Provided that a shift of 12 ordinary hours may be rostered by agreement between the employee and the hospital.

(6) Broken shifts shall not be rostered but may be worked where an employee agrees to be called in to work at short notice.

(7) (a) The roster shall in each case provide for a 10 hour break between shifts, or 9.5 hour break by agreement between the employee and the hospital.

(b) Provided that this subclause shall not apply where an employee agrees to work additional hours at short notice.

(8) An employee shall not be rostered to work a shift of less than 3 hours duration.

16.—OVERTIME

(1) Time worked in excess of 10 hours a day or 38 hours each week (40 hours in the case of an employee who accrues additional days off) shall be deemed overtime and shall be paid for at time and a half for the first two hours and double time thereafter.

(2) An employee may be required to work reasonable overtime.

(3) (a) Where an employee and the hospital so agree, time off in lieu of payment for overtime may be allowed proportionate to the payment to which the employee is entitled.

(b) Such time off shall be taken at a time (or times) agreed between the hospital and employee.

17.—ROSTERS

(1) A roster of working hours shall be posted in a convenient place where it can be readily seen by each employee concerned.

(2) The roster shall be open for inspection by an accredited representative of the Union at all reasonable times.

(3) The roster shall be posted at least 7 days before it comes into operation.

(4) (a) The roster may be altered at the hospital's discretion if the hospital's requirements render such alteration necessary provided that—

(i) an employee is entitled to 48 hours notice of a requirement to come in to work;

(ii) an employee is entitled to 12 hours notice where a shift is cancelled or varied;

The notice referred to in this paragraph may be dispensed with by agreement between the employee and the hospital.

(b) An employee who has commenced a shift is entitled to complete that shift unless otherwise agreed between the employee and the hospital.

18.—MEAL AND MEAL HOURS

(1) (a) Meal breaks shall be a minimum of 30 minutes and a maximum of one hour (except by agreement) and subject to subclause (2) of this clause shall not be counted as time worked.

(b) The employee shall not be required to work for more than 6 hours consecutively without a meal break.

(2) Where the employee is required to be on duty or available at the hospital during his/her meal break, the employee shall be paid at ordinary rates. Provided that the time when the employee is on duty or available but not working shall not be counted as time worked for the purposes of Clause 16—Overtime of this Agreement.

(3) One fifteen or two seven minute tea breaks shall be allowed during each shift and shall be taken when convenient to the hospital without deduction of pay for such time.

(4) An employee who has not been notified the previous day or earlier that he or she is required to attend work at a time when a meal is usually taken shall be provided with such a meal.

19.—ACCRUED TIME OFF

(1) **Entitlement**

(a) An employee who at the date of this Agreement had an entitlement to accued days off shall continue to accrue an entitlement to time off at the rate of .05 of an hour for each ordinary hour worked to a maximum of 12 days (96 hours) off in each 12 month period.

(b) Such employee shall not accrue an entitlement to time off during the first 4 weeks of annual leave, long service leave, any period of unpaid leave or any absence on workers compensation leave in excess of one calendar month.

Accrual shall continue during any other period of leave (including any additional annual leave) prescribed by this Agreement.

(2) **Taking Accrued Time Off**

Where an eligible employee has accrued a sufficient entitlement, the accrued time off may be taken—

(a) in a minimum period of one week made up of 5 consecutive accrued days off in conjunction with a period of annual leave or at a time mutually acceptable to the employee and the hospital; or

(b) as single day absences at a time suitable to the hospital and subject to 48 hours notice given to the employee; or

(c) at the request of the employee, and by agreement with the hospital, in periods of less than one day; or

(d) at any other time agreed between the employee and the hospital provided that—

(i) the hospital shall, subject to its operational requirements, make every reasonable endeavour to accommodate the wishes of the Employee; and

(ii) the hospital shall allow the time off to be taken in the 12 months following the year of accrual.

(3) **Rate of Pay**

Accrued Time Off shall be paid at the ordinary rate.

(4) **Termination**

An employee who at the time of termination has accrued time off to his/her credit shall be paid for those hours at ordinary rates.

(5) **Pay Out of Entitlements**

(a) When an employee proceeds on parental leave, the hospital may pay the employee for any accrued time off then standing to his/her credit.

(b) An employee may at any time, by agreement in writing with the hospital, be paid for some or all of the accrued time off standing to his/her credit in lieu of taking the time off.

An employee shall not otherwise be paid for accrued time off without actually taking the time off.

20.—SALARIES

(1) The classification structure and the conditions pertaining to appointment and progression, are prescribed in Schedule B—Salary Scales.

(2) The base hourly rate of wage for each employee shall be calculated by dividing the annual rate by 52.167 and the resultant weekly rate by 38, or in the case of an employee in receipt of accrued time off, by 40. Provided that for a casual employee, the divisor shall remain 40 in accordance with Clause 13 (1) Casual.

(3) In lieu of the salary rates provided in Schedule B, the hospital and employee may agree to implement salary packaging arrangements. Such arrangements must be in accordance with the hospital salary packaging policy. The administrative arrangements for salary packaging will be entirely at the discretion of the hospital. Salary packaging arrangements entered into will be cost neutral in relation to the total employment cost of the employee to the hospital.

21.—PAYMENT OF WAGES

(1) Wages shall be paid fortnightly by electronic funds transfer into one or two accounts nominated by the employee held at any major bank, building society or credit union.

Any costs associated with the establishment by the employee of such an account and of the operation of it shall be borne by the employee.

(2) Where payment is not made within the nominated time the hospital shall make every reasonable endeavour to rectify the matter without further delay. Where the problem is within the control of the hospital it shall be rectified within 24 hours.

(3) Each employee shall be provided with a pay advice slip on each day that wages are paid. The pay advice slip shall detail—

(a) the rate of wage;
(b) the hours worked including overtime;
(c) the number of ordinary hours for which payment has been made;
(d) the gross wage;
(e) the net wage;
(f) the hospital funded superannuation component;
(g) any allowances paid;
(h) any deductions made including details of any salary sacrifice;
(i) the composition of any annual leave payment;
(j) the composition of any termination payment;
(k) accrued annual leave;
(l) accrued days off (where applicable).

(4) Upon termination of employment, the hospital shall pay to the employee all monies earned by or payable to the employee before the employee leaves the hospital or the same shall be forwarded to the employee by post on the next working day following termination. Provided that—

(a) Where the employment is terminated without notice in accordance with this Agreement the hospital shall, as soon as reasonably possible, forward by post all monies earned by or payable to the employee;

(b) By agreement the monies earned by or payable to the employee may be paid by electronic funds transfer into the employee's account(s).

22.—SHIFT WORK

(1) (a) The loading on the ordinary rates of pay for a employee who works an afternoon shift commencing not earlier than 12.00 noon and finishing after 6.00 pm on weekdays shall be 15%

(b) The provisions of paragraph (a) of this subclause do not apply to an employee who on any weekday commences his/her ordinary hours of work after 12.00 noon and completes those hours at or before 6.00 pm on that day.

(c) The loading on ordinary rates of pay for an employee who works a shift between the hours of 6.00 pm and 7.30 am on a weekday shall be 15%.

(2) (a) An employee rostered to work ordinary hours between midnight Friday and midnight on the following Saturday shall be paid a loading of 50% on actual hours worked during this period.

(b) An employee rostered to work ordinary hours between midnight Saturday and midnight on the following Sunday shall be paid a loading of 75% on actual hours worked during this period.

(3) Where an employee works a broken shift each portion of that shift shall be considered a separate shift for the purpose of this clause.

(4) Where the ordinary hours of work span 12.00 midnight on a Friday night or Sunday night the additional payments for shift work and work during the weekend shall be made by calculation for each part of the shift according to the rate applicable for additional payment for shift work and work during the weekend as the case may be.

23.—CALCULATION OF PENALTIES

Where the employee works hours which would entitle him or her to payment of more than one of the penalties payable in accordance with the overtime, on call, shift and weekend penalties, or public holiday provisions of this Agreement, only the highest of any such penalty shall be payable. In the case of casuals any such penalty shall be in addition to the casual loading.

24.—ON CALL

(1) For the purposes of this Agreement an employee is on call when he or she is required by the hospital to remain at his or her private residence or any other mutually agreed place as will enable the hospital to readily contact him or her during the hours for which he or she has been placed on call.

An employee is also on call when required to carry a mobile telephone or beeper and to remain within a specified range of the hospital.

(2) (a) An employee shall be paid an hourly allowance equal to 18.75% of 1/40th of the weekly salary rate prescribed in this agreement for a Medical Scientist. Provided that payment in accordance with this sub-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.

(b) Where the hospital supplies the employee with a mobile telephone or beeper, the employee shall be paid 75% of the rate prescribed in sub-paragraph (a).

(3) The employee shall not be required to remain on call whilst on leave or the day before commencing leave unless by mutual agreement between the employee and the hospital.

Call In

(4) If an employee is recalled to work for any purpose, she/he shall be paid a minimum of two hours at the appropriate overtime rate but shall not be obliged to work for two hours if the work for which she/he was recalled is completed in less time, provided that if an employee is called out within two hours of starting work on a previous call she/he shall not be entitled to any further payment for the time worked within that period of two hours.

(5) If an employee is recalled to work she/he shall be provided with transport, free of charge, from her/his home to the place of employment and return, or, be paid the motor vehicle allowance provided for in clause 26 of this Agreement.

(6) For the purposes of assessing overtime, each day shall stand alone.

25.—LAUNDRY AND UNIFORMS

(1) Where the hospital requires a uniform to be worn, an adequate supply of such uniforms shall be provided free of charge to employees. Uniforms shall be replaced on an "as required" basis.

(2) Uniforms shall at all times remain the property of the hospital and must be returned to the hospital on termination.

(3) The cost of laundering shall be met by employees.

(4) Employees shall be responsible for providing appropriate clean and safe footwear.

(5) The provisions of this clause shall not detract from the hospital's obligation pursuant to s.19 of the O*ccupational Health Safety and Welfare Act* 1984—1987 to provide employees with adequate personal protective clothing and equipment where it is not practicable to avoid the presence of hazards at the workplace.

26.—FARES AND MOTOR VEHICLE ALLOWANCE

(1) An employee required to work outside the hospital during his or her normal working hours shall be paid any reasonable travelling expenses incurred except where an allowance is paid in accordance with subclause (2) hereof.

(2) An employee required and authorised to use his or her own motor vehicle in the course of his duties shall be paid an allowance of not less than 54.9 cents per kilometre.

(3) The rate prescribed in subclause (2) shall whenever this Agreement is renewed be adjusted to reflect the rate applicable to travel in the metropolitan area (over 1600cc—2600cc) prescribed in the Public Service General Conditions of Service and Allowances Award No. PSA A4 of 1989.

(4) Nothing in this clause shall prevent the hospital and the employee making other arrangements as to car allowance not less favourable to the employee.

27.—SUPERANNUATION

(1) The hospital shall contribute on behalf of the employee in accordance with the requirements of the *Superannuation Guarantee (Administration) Act 1992*.

(2) Contributions shall at the option of the employee be paid into either—

(a) the Health Employees' Superannuation Trust Australia fund;

(b) the National Catholic Fund; or

(c) such other complying superannuation fund or scheme nominated in accordance with section 49C of the *Industrial Relations Act 1979*.

(3) The hospital shall notify the employee that he/she may nominate a complying fund or scheme. If the employee does not nominate a fund or scheme, or until such time as he/she nominates a fund or scheme, superannuation contributions shall be paid into a fund or scheme nominated by the hospital. The hospital and employee are bound by the employee's nominated fund choice unless they agree to a change of fund. The Hospital will not unreasonably refuse a change of fund request made by the employee.

(4) Contributions into the nominated fund shall be paid monthly.

(5) Contributions shall continue to be paid on behalf of an employee in receipt of payments under the Workers Compensation and Assistance Act.

28.—ANNUAL LEAVE AND PUBLIC HOLIDAYS

Entitlement

(1) (a) Each employee shall after the completion of each 12 months continuous service be entitled to four weeks annual leave.

(b) The entitlement accrues *pro rata* based on completed weeks of service.

(c) In paragraph (a), "service" shall not include any period of unpaid leave other than the first 3 months of unpaid sick leave and the first month of workers' compensation leave.

Rate of Pay

(2) (a) The 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.

(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 all periods of annual leave other than the periods relating to public holidays (ie to which the employee is entitled under subclauses 9 and 12 hereof).

Timing of Payment

(3) The employee is to be paid for a period of annual leave at the time payment is made in the normal course of employment, unless the employee requests in writing that he or she be paid before the period of leave commences in which case the employee is to be so paid.

Provided that, where annual leave is paid in advance, payment for time worked may be adjusted in the fortnightly pay period following the period of annual leave.

Termination

(4) If an employee's employment terminates, the employee shall be paid a pro rata entitlement (at the rate prescribed by subclause (2) hereof) in respect of each completed week of service for which annual leave has not already been taken.

Provided that—

(a) Leave loading shall not apply to pro rata leave on termination but shall apply (in accordance with subclause (2) hereof) to leave resulting from a completed year of service.

(b) Employees to whom subclause (9) hereof applies shall be paid for such additional days leave as have accrued under those subclauses at the date of termination.

Taking Annual Leave

(5) (a) The employee may, with the approval of the hospital, be allowed to take the annual leave prescribed by this clause before the completion of twelve month's continuous service.

(b) The annual leave prescribed in this clause may be split into portions by mutual agreement between the hospital and the employee.

(c) When the employee requests that the annual leave be split into portions the hospital shall make every reasonable endeavour to accommodate the wishes of the employee.

(d) Where the hospital and employee have not agreed when the employee is to take annual leave—

(i) the hospital shall allow the leave to be taken in the 12 months following the year of accrual; and

(ii) the hospital shall give the employee at least 2 week's notice of the period of time when it will be convenient to the hospital for the employee to take the leave.

Compaction

(6) An employee who during a qualifying period towards an entitlement of annual leave was employed continuously on both a full-time and part-time basis, or a part-time basis only, may elect to take a lesser period of annual leave calculated by converting the part-time service to equivalent full-time service.

Such election is to be made in writing by the employee and approved by the hospital.

Cashing In

(7) An employee to whom subclause (9) of this clause applies or who has otherwise accrued in excess of 4 weeks annual leave may elect to be paid when proceeding on annual leave an amount equivalent to the value of his or her additional leave entitlement in lieu of taking the additional leave. Such election is to be made in writing by the employee and approved by the hospital.

Public Holiday Occurring During Annual Leave

(8) An employee shall be entitled to a day's leave in lieu of a public holiday, without deduction of pay, in respect of a public holiday that occurs during the employees' annual leave.

Shift Work

(9) An employee rostered to work ordinary hours on Sundays and/or public holidays shall be entitled to additional annual leave as follows—

(a) if 35 ordinary shifts on such days have been worked—one week

(b) if less than 35 ordinary shifts on such days have been worked the employee shall be entitled to have one additional day's leave (to a maximum of five days) for each seven ordinary shifts so worked.

Public holidays

(10) An employee not required to work on a day solely because that day is a public holiday or day observed in lieu thereof, shall be entitled to leave for the number of hours which he or she would otherwise be rostered to work on that day without deduction of pay.

(11) Where the employee is rostered to work ordinary hours on a public holiday or day observed in lieu thereof, he or she shall be entitled to ordinary rates of pay and a loading of 50% for the actual time worked together with an equivalent period of time off to be added to the period of annual leave.

29.—SICK LEAVE

(1) An employee shall accrue 10 rostered shifts paid sick leave per annum.

(2) The entitlement shall accrue pro rata on a weekly basis.

(3) An employee who is unable to attend work on the grounds of personal ill health or injury or on account of the illness or injury of a family member residing with the employee, is entitled to be paid at ordinary rates for the period of the absence up to and including the number of hours which the employee was rostered to work on that day.

Provided that—

(a) subject to subclause (4) hereof, the payment shall not exceed payment for 10 rostered shifts per annum; and

(b) where such payment exceeds the employee's accrued entitlement, the excess may be offset against any future accrual or against monies otherwise payable to the employee at the point of separation;

(4) Unused portions of sick leave entitlement shall accumulate from year to year and may be taken in any subsequent year.

(5) An employee shall advise the hospital as soon as reasonably practicable and if possible prior to the commencement of the shift of, the inability to attend work, the nature of illness or injury and the estimated duration of absence.

(6) An employee is allowed a maximum of four days absence without a medical certificate in any one accruing year provided that a medical certificate must be provided for any absence of more than two consecutive days.

(7) An employee who suffers personal ill health or injury whilst on annual leave may be paid sick leave in lieu of annual leave subject to

(a) providing a medical certificate stating the illness or injury necessitated confinement to home or hospital for seven consecutive days or more.

(b) the portion of annual leave coinciding with the paid sick leave is to be taken at a time agreed by hospital and employee or shall be added to the next period of annual leave.

(c) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in Clause 28—Annual Leave and Public Holidays shall be deemed to have been paid with respect to the replaced annual leave.

(8) Paid leave may be withheld if the illness or injury is the result of the 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 1981*, the employee shall reimburse to the hospital the payments made under this clause and the hospital shall reinstate the employee's sick leave or other entitlements accordingly.

30.—LONG SERVICE LEAVE

(1) The long service leave provisions published in Volume 79 of the Western Australian Industrial Gazette at pages 1 to 4 inclusive as updated from time to time, are hereby incorporated in and shall be deemed to be part of this Agreement, providing that long service leave shall not accrue on workers' compensation leave in excess of one month.

(2) Provided that the leave to which an employee shall be entitled or deemed to be entitled shall be as provided in this clause—

Where an employee has completed at least 10 years' service the amount of leave shall be—

(a) in respect of 10 years service so completed—eight and two third weeks leave;

(b) in respect of the next 5 years service completed after such 10 years—four and one third weeks leave;

(c) in respect of each 10 years service completed after such 10 years—eight and two third weeks leave;

(d) on the termination of the employee's employment—

(i) by his/her death;

(ii) in any circumstances otherwise than by the employer for serious misconduct;

in respect of the number of years' service with the employer completed since he/she last became entitled to an amount of long service leave, a proportionate amount on the basis of eight and two thirds weeks for 10 years service.

(3) Leave may be taken in weekly multiples. When the remaining portion of accrued untaken leave entitlement is less than a week, such portion may be taken.

(4) On agreement between the hospital and employee, a part time employee or an employee whose ordinary hours have changed from part time to full time may take his or her long service leave entitlement as a reduced period of full time equivalent time off. Such agreement shall not be unreasonably withheld by the hospital.

(5) At the request of the employee and with the agreement of the hospital, an employee faced with pressing personal needs may be paid in lieu of taking a portion of long service leave.

31.—PARENTAL LEAVE

(1) **Interpretation**

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 authorised leave or absence.

"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) of this clause;

"spouse" includes a *de facto* spouse.

(2) **Entitlement to parental leave**

(a) Subject to this subclause and to subclauses (3) and (4) hereof, 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 12months' continuous service with the hospital; and

(ii) has given the hospital at least 10 weeks' written notice of his or her intention to take the leave;

(iii) has notified the hospital of the dates on which he or she wishes to start and finish the leave.

An employee shall not be in breach of this Clause as a consequence of failure to give the required notice if such failure is occasioned by the confinement 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 subsection does not apply to—

(i) one week's parental leave taken by the male parent immediately after the birth of the child; or

(ii) three week's parental leave 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 (c)(i).

(3) **Certification**

(a) An employee who has given notice of his or her intention to take parental leave, other than for adoption, is to provide to the hospital 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.

(b) An employee who has given notice of his or her intention to take parental leave for adoption, is to provide to the hospital—

(i) a statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or

(ii) a statement from the appropriate government authority confirming that the employee is to have custody of the child pending an application for an adoption order.

(4) **Notice of spouse's parental leave**

(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 hospital 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.

(5) **Transfer to a safe job**

Where in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the hospital deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

If the transfer to a safe job is not practicable, the employee may, or the hospital may require the employee to take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (10), (11), (12) and (13) hereof.

(6) **Maternity leave to start 6 weeks before birth**

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.

(7) **Variation of Period of Parental Leave**

(a) Provided the aggregate of any leave (including leave taken pursuant to subclauses (5) and (9)) does not

exceed the period to which the employee is entitled under subclause (2) hereof—

(i) the period of parental leave may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;

(ii) the period may be further lengthened by agreement between the employee and the hospital.

(b) The period of parental leave may, with the consent of the hospital, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.

(8) **Cancellation of Parental Leave**

(a) Parental leave, other than adoption leave, applied for but not commenced, shall be cancelled when the pregnancy of the employee or the employee's spouse terminates other than by the birth of a living child.

(b) Where the pregnancy of an employee 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 hospital which shall not exceed four weeks from the date of notice in writing by the employee to the hospital that she desires to resume work.

(9) **Special Maternity Leave and Sick Leave—**

(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 maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, or

(ii) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a duly qualified medical practitioner certifies as necessary before her return to work.

(b) Where 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 maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and parental leave shall not exceed the period to which the employee is entitled under subclause (2) hereof.

(c) For the purposes of subclauses (10), (12) and (13) hereof, parental leave shall include special maternity leave.

(d) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (3), to the position she held immediately before such transfer.

Where such position no longer exists but there are other positions available, for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(10) **Parental Leave and Other Leave Entitlements**

Provided the aggregate of any leave (including leave taken pursuant to subclauses (5) and (9)) does not exceed the period to which the employee is entitled under subclause (2) hereof—

(a) an employee may, in lieu of or in conjunction with parental leave, take any annual leave, long service leave or any part thereof or accrued time off to which he or she is then entitled.

(b) Paid sick leave or other paid authorised absences (excluding annual leave, long service leave or accrued time off), shall not be available to an employee during his or her absence on parental leave.

(11) **Return to work after parental leave**

(a) An employee shall confirm his or her intention of returning to work by notice in writing to the hospital given not less than four weeks prior to the expiration of the period of parental leave.

(b) On finishing parental leave, an employee is entitled to the position he or she held immediately before starting parental leave.

(c) If the position referred to in paragraph (b) 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.

(d) 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 (b), that subsection applies only in respect of the position held by the employee immediately before taking the acting or temporary position.

(12) **Effect of parental leave on employment**

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 a purpose of this Agreement or a relevant award or contract of employment.

(13) **Termination of Employment**

(a) An employee on parental leave may terminate his or her employment at any time during the period of leave by notice given in accordance with this Agreement.

(b) The hospital shall not terminate the employment of an employee on the grounds of pregnancy or absence on parental leave, but otherwise the rights of the hospital in relation to termination of employment are not hereby affected.

(14) **Replacements—**

(a) A replacement is a person specifically engaged as a result of an employee proceeding on parental leave.

(b) The hospital shall, before engaging a replacement under this subclause, inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(c) The hospital shall, before engaging a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his or her rights under this clause, inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

(d) Provided that nothing in this subclause shall be construed as requiring the hospital to engage a replacement.

32.—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, grandchild 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 two (2) days.

(2) Bereavement leave shall at the discretion of the employee be taken at any time up to and including the two days following the day of the funeral.

(3) Payment for such leave may be subject to the employee providing proof of the death, satisfactory to the hospital.

(4) 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.

33.—JURY SERVICE

(1) Employees summoned for jury service and giving prior advice to their manager will be granted paid leave subject to the procedures set out herein.

(2) Employees requesting time off for jury service must notify their manager on receipt of notice to attend.

(3) Application for leave of absence for jury service must be made on the standard Application for Leave form with a copy of the notice to attend attached.

(4) On presentation of proof of appearance payment of salary will be made at the ordinary time through the pay roll system.

(5) The hospital will claim reimbursement from the Court.

34.—STUDY LEAVE

(1) The employer is committed to assisting employees who are engaged in a course of study which is relevant to his/her profession of work.

(2) Applicants for study leave will be considered on merit and subject to the operational requirements of the hospital.

35.—TIME OFF WITHOUT PAY

Time off without pay for whatever purpose may be granted by agreement between the hospital and the employee.

36.—INTRODUCTION OF CHANGE AND REDUNDANCY

(1) **Interpretation**

In this clause—

"Employee" does not include a employee engaged on a casual or temporary basis or on a fixed term contract;

"redundant" means being no longer required by the hospital to continue doing a job because the hospital has decided that the job will not be done by any employee.

For the purposes of this clause, an action of the employer has a **"significant effect**" on an employee if—

(a) there is to be a major change in the composition, operation or size of, or skills required in, the hospital's workforce that will affect the employee; or

(b) there is to be elimination or reduction of a job opportunity, promotion opportunity or job tenure for the employee; or

(c) the employee is required to be retrained; or

(d) the employee is to be required to transfer to another job or work location; or

(e) the employee's job is to be restructured.

(2)(a) **Employee to be Informed**

Where the hospital has decided to—

(i) take action that is likely to have a significant effect on an employee; or

(ii) make an employee redundant,

the employee is entitled to be informed by the hospital, as soon as reasonably practicable after the decision has been made, of the action or the redundancy, as the case may be.

(b) **Discussions to occur**

The hospital shall thereafter hold discussions with the employee affected as to—

(i) the likely effects of the action or the redundancy in respect of the employee; and

(ii) measures that may be taken by the employee or hospital to avoid or minimise a significant effect.

Provided that the hospital shall not be required to disclose confidential information the disclosure of which may seriously harm the hospital's interests.

(3) **Union to be informed**

Where the hospital has made a definite decision to introduce major changes that are likely to have significant effects on one or more employees, the hospital shall notify and hold discussions with the union.

(4) **Severance Pay**

(a) In addition to the period of notice prescribed in Clause 9 of this Agreement, for ordinary termination, an employee whose employment is terminated on the grounds of redundancy shall be entitled to the following amount of severance pay in respect of a continuous period of service.

Period of Continuous Service	**Severance Pay**
Less than 1 year	Nil
1 year but less than 2 years	1 weeks
2 years but less than 3 years	3 weeks
3 years but less than 4 years	5 weeks
4 years but less than 5 years	7 weeks
5 years but less than 6 years	9 weeks
Thereafter	1 week's additional pay for each additional year of service

"**Weeks Pay"** means the ordinary weekly rate of wage for the Employee concerned.

(b) For the purpose of this clause continuity of service shall not be broken on account of—

(i) any absence from work on account of personal sickness or accident for which an employee is entitled to claim sick pay as prescribed by this award or on account of leave lawfully granted by the hospital; or

(ii) any absence with reasonable cause, proof whereof shall be upon the employee; or

(iii) any absence on approved leave without pay.

Provided that in the calculation of continuous service under this subclause any time in respect of which an employee is absent from work except time for which an employee is entitled to claim annual leave, sick pay, long service leave and public holidays as prescribed by this agreement shall not count as time worked.

(c) Service by the employee with a business which has been transmitted from one hospital to another and the employee's service has been deemed continuous in accordance with subclause (3) of Clause 2 of the Long Service Leave Provisions published in Volume 79 of the WA Industrial Gazette at pp.1-4 shall also constitute continuous service for the purpose of this clause.

(5) **Employee Leaving During Notice—**

An employee whose employment is to be terminated on the grounds of redundancy may terminate employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had the employee remained with the hospital until the expiry of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

(6) **Alternative Employment—**

(a) The hospital, in a particular redundancy case, may make application to the Western Australian Industrial Relations Commission to have the general severance pay prescription varied if the hospital obtains acceptable alternative employment for an employee.

(b) Provided that where an employee is offered and accepts alternative employment at another St John of God Health Care system hospital, continuity of service shall not be broken and any accrued entitlements shall be carried over to the new hospital. The employee shall not be entitled to the benefits prescribed in subclause (4).

(7) **Leave for Job Interviews**

(a) An employee who has been given notice that he or she has been, or will be, made redundant shall during the period of notice of termination be entitled to be absent from work up to a maximum of 8 ordinary hours during each week of notice without deduction of pay for the purpose of being interviewed for further employment.

(b) An employee who claims to be entitled to paid leave under paragraph (a) shall, at the request of the hospital, be required to produce reasonable proof of attendance at an interview or the employee shall not receive payment for the time absent.

(8) **Notice to Centrelink**

Where a decision has been made to terminate employees in circumstances of redundancy, the hospital shall, subject to the agreement of the employees concerned, notify Centrelink thereof as soon as possible giving relevant information including the number and categories of employees likely to be affected and the period over which the terminations are intended to be carried out.

37.—TIME AND WAGES RECORD

(1) A time and wages record shall be kept by the hospital and shall, upon reasonable notice of not less than 24 hours being given, be available for inspection by an accredited representative of the union.

(2) The record shall contain the following information—

(a) the name and address of each employee subject to this Agreement;

(b) the date on which each employee commenced employment with the hospital;

(c) the classification and increment of the employee;

(d) whether the employee is employed on a full time, part-time or casual basis;

(e) the commencing and finishing time of work each day;

(f) the total number of ordinary hours and the total number of overtime hours worked each day;

(g) the number of ordinary hours for which payment was made;

(h) the wages and allowances paid to each employee in each pay period and any deductions therefrom.

(3) The representative of the union shall be permitted reasonable time to inspect the record and, if required, take an extract or copy of any of the information contained therein.

(4) Provided that—

(a) the employer may refuse the representative of the union access to time and wages 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 within 48 hours of being notified of the requirement to inspect by the representative;

(b) 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 organisation.

38.—INTERVIEWS

(1) Subject to section 49AB of the *Industrial Relations Act 1979* an accredited representative of the Union shall be entitled to enter the hospital and interview a Employee. Provided that—

(a) On arrival at the workplace the union representative shall seek permission to enter the premises from the Chief Executive Officer or his appointed representative.

(b) Agreement between the union representative and the CEO or his appointed representative shall be sought as to where and subject to what conditions the employee may be interviewed or work inspected.

(2) Failing agreement on the foregoing, the following shall apply—

(a) On giving prior notice in writing or by telephone to the CEO or his appointed representative, or failing that person being available, the most senior person in charge of the establishment, an accredited representative of the union shall be entitled to enter the hospital to interview an employee at a time and place agreed between the union and the CEO or his appointed representative.

(b) Where there is no agreement as to time and place, the union representative shall have the right, upon prior notice to the CEO or his representative, or most senior person in charge of the establishment, to interview employees during the recognised meal period at the place where the meal is usually taken.

(3) If access has not been gained in accordance with the provisions of this clause then the union representative shall leave immediately upon a request from the CEO or, his appointed representative or senior person in charge.

39.—NOTICES

The hospital shall provide a notice board in a place where it may be conveniently and readily seen for the posting of union notices.

40.—CLASSIFICATION REVIEW

(1)(a) The employer shall allocate a salary classification level in accordance with the salary schedule of this Agreement (Schedule B) to each position by establishing the work value of the position taking account of internal and external relativity relevant to the position, and in accordance with State Wage Principles of the Western Australian Industrial Relations Commission.

(b) In arriving at an appropriate salary level, the employer shall also have due regard to any qualifications that may be a prerequisite for carrying out the position.

(2)(a) An employee may request a review of the classification allocated at any time where a change in duties and responsibilities has occurred.

(b) No more than one request may be made by an employee in any 12 month period.

(c) The employer shall give the employee written advice of the result of the review.

41.—MONITORING COMMITTEE

(1) A Monitoring Committee shall be established for the purpose of monitoring, and resolving problems arising from the application of this Agreement.

(2) Meetings may be called by any party providing a minimum of 7 days notice. This notice may be dispensed with by agreement.

(3) In resolving problems arising from the application or interpretation of the Agreement the single bargaining unit shall make reasonable attempts to reach a consensus.

(4) Where consensus is not able to be reached the parties may jointly or individually refer the problem to the Western Australian Industrial Commission or to an agreed third party for the purposes of conciliation and, if required, arbitration.

42.—DISPUTE SETTLEMENT

(1) The following procedures shall apply in connection with questions, disputes or difficulties arising under this Agreement not appropriately dealt with under Clause 41—Monitoring Committee.

(2) The persons directly involved, or representatives of the person(s) directly involved, shall discuss the question, dispute or difficulty as soon as is practicable.

(3)(a) If these discussions do not result in a settlement, the question, dispute or difficulty shall be referred to senior management for further discussion.

(b) Discussions at this level will take place as soon as practicable.

(4) The persons involved at each step of the process shall make reasonable attempts to resolve the question, dispute or difficulty.

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

(6) Any settlement reached which is contrary to the terms of this Agreement shall not have effect unless and until that conflict is resolved to allow for it.

(7) Nothing in this clause shall be read so as to exclude the Union from representing its members.

(8) Any question, dispute or difficulty not settled may be referred to the Western Australian Industrial Relations Commission.

SCHEDULE A—SIGNATORIES

Signed for and on behalf of
ST JOHN OF GOD HEALTH CARE BUNBURY—
Signed
Mark Grims CEO/DON 3/8/2000
In the presence of—
Signed
Amanda Young Exect Asst
Signed for and on behalf of
HOSPITAL SALARIED OFFICERS' ASSOCIATION OF WESTERN AUSTRALIA (UNION OF WORKERS)—
Signed
Toni Farrell President
In the presence of—
Signed
Nic Evans
Common Seal
Signed
D P Hill Secretary
In the presence of—
Signed
J G Reid

SCHEDULE B—SALARY SCALES

(1) The minimum annual rates of remuneration payable to employees covered by this agreement shall be as set out hereunder.

Column A: Current salary per annum.

Column B: A $15.00 per week increase with effect from 7 June 2000.

Column C: A further 2.5% increase based on the current rate (Column A rate) with effect from the date of registration of agreement.

Column D: A further and final increase of 3% applying 12 months after the date of registration.

(2) Minimum Salaries—

LEVEL	Column A	Column B	Column C	Column D
Level 1 1st year of service	22,362	23,145	23,704	24,415
2nd year of service	22,752	23,535	24,104	24,827
3rd year of service	23,151	23,934	24,513	25,248
Level 2 1st year of service	23,473	24,256	24,843	25,588
2nd year of service	24,127	24,910	25,513	26,278
3rd year of service	24,777	25,560	26,179	26,964
4th year of service	25,425	26,208	26,844	27,649
Level 3	26,076	26,859	27,511	28,336
	26,727	27,510	28,178	29,023
	27,372	28,155	28,839	29,704
Level 4	27,890	28,673	29,370	30,251
	28,655	29,438	30,154	31,059
Level 5	29,559	30,342	31,081	32,013
	30,158	30,941	31,695	32,646
Level 6	30,897	31,680	32,452	33,426
	32,076	32,859	33,661	34,671
Level 7	32,693	33,476	34,293	35,322
	33,618	34,401	35,241	36,298
Level 8	34,569	35,352	36,216	37,302
	35,920	36,703	37,601	38,729
Level 9	36,624	37,407	38,323	39,473
	37,591	38,374	39,314	40,493
Level 10	38,482	39,265	40,227	41,434
	39,506	40,289	41,277	42,515
Level 11	41,478	42,261	43,298	44,597
	42,942	43,725	44,799	46,143
Level 12	45,022	45,805	46,931	48,339
Level 13	46,135	46,918	48,071	49,513
	47,545	48,328	49,517	51,003
Level 14	49,006	49,789	51,014	52,544
Level 15	51,141	51,924	53,203	54,799
	52,891	53,674	54,996	56,646
A1	55,071	55,854	57,231	58,948
A2	57,246	58,029	59,460	61,244
A3	59,398	60,181	61,666	63,516
A4	61,574	62,357	63,896	65,813
A5	65,233	66,016	67,647	69,676
A6	67,883	68,616	70,312	72,421
A7	70,538	71,321	73,084	75,277
A8	73,537	74,320	76,158	78,443
A9	76,719	77,502	79,420	81,803

(3) An employee, who is 21 years of age or older on appointment to a classification equivalent to Level 1, may be appointed to the minimum rate of pay based on years of service, not on age.

(4) Employees who are appointed to Level 1, Level 2 or Level 3, and are under 21 years of age, salaries shall be calculated using the following percentages of the first year of service rate for the Level the employee is appointed to—

Under 17 years of age	54%
17 years of age	64%
18 years of age	74%
19 years of age	86%
20 years of age	97%

Notwithstanding this provision, the employer can appoint an employee to the first year of service rate or higher.

(5) Salaries—Specified Callings and Other Professionals

(a) Employees who are employed in the calling of Medical Scientists, Scientific Officer, Dietitian, Occupational Therapist, Physiotherapist, Social Worker, Speech Pathologist, or any other professional calling as agreed between the Union and employer, shall be entitled to Annual Salaries as follows—

LEVEL	Column A	Column B	Column C	Column D
Level 5/10	29,559	30,342	31,081	32,012
	30,897	31,680	32,452	33,426
	32,693	33,476	34,293	35,322
	34,569	35,352	36,216	37,302
	37,591	38,374	39,314	40,493
	39,506	40,289	41,277	42,515
Level 11/12	41,478	42,261	43,298	44,597
	42,942	43,725	44,799	46,143
	45,022	45,805	46,931	48,339
Level 13/14	46,135	46,918	48,071	49,513
	47,545	48,328	49,517	51,003
	49,006	49,789	51,014	52,544

Employees at Level 15 and above shall be paid at no less than the rate applying for each classification as provided in sub-clause (2) above.

(b) Subject to paragraph (d) of this subclause, on appointment or promotion to the Level 5/10 under this clause—

(i) Employees who have completed an approved three academic year tertiary qualification, relevant to their calling, shall commence at the first year increment.

(ii) Employees, who have completed an approved four academic year tertiary qualification, relevant to their calling, shall commence at the second year increment.

(iii) Employees, who have completed an approved Masters or PhD Degree, relevant to their calling, shall commence on the third year increment.

Provided that employees who attain a higher tertiary level qualification after appointment shall not be entitled to any advanced progression through the range.

(c) The employer and union shall be responsible for determining the relevant acceptable qualifications for appointment for the callings covered by this clause and shall maintain a manual setting out such qualifications.

(d) The employer, in allocating levels pursuant to subclause (5) of this clause may determine a commencing salary above Level 5/10 for a particular calling or callings.

(6)(a) Unless otherwise specified, progression between levels shall be by annual increments, subject to a satisfactory performance appraisal.

(b) Any disagreement in relation to the payment of an annual increment may be referred to the WA Industrial Relations Commission for determination.

ST JOHN OF GOD HEALTH CARE SUBIACO (HSOA—PHARMACY) AGREEMENT 2000.
No. AG 202 of 2000.

2000 WAIRC 00635

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	ST JOHN OF GOD HOSPITAL SUBIACO INC APPLICANT v. HOSPITAL SALARIED OFFICERS ASSOCIATION OF WESTERN AUSTRALIA (UNION OF WORKERS)
RESPONDENT	
CORAM	COMMISSIONER P E SCOTT
DELIVERED	WEDNESDAY, 20 SEPTEMBER 2000
FILE NO/S	AG 202 OF 2000

Result	Agreement Registered
Representation	
Applicant	Mr I Oakley appeared on behalf of the applicant
Respondent	Ms C Thomas appeared on behalf of the respondent

Order.

HAVING heard Mr I Oakley on behalf of St John of God Hospital Subiaco Inc and Ms C Thomas on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers), and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the St John of God Health Care Subiaco (HSOA—Pharmacy) Agreement 2000 in the terms of the following schedule be registered on the 8th day of September 2000 and shall replace the St John of God Hospital Subiaco (HSOA—Pharmacy) Agreement 1998 (No. AG 61 of 1998).

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

Schedule.

1.—TITLE

This Agreement shall be referred to as the St John of God Health Care Subiaco (HSOA—Pharmacy) Agreement 2000.

2.—ARRANGEMENT

Clause No.	Subject	Page No.
1.	Title	
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4.	Parties	
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6.	Relationship to Award	
7.	Term	
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11.	Salary Sacrifice	
12.	Overtime	
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15.	Flexible Working Hours	
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20.	Bereavement Leave	
21.	Parental Leave	
22.	Introduction of Change and Redundancy	
23.	Dispute Settlement	
24.	No Extra Claims	
Schedule A	Minimum Salaries	

3.—INTRODUCTION

St John of God Health Care Subiaco is committed to the dignity and worth of each person. We believe that work is a major forum in which we express and develop our dignity and grow towards fullness in human living.

We believe that conditions of work must be such that each person has the freedom and resources needed for growth and development towards wholeness.

St John of God Health Care Subiaco is committed to the development and maintenance of an organisational culture that is person focused, committed to the Christian ministry of healing, and to the processes of Quality Caring.

St John of God Health Care Subiaco has an organisational culture that promotes, encourages and facilitates individual and organisational growth and development towards quality service provision. It allows for flexibility and mutuality in the arrangements of working conditions.

It is a culture that leads to greater job satisfaction and ever improving quality of patient care and services.

St John of God Health Care Subiaco will arrange conditions of employment, "Employment Relationships" in accordance with the following "Principles for Employment Relationships."

PRINCIPLES FOR EMPLOYMENT RELATIONSHIPS
BASED ON FIDELITY TO OUR HERITAGE

1. Positive employment relationships are essential for the successful provision of health care. Recognition of the rights and duties of the Hospital and each Caregiver are required for fairness and mutual accountability. [Justice]*

2. The work of all Caregivers is valued equally in the Mission and operation of the System. (This includes the work of those who provide direct patient care and those whose work enables these hands-on Caregivers to function effectively.) [Respect]*

3. Behaviours in the workplace must demonstrate respect for the basic orientation of the Mission, Philosophy and Cultural Values of the Hospital. [Respect]*

4. In decisions related to clinical provision of health care, the expert knowledge and experienced judgements of health care professionals are acknowledged in their individual areas of competency as we work in collaboration with each other. [Respect, Justice, Excellence]*

5. The Hospital recognises the different cultures and faith traditions of our Caregivers. It respects and values these differences and strives to learn from the richness of this diversity. [Hospitality, Respect]*

6. Opportunities for employment, career development and other pathways to growth are open to all people competent for the positions available throughout the Hospital. [Hospitality, Compassion, Respect, Justice and Excellence]*

7. The Hospital recognises the right of Caregivers to form associations to engage in collective actions, to negotiate various benefits for their members and to work for a better society. This does not exclude the Caregiver's right to choose individual negotiations when appropriate. [Respect, Justice]*

8. Decision making, planning and policy formation related to the work of Caregivers will be participative processes involving relevant stakeholders. Due processes are established to attend to grievances, injuries and other concerns. [Hospitality, Compassion, Respect, Justice and Excellence]*

9. Each Caregiver is expected to be committed to person centred care, to continual improvement of the quality of services and to the requirements of the Hospital's Mission, Vision and Goals as described in their employment contracts. [Hospitality, Compassion, Respect, Justice and Excellence]*

10. Each Caregiver will be involved in ongoing learning. [Justice, Excellence]*

11. Caregivers are entitled to fair compensation for their work and they will share in the benefits of their work. [Hospitality, Justice, Excellence]*

12. Each Caregiver will contribute to quality patient care and to the common good of all by just and honest performance of the duties of their individual position. [Hospitality, Justice, Excellence]*

(* The Core Cultural Value(s) most relevant to each principle is noted in square brackets [ ].)

CAREGIVER EMPLOYMENT AGREEMENT

Involvement in this Agreement results in mutual commitment to the following—

St John of God Health Care Subiaco—

1. The provision of fair employment conditions.
2. Maintenance of safe working environments.
3. Opportunities for growth and development for each Caregiver.
4. Resources to facilitate optimum work processes and quality of services.
5. Participation in continual improvement of all work processes.
6. Provision of information and training to enable each Caregiver to understand and fulfil his or her obligations under this Agreement and to apply safe work practices.
7. Non requirement of Caregivers to perform duties outside their competence.
8. Provision of a regular cycle of appraisal and review of performance and developmental needs.
9. Involvement of Caregivers as participants in the general functioning of the workplace.

Each Caregiver—

1. Provision of an honest day's work in accordance with the relevant Position Description.
2. Positive participation in the desired organisational culture of the Hospital.
3. Involvement in learning that will facilitate personal and professional growth and development.
4. Observance of appropriate safety and security regulations.
5. Observance of the Hospital's policies and procedures.
6. Participation in a regular cycle of appraisal and review of performance and developmental needs.

4.—PARTIES

The parties to this Agreement shall be St John of God Hospital Subiaco Inc. trading as St John of God Health Care ("the Hospital") and the Hospital Salaried Officers Association of Western Australia (Union of Workers).

5.—AREA AND SCOPE

(1) This Agreement shall apply to all registered Pharmacists employed as such by St John of God Health Care Subiaco, but shall exclude the Chief Pharmacist and Deputy Chief Pharmacist.

(2) There are an estimated 15 Caregivers covered by the provisions of this Agreement as at the date of registration.

6.—RELATIONSHIP TO AWARD

(1) This Agreement shall be read and interpreted in conjunction with the

(a) *Hospital Salaried Officers (Private Hospitals) Award 1980*, hereinafter referred to as the "the Award", and

(b) the *Health Care Industry (Private) Superannuation Award 1987*,

but where the terms of this Agreement are inconsistent with the Award, the terms of this Agreement shall prevail.

7.—TERM

The term of this Agreement from the date of registration until 30 June 2002.

8.—REPLACEMENT

(1) This Agreement cancels and replaces Industrial Agreement No. AG 61 of 1998.

(2) Notwithstanding the provisions of Clause 7.—Term, this Agreement shall continue to operate until it is replaced by a new Agreement.

(3) If a new Agreement has not been negotiated within three months after the expiry of the term of this Agreement, and unless all parties agree to extend the negotiating period, the parties agree to have any outstanding issues arbitrated by the Western Australian Industrial Relations Commission or another agreed third party.

(4) Provided that—

(a) the parties may at any time agree to vary or cancel the Agreement in accordance with the provisions of the *Industrial Relations Act 1979*.

(b) the parties shall review the Agreement should, as a result of movements in award rates of pay, the total wage prescribed by this agreement for any classification fall below the relevant award safety net. Any such review shall be conducted in accordance with the State Wage Fixing Principles in operation at the time.

9.—DEFINITIONS

(1) "Caregiver" means a Caregiver of the Hospital.

(2) "Pharmacist" shall mean a Caregiver who is registered as such under the *Pharmacy Act 1964*, and employed as such by the Hospital.

10.—SALARIES

This clause replaces Schedule B—Minimum Salaries of the Award.

(1) The employer shall allocate a salary classification level to each position in accordance with Schedule A—Minimum Salaries of this Agreement and Schedule C—Classification and Grading of Employees of the Award.

(2) The minimum annual salaries for Caregivers bound by this Agreement shall be as set out in Schedule A.

11.—SALARY SACRIFICE

In lieu of the salaries provided in Schedule A, the Hospital and Caregiver may agree to implement salary packaging arrangements. Such arrangements must be in accordance with the Hospital salary packaging policy. The administrative arrangements for salary packaging will be entirely at the discretion of the Hospital. Salary packaging arrangements entered into will be cost neutral in relation to the total employment cost of the Caregiver for the Hospital.

12.—OVERTIME

(1) This clause shall replace sub- clause (2) of Clause 13—Overtime of the Award.

(2) All time worked at the direction of the employer on a Saturday after 12.00 noon or a Sunday shall be paid at the rate of double time.

(3) In relation to the first two hours worked in excess of 38 hours in each week, a full time Pharmacist may elect to either be paid overtime at time and one half or accrue flexitime in accordance with Clause 15—Flexible Working Hours of this Agreement. Where such overtime cannot be approved in advance it must be approved at the first opportunity the next working day.

13.—SHIFTWORK

(1) The provisions of Clause 25—Shiftwork of the Award shall apply to Caregivers engaged on shift work.

(2) Provided that a Caregiver—

(i) employed at 19 May 1998; and

(ii) receiving a benefit greater than that prescribed in Clause 25—Shiftwork of the Award for weekend work;

shall continue to receive the same or equivalent benefit for the duration of this Agreement. Any payment made in lieu of the existing arrangement shall be based on the rates contained in Schedule A.

14.—CASUAL

(1) A casual shall be paid 1/38th of the base weekly rate prescribed in Schedule A of this, for each hour worked, plus 20% additional loading.

(2) A casual shall not receive any of the leave entitlements prescribed in this Agreement or the Award.

15.—FLEXIBLE WORKING HOURS

(1) **General Principles**

(a) Whilst flexitime has been designed primarily to enable Pharmacists to have a greater say in planning their working hours, this must be achieved in such a way that satisfactory performance of the Department is maintained.

(b) The organisation of a flexitime schedule shall be the responsibility of the Caregivers and will cover a period of 10 working days. Flexitime requests must allow for minimum staffing and other requirements with respect to opening times and lunch break coverage.

(c) The Head of Department retains the right to determine arrangements to suit the operational needs of the Department.

(2) **Hours of Duty**

(a) The ordinary hours of duty may be an average of 7 hours 36 minutes per day or as per contract which may be worked with flexible commencement and finishing times in accordance with the provisions of this subclause, provided that the required hours of duty for each two week settlement period shall be 76 hours for full time Caregivers or as per contract for part time Caregivers.

(b) For the purpose of leave and public holidays, a day shall be credited as 7 hours 36 minutes or as per contract in the case of part time Caregivers.

(3) **Flexitime Periods**

(a) Subject to the operational requirements of the position and the agreement of the Head of Department, a Pharmacist is free to elect his/her hours of duty and times of attendance within the following periods—

07.30 am	-	09.30 am
12.00 pm	-	02.00 pm
04.00 pm	-	06.00 pm

(b) Core Periods

During the core times of 9.30 am to 12.00 pm and 2.00 pm to 4.00 pm, all Caregivers are required to be on duty unless on approved leave.

(c) Lunch Break

A Caregiver shall be allowed to avail themselves of the meal break between 12.00 pm and 2.00 pm provided that the meal break shall not be less than 30 minutes duration and shall not count as time worked. A lunch break must be taken after a Caregiver has worked continuously for five hours.

(4) **Flexileave**

(a) A Caregiver may be allowed a maximum of one full day or 2 half days (mornings or afternoons) in each settlement period equivalent to 2 core periods.

(b) Approval to take flexileave is subject to the Caregiver having accrued sufficient credit hours to cover the absence prior to taking the leave. In exceptional circumstances and with the approval of the Manager, flexileave may be taken before accrual subject to such conditions as the Manager may impose.

(c) The debit for a full day of flexileave shall be 7 hours 36 minutes or as per contract.

(d) Where a half a day flexileave precedes the day's work, such leave shall be deemed to have commenced at the commencement of prescribed hours of duty.

(5) **Settlement Period**

(a) For recording of time worked, there shall be a settlement period which shall consist of two weeks.

(b) The settlement period shall commence at the beginning of a pay period.

(c) The required hours of duty for a settlement period shall be 76 hours or as per contract.

(6) **Credit Hours**

(a) Credit hours in excess of the required 76 hours to a maximum of 10 hours are permitted at the end of each settlement period. Such credit hours shall be carried forward to the next settlement period.

(b) Credit hours in excess of 10 hours at the end of a settlement period shall be lost except at the discretion of the Manager.

(7) **Debit Hours**

(a) Debit hours below the required 76 hours to a maximum of 10 hours are permitted at the end of the each settlement period.

(b) Such debit hours shall be carried forward to the next settlement period.

(c) For debit hours in excess of 10 hours, a Caregiver shall be paid only for the hours worked.

(d) A Caregiver having excessive debit hours may be required to work standard working hours in addition to not being paid for the number of hours in excess of the debit hours permitted at the end of each settlement period.

(8) **Maximum daily working hours**

(a) A maximum of 9.5 ordinary hours may be worked in any one day.

(9) **Study Leave**

Where study leave has been approved by the Hospital in accordance with the provisions of Clause 17—Study Leave, credit of up to 3 hours per week will be given for education commitments falling within the ordinary hours of duty and for which "time off" is necessary to allow for attendance at formal classes

(10) **Bereavement leave and sick leave**

(a) Sick leave and bereavement leave will be recorded in hours and minutes and the maximum credit for a full days sick or bereavement leave, is 7 hours 36 minutes or as per contract.

(b) When a Caregiver reports for duty and leaves during the day, the Caregiver will be credited for the time worked and be credited with sick or bereavement leave for the period up to the completion of ordinary hours of duty.

(c) Where a Caregiver takes sick or bereavement leave and subsequently commences work on that day, the Caregiver shall in addition to the credit for hours worked be credited with sick or bereavement leave for the period from the commencement of prescribed hours of duty up to the time of commencing duty.

(11) **Public holidays and annual leave**

Each public holiday or day of annual leave shall be credited as 7 hours 36 minutes or as per contract.

16.—FAMILY LEAVE

(1) A Caregiver who is unable to attend or remain at work on the grounds of the illness or injury of a family member residing with the Caregiver, is entitled to be paid at ordinary rates for the period of the absence up to and including the number of hours which the Caregiver was rostered to work on that day.

(2) Where a Caregiver is absent in accordance with subclause (1), such absences shall be deducted from the Caregiver's entitlement to sick leave, granted in accordance with Clause 17.—Sick Leave of the Award.

(3) Notwithstanding the provisions of Clause 17.—Sick Leave of the Award, payment of sick leave taken on account of the illness or injury of a family member residing with the Caregiver shall not exceed payment for 38 hours in any one year of service.

(4) Where a Caregiver claims payment for sick leave on account of the illness or injury of a family member residing with the Caregiver, the Caregiver shall be required to provide medical certificates in accordance with sub-clause (4) of Clause 17.—Sick Leave of the Award.

17.—ALLOWANCES

Where a Caregiver is paid an allowance under the Award which is calculated as a percentage of a salary rate prescribed by that Award, the allowance shall, be calculated using the salary rates as prescribed at Schedule A of this Agreement.

18.—LONG SERVICE LEAVE

(1) The long service leave provisions published in Volume 79 of the Western Australian Industrial Gazette at pages 1 to 4 inclusive as updated from time to time, are hereby incorporated in and shall be deemed to be part of this Agreement,

providing that long service leave shall not accrue on workers' compensation leave in excess of one month.

(2) Provided that the leave to which an employee shall be entitled or deemed to be entitled shall be as provided in this clause—

Where an employee has completed at least 10 years' service the amount of leave shall be—

(a) in respect of 10 years service so completed—eight and two third weeks leave;

(b) in respect of the next 5 years service completed after such 10 years—four and one third weeks leave;

(c) in respect of each 10 years service completed after such 15 years—eight and two third weeks leave;

(d) on the termination of the employee's employment—

(i) on his/her death;

(ii) in circumstances otherwise than by the employer for serious misconduct;

in respect of the number of years' service with the employer completed since he/she last became entitled to an amount of long service leave, a proportionate amount on the basis of eight and two thirds weeks leave for 10 years service.

(3) Leave shall be granted and taken as soon as reasonably practicable after the right thereto accrues due or at such time or times as may be agreed between the Hospital and the Caregiver. Where the Hospital and Caregiver so agree, long service leave may be taken in separate periods of not less than one week.

(4) On agreement between the Hospital and Caregiver, a part time Caregiver or a Caregiver whose ordinary hours have changed from part time to full time may take his or her long service leave entitlement as a reduced period of full time equivalent time off. Such agreement shall not be unreasonably withheld by the Hospital.

(5) At the request of the Caregiver and by agreement with the Hospital, a Caregiver experiencing personal financial needs may be paid up to a maximum of 4 weeks in lieu of taking long service leave.

19.—STUDY LEAVE

(1) Where a Caregiver is engaged in an accredited course of study which in the Hospital's view—

(a) is relevant to the duties being or likely to be performed by the Caregiver;

(b) is relevant to the current and emerging business needs of the Hospital;

(c) enhances the career development of the Caregiver; and

(d) does not unduly affect or inconvenience the operations of the Hospital.

The Hospital may grant leave with pay to undertake study for an approved course, provided that the classes lectures or tutorials fall within the parameters of the Caregiver's normal working hours. The amount of leave granted may be up to three hours per week.

(2) Paid study leave is provided for formal study periods only (ie at the college/university) and the Caregiver shall undertake at least 50% of formal study in her/his own time.

(3) The Caregiver is required to provide evidence to the Hospital of attendance and satisfactory progress with studies.

20.—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, grandchild or any other person who immediately before that person's death lived with the Caregiver as a member of the Caregiver's family, the Caregiver is entitled to bereavement leave, without loss of ordinary time earnings, of up to two (2) days.

(2) Bereavement leave shall at the discretion of the Caregiver be taken at any time up to and including the two days following the day of the funeral.

(3) Payment for such leave may be subject to the Caregiver providing proof of the death.

(4) Bereavement leave is not to be taken where the Caregiver is absent on another form of leave or would not otherwise have been on duty unless the absence has been taken to enable the Caregiver to be with a dying relative.

21.—PARENTAL LEAVE

(1) **Interpretation**

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 Caregiver or the Caregiver's spouse;

(b) is less than 5 years of age; and

(c) has not lived continuously with the Caregiver 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 authorised leave or absence.

"expected date of birth" means the day certified by a medical practitioner to be the day on which the medical practitioner expects the Caregiver or the Caregiver's spouse, as the case may be, to give birth to a child;

"parental leave" means leave provided for by subclause (2) of this clause;

"spouse" includes a *de facto* spouse.

(2) **Entitlement to parental leave**

(a) Subject to this subclause and to subclauses (3) and (4) hereof, a Caregiver, other than a casual Caregiver, is entitled to take up to 52 consecutive weeks of unpaid leave in respect of—

(i) the birth of a child to the Caregiver or the Caregiver's spouse; or

(ii) the placement of a child with the Caregiver with a view to the adoption of the child by the Caregiver.

(b) A Caregiver 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 Hospital; and

(ii) has given the Hospital at least 10 weeks' written notice of his or her intention to take the leave;

(iii) has notified the Hospital of the dates on which he or she wishes to start and finish the leave.

A Caregiver shall not be in breach of this Clause as a consequence of failure to give the required notice if such failure is occasioned by the confinement occurring earlier than the expected date.

(c) A Caregiver is not entitled to take parental leave at the same time as the Caregiver's spouse but this subsection does not apply to—

(i) one week's parental leave taken by the male parent immediately after the birth of the child; or

(ii) three week's parental leave taken by the Caregiver and the Caregiver's

(iii) 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 Caregiver's spouse in relation to the same child, except the period of one week's leave referred to in paragraph (c)(i).

(3) **Certification**

(a) A Caregiver who has given notice of his or her intention to take parental leave, other than for adoption, is to provide to the Hospital a certificate from a medical practitioner stating that the Caregiver or the

Caregiver's spouse, as the case may be, is pregnant and the expected date of birth.

(b) A Caregiver who has given notice of his or her intention to take parental leave for adoption, is to provide to the Hospital—

(i) a statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the Caregiver for adoption purposes; or

(ii) a statement from the appropriate government authority confirming that the Caregiver is to have custody of the child pending an application for an adoption order.

(4) **Notice of spouse's parental leave**

(a) A Caregiver who has given notice of his or her intention to take parental leave or who is actually taking parental leave is to notify the Hospital of particulars of any period of parental leave taken or to be taken by the Caregiver'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 Caregiver as to the truth of the particulars notified.

(5) **Transfer to a safe job**

Where in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the Caregiver make it inadvisable for the Caregiver to continue at her present work, the Caregiver shall, if the Hospital deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

If the transfer to a safe job is not practicable, the Caregiver may, or the Hospital may require the Caregiver to, take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (10), (11), (12) and (13) hereof.

(6) **Maternity leave to start 6 weeks before birth**

A female Caregiver 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 Caregiver is fit to work.

(7) **Variation of Period of Parental Leave**

(a) Provided the aggregate of any leave (including leave taken pursuant to subclauses (5) and (9)) does not exceed the period to which the Caregiver is entitled under subclause (2) hereof—

(i) the period of parental leave may be lengthened once only by the Caregiver giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;

(ii) the period may be further lengthened by agreement between the Caregiver and the Hospital.

(b) The period of parental leave may, with the consent of the Hospital, be shortened by the Caregiver giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.

(8) **Cancellation of Parental Leave**

(a) Parental leave, other than adoption leave, applied for but not commenced, shall be cancelled when the pregnancy of the Caregiver or the Caregiver's spouse terminates other than by the birth of a living child.

(b) Where the pregnancy of a Caregiver on maternity leave terminates other than by the birth of a living child, it shall be the right of the Caregiver to resume work at a time nominated by the Hospital which shall not exceed four weeks from the date of notice in writing by the Caregiver to the Hospital that she desires to resume work.

(9) **Special Maternity Leave and Sick Leave—**

(a) Where the pregnancy of a Caregiver 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 maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, or

(ii) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a duly qualified medical practitioner certifies as necessary before her return to work.

(b) Where a Caregiver 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 maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and parental leave shall not exceed the period to which the Caregiver is entitled under subclause (2) hereof.

(c) For the purposes of subclauses (10), (12) and (13) hereof, parental leave shall include special maternity leave.

(d) A Caregiver returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of a Caregiver who was transferred to a safe job pursuant to subclause (3), to the position she held immediately before such transfer.

Where such position no longer exists but there are other positions available, for which the Caregiver is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(10) **Parental Leave and Other Leave Entitlements**

Provided the aggregate of any leave (including leave taken pursuant to subclauses (5) and (9)) does not exceed the period to which the Caregiver is entitled under subclause (2) hereof—

(a) a Caregiver may, in lieu of or in conjunction with parental leave, take any annual leave, long service leave or any part thereof or accrued time off to which he or she is then entitled.

(b) Paid sick leave or other paid authorised absences (excluding annual leave, long service leave or accrued time off), shall not be available to a Caregiver during his or her absence on parental leave.

(11) **Return to work after parental leave**

(a) A Caregiver shall confirm his or her intention of returning to work by notice in writing to the Hospital given not less than four weeks prior to the expiration of the period of parental leave.

(b) On finishing parental leave, a Caregiver is entitled to the position he or she held immediately before starting parental leave.

(c) If the position referred to in paragraph (b) is not available, the Caregiver is entitled to an available position—

(i) for which the Caregiver is qualified; and

(ii) that the Caregiver is capable of performing, most comparable in status and pay to that of his or her former position.

(d) Where, immediately before starting parental leave, a Caregiver was acting in, or performing on a temporary basis the duties of, the position referred to in paragraph (b), that subsection applies only in respect of the position held by the Caregiver immediately before taking the acting or temporary position.

(12) **Effect of parental leave on employment**

Absence on parental leave—

(a) does not break the continuity of service of a Caregiver; and

(b) is not to be taken into account when calculating the period of service for a purpose of this Agreement or a relevant award or contract of employment.

(13) **Termination of Employment**

(a) A Caregiver on parental leave may terminate his or her employment at any time during the period of leave by notice given in accordance with this Agreement.

(b) The Hospital shall not terminate the employment of a Caregiver on the grounds of pregnancy or absence on parental leave, but otherwise the rights of the Hospital in relation to termination of employment are not hereby affected.

(14) **Replacements—**

(a) A replacement is a person specifically engaged as a result of a Caregiver proceeding on parental leave.

(b) The Hospital shall, before engaging a replacement under this subclause, inform that person of the temporary nature of the employment and of the rights of the Caregiver who is being replaced.

(c) The Hospital shall, before engaging a person to replace a Caregiver temporarily promoted or transferred in order to replace a Caregiver exercising his or her rights under this clause, inform that person of the temporary nature of the promotion or transfer and of the rights of the Caregiver who is being replaced.

(d) Provided that nothing in this subclause shall be construed as requiring the Hospital to engage a replacement.

22.—INTRODUCTION OF CHANGE AND REDUNDANCY

(1) **Interpretation**

In this clause—

"Caregiver" does not include a Caregiver engaged on a casual or temporary basis or on a fixed term contract;

"redundant" means being no longer required by the Hospital to continue doing a job because the Hospital has decided that the job will not be done by any Caregiver.

For the purposes of this clause, an action of the employer has a **"significant effect**" on a Caregiver if—

(a) there is to be a major change in the composition, operation or size of, or skills required in, the Hospital's workforce that will affect the Caregiver; or

(b) there is to be elimination or reduction of a job opportunity, promotion opportunity or job tenure for the Caregiver; or

(c) the guaranteed hours of the Caregiver's work are to significantly increase or decrease; or

(d) the Caregiver is required to be retrained; or

(e) the Caregiver is to be required to transfer to another job or work location; or

(f) the Caregiver's job is to be restructured.

(2) (a) **Caregiver to be Informed**

Where the Hospital has decided to—

(i) take action that is likely to have a significant effect on a Caregiver; or

(ii) make a Caregiver redundant,

the Caregiver is entitled to be informed by the Hospital, as soon as reasonably practicable after the decision has been made, of the action or the redundancy, as the case may be.

(b) **Discussions to occur**

The Hospital shall thereafter hold discussions with the Caregiver affected as to—

(i) the likely effects of the action or the redundancy in respect of the Caregiver; and

(ii) measures that may be taken by the Caregiver or Hospital to avoid or minimise a significant effect.

Provided that the Hospital shall not be required to disclose confidential information the disclosure of which may seriously harm the Hospital's interests.

(3) **Union to be informed**

Where the Hospital has made a definite decision to introduce major changes that are likely to have significant effects on Caregivers, the Hospital shall notify and hold discussions with the relevant union(s).

(4) **Severance Pay**

(a) In addition to the period of notice prescribed in Clause 9—Contract of Service of the Award, for ordinary termination, a Caregiver whose employment is terminated on the grounds of redundancy shall be entitled to the following amount of severance pay in respect of a continuous period of service.

Period of Continuous Service	Severance Pay
Less than 1 year	Nil
1 year but less than 2 years	1 weeks
2 years but less than 3 years	3 weeks
3 years but less than 4 years	5 weeks
4 years but less than 5 years	7 weeks
5 years but less than 6 years	9 weeks
Thereafter	1 week's additional pay for each additional year of service

"**Weeks Pay"** means the ordinary weekly rate of wage for the Caregiver concerned.

(b) For the purpose of this clause continuity of service shall not be broken on account of—

(i) any absence from work on account of personal sickness or accident for which a Caregiver is entitled to claim sick pay as prescribed by this award or on account of leave lawfully granted by the Hospital; or

(ii) any absence with reasonable cause, proof whereof shall be upon the Caregiver; or

(iii) any absence on approved leave without pay.

Provided that in the calculation of continuous service under this subclause any time in respect of which a Caregiver is absent from work except time for which a Caregiver is entitled to claim annual leave, sick pay, long service leave and public holidays as prescribed by this agreement shall not count as time worked.

(c) Service by the Caregiver with a business which has been transmitted from one Hospital to another and the Caregiver's service has been deemed continuous in accordance with subclause (3) of Clause 2 of the Long Service Leave Provisions published in Volume 79 of the Western Australian Industrial Gazette at pages 1-4 shall also constitute continuous service for the purpose of this clause.

(5) **Caregiver Leaving During Notice—**

A Caregiver whose employment is to be terminated on the grounds of redundancy may terminate employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had the Caregiver remained with the Hospital until the expiry of such notice. Provided that in such circumstances the Caregiver shall not be entitled to payment in lieu of notice.

(6) **Alternative Employment—**

The Hospital, in a particular redundancy case, may make application to the Commission to have the general severance pay prescription varied if the Hospital obtains acceptable alternative employment for a Caregiver.

(7) **Leave for Job Interviews**

(a) A Caregiver who has been given notice that he or she has been, or will be, made redundant shall during the period of notice of termination be entitled to be absent from work up to a maximum of 8 ordinary hours during each week of notice without deduction of pay for the purpose of being interviewed for further employment.

(b) A Caregiver who claims to be entitled to paid leave under paragraph (a) shall, at the request of the Hospital, be required to produce reasonable proof of attendance at an interview or the Caregiver shall not receive payment for the time absent.

23.—DISPUTE SETTLEMENT

(1) Subject to the provisions of the *Industrial Relations act, 1979* any dispute or difficulty, including any matter arising

under this Agreement, or any matter raised by the Union, the Hospital or the Caregivers covered by this Agreement, shall be settled in accordance with the procedures set out herein—

(a) **Step 1**

As soon as practicable after the issue or claim has arisen, it shall be considered jointly by the Department Manager, the Caregiver or Caregivers concerned and where the Caregiver(s) so request(s), the workplace representative.

(b) **Step 2**

If the dispute is not resolved the issue or claim shall be considered jointly be the Division Manager, the Department Manager, the Caregiver or Caregivers concerned and where the Caregiver(s) so request(s), the workplace representative who shall attempt to settle the dispute.

(c) **Step 3**

If the dispute is not resolved the issue or claim shall be considered jointly by the Manager Employee Relations, the Department Manager, the Caregiver or Caregivers concerned and where the Caregiver(s) so request(s), an official of the union who shall attempt to settle the dispute.

(d) **Step 4**

If the dispute is not resolved it may then be referred to the Western Australian Industrial Relations Commission for assistance in resolving the dispute.

(2) Throughout all steps of the procedure all relevant facts shall be clearly identified and recorded.

(3) On each occasion sensible time limits shall be agreed upon for the completion of each step of the procedure.

(4) Observe of these procedures shall in no way prejudice the right of any party in dispute to refer the matter for resolution in the Western Australian Industrial Relations Commission, at any time.

24.—NO EXTRA CLAIMS

There shall be no extra salary claims for the life of this Agreement, except where consistent with decisions of the Western Australian Industrial Relations Commission that reflect State Wage Decisions requiring general application.

25.—SIGNATORIES TO AGREEMENT

For and on behalf of

ST JOHN OF GOD HEALTH CARE SUBIACO—

Signed.....

In the presence of—

Signed.....

Signed for and on behalf of

HOSPITAL SALARIED OFFICES ASSOCIATION OF WESTERN AUSTRALIA (UNION OF WORKERS)—

Signed..... ***Common Seal***

Secretary

In the presence of—

Signed.....

Signed.....

President

In the presence of—

Signed.....

SCHEDULE A

MINIMUM SALARIES

(1) The minimum rates of salaries to be paid to Caregivers covered by this Agreement shall be as set out hereunder—

Column A: Salary applying prior to the commencement of this Agreement.

Column B: A 2.5% increase to apply from the first pay period commencing on or after 10 July 2000.

Column C: A further and final 3% increase to apply from the first pay period commencing on or after 1 July 2001.

Level	Column A	Column B	Column C
Level 5/10	32669	33486	34490
	34391	35251	36308
	36534	37447	38571
	38774	39743	40936
	42382	43442	44745
	44792	45912	47289
Level 11/12	47146	48325	49774
	48893	50115	51619
	51377	52661	54241
Level 13/14	52705	54023	55643
	54388	55748	57420
	56132	57535	59261
Level 15	58681	60148	61952
	60770	62289	64158
A: 1	63930	65528	67494
A: 2	66130	67783	69817
A: 3	68537	70250	72358
A: 4	72410	74220	76447
A: 5	75503	77391	79712
A: 6	78648	80614	83033
A: 7	82961	85035	87586
A: 8	85875	88022	90663
A: 9	89198	91428	94171

(2) Subject to paragraph (c) of this subclause, on appointment or promotion to the Level 5/10 under this clause—

(a) Caregivers, who have completed an approved three academic year tertiary qualification, relevant to their calling, shall commence at the first year increment.

(b) Caregivers, who have completed an approved four academic year tertiary qualification, relevant to their calling, shall commence at the second year increment.

(c) Caregivers, who have completed an approved Masters or PhD Degree, relevant to their calling, shall commence on the third year increment.

Provided that Caregivers who attain a higher tertiary level qualification after appointment shall not be entitled to any advanced progression through the range.

(3) The employer and union shall be responsible for determining the relevant acceptable qualifications for appointment for the callings covered by this Clause and shall maintain a manual setting out such qualifications.

(4) The employer, in allocating levels pursuant to subclause (2) of this clause may determine a commencing salary above level 5/10 for a particular calling/s.

(5) Annual increments shall be subject to the Caregiver's satisfactory performance over the preceding twelve months.

(6) Any dispute in relation to the payment of an annual increment shall be referred to the WA Industrial Relations Commission for determination.

SUNASON P/L/BLPPU AND THE CMETU COLLECTIVE AGREEMENT 2000.
No. AG 207 of 2000.

2000 WAIRC 00596

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	THE WESTERN AUSTRALIAN BUILDERS' LABOURERS, PAINTERS & PLASTERERS UNION OF WORKERS, CONSTRUCTION, MINING, ENERGY, TIMBERYARDS, SAWMILLS AND WOODWORKERS UNION OF AUSTRALIA—WESTERN AUSTRALIAN BRANCH V SUNASON PTY LTD
CORAM	CHIEF COMMISSIONER W S COLEMAN
DELIVERED	MONDAY, 11 SEPTEMBER 2000
FILE NO/S	AG 207/2000

Result Agreement registered
Representation
Applicant Mr P Joyce on behalf of the Unions
Respondent No appearance

Order.

HAVING heard Mr P Joyce on behalf of the Western Australian Builders' Labourers, Painters and Plasterers Union of Workers & Construction, Mining, Energy, Timberyards, Sawmills & Woodworkers Union of Australia, Western Australian Branch and there being no appearance by the other party to the Agreement, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

1. THAT the Sunason P/L/BLPPU and the CMETU Collective Agreement 2000 in the terms of the following schedule be registered on the 11th day of September, 2000. This Agreement replaces AG 8 of 1998 entitled 'Sunason Industrial Agreement' which is hereby cancelled.

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

1.—TITLE

This agreement shall be known as the Sunason P/L / BLPPU and the CMETU Collective Agreement 2000.

2.—ARRANGEMENT

	Clause No.
Title	1
Arrangement	2
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Application	4
Relationship to Parent Award	5
Period of Operation	6
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3.—PARTIES AND PERSONS BOUND

This agreement shall be binding on Sunason Pty Ltd (hereinafter referred to as "the company"), the Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and the Construction Mining Energy Timberyards Sawmills and Woodworkers Union of Australia—WA Branch (hereinafter referred to as "the unions") and all employees of the company eligible to be members of the unions.

4.—APPLICATION

This agreement shall apply to all employees of the company engaged on work in or in connection with construction, alteration, maintenance, repair or demolition of buildings or other structures of any kind whatsoever.

This agreement shall apply in Western Australia only. There are approximately 7 employees covered by this agreement.

5.—RELATIONSHIP TO PARENT AWARD

1. This agreement is supplementary to, and shall be read and interpreted wholly in conjunction with, the Building Trades (Construction) Award 1987, Award No. R14 of 1978 (hereinafter referred to as "the award").

2. In the event of any inconsistency between the award and an express provision of this agreement, the terms of this agreement shall prevail to the extent of such inconsistency, unless the express provision of the agreement provides otherwise.

6.—PERIOD OF OPERATION

This agreement shall come into force from the first pay period commencing on or after November 1st 1999 and shall remain in force until the 1st of November, 2002.

7.—CLASSIFICATION STRUCTURE & RATES OF PAY

1. All employees working under this agreement shall be paid according to the wage rates set out below.

2. Wage Rates (per hour at ordinary time)

	Previous EBA Rate Hourly Rate $	1st November 1999 Hourly Rate $	1st November 2000 Hourly Rate $	1st November 2001 Hourly Rate $
Labourer Group 1	17.15	18.01	18.91	19.86
Labourer Group 2	16.56	17.39	18.26	19.17
Labourer Group 3	16.12	16.93	17.78	18.67
Plaster, Fixer	17.82	18.71	19.65	20.63
Painter, Glazier	17.42	18.29	19.20	20.16
Signwriter	17.80	18.69	19.62	20.63
Carpenter/Roofer	17.93	18.85	19.79	20.78
Bricklayer	17.75	18.63	19.61	20.59
Refractory Bricklayer	20.38	21.40	22.47	25.59
Stonemason	17.93	18.82	19.76	20.75
Rooftiler	17.62	18.50	19.43	20.40
Marker/Setter Out	18.46	19.38	20.35	21.37
Special Class T	18.69	19.62	20.61	21.64

APPRENTICE RATES

	Previous EBA Rate Hourly Rate $	1st November 1999 Hourly Rate $	1st November 2000 Hourly Rate $	1st November 2001 Hourly Rate $
Plasterer, Fixer				
Year 1	7.48	7.86	8.25	8.66
Year 2 (1/3)	9.81	10.29	10.81	11.35
Year 3 (2/3)	13.37	14.03	14.74	15.47
Year 4 (3/3)	15.69	16.46	17.29	18.15
Painter. Glazier				
Year 1 (.5/3/5)	7.32	7.68	8.06	8.47
Year 2 (1/3), (1.5/3.5)	9.58	10.06	10.56	11.09
Year 3 (2/3), (2.5/3.5)	13.06	13.72	14.40	15.12
Year 4 (3/3), (3.5/3.5)	15.33	16.10	16.90	17.74
Signwriter				
Year 1 (.5/3.5)	7.48	7.85	8.24	8.66
Year 2 (1/3, 1.5/3.5)	9.78	10.28	10.79	11.35
Year 3 (2/3. 2.5/3.5)	13.35	14.02	14.72	15.47
Year 4 (3/3, 3/5/3.5)	15.66	16.45	17.27	18.15
Carpenter/Roofer				
Year 1	7.54	7.92	8.31	8.73
Year 2 (1/3)	9.86	10.37	10.88	11.43
Year 3 (2/3)	13.45	14.14	14.84	15.59
Year 4 (3/3)	15.78	16.59	17.42	18.29
Bricklayer				
Year 1	7.46	7.82	8.24	8.65
Year 2 (1/3)	9.76	10.25	10.79	11.32
Year 3 (2/3)	13.31	13.97	14.71	15.44
Year 4 (3/3)	15.62	16.39	17.26	18.12
Stonemason				
Year 1	7.54	7.92	8.31	8.73
Year 2 (1/3)	9.86	10.37	10.88	11.43
Year 3 (2/3)	13.45	14.14	14.84	15.59
Year 4 (3/3)	15.78	16.59	17.42	18.29
Rooftiler				
6 months	10.04	10.54	11.07	11.62
2nd 6 months	11.04	11.59	12.17	12.78
Year 2	12.90	13.55	14.23	14.94
Year 3	15.14	15.90	16.70	17.54

3. All expense related allowances not specifically mentioned in this agreement will be paid as per the award as varied from time to time.

4. Site allowances relating to particular sites shall be paid in accordance with Appendix B of this Agreement.

5. An additional payment will be made to compensate for the impact of the Goods and Services Tax on the Consumer Price Index. In the circumstance that the CPI limit below is exceeded the appropriate additional payment will be made to the wage rates. The CPI figure for the applicable dates will be the official figure released by the ABS for the preceding year.

Date	CPI Limit	Additional Payment
June 2001	5%	1% (paid 1/9/2001)
June 2001	6%	2% (paid 1/9/2001)
June 2002	5%	1% (paid 1/9/2002)
June 2002	6%	2% (paid 1/9/2002)

8.—INDUSTRY STANDARDS

Redundancy

The company shall increase redundancy contributions on behalf of each employee to the following sums on a weekly basis—

Rate on signing	$50
Rate as of 1/05/2001	$60

Superannuation

(i) The Company will make a payment of $75 per week per employee or the percentage rate that is prescribed under the Superannuation Guarantee Charge, whichever is the greater. On 1st July 2002 the Company will make a payment of $90 per week per employee.

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

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

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

In the event that the employee and the Company reach an agreement pursuant to section 49C(2)(d) of the Act to change the complying superannuation fund or scheme the Company will, within seven days of the employee and the Company reaching such an agreement, advise the Union in writing of the agreement. The employer 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.

9.—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.

(c) Where the Company has signed a previous Agreement with the Union that also allowed for the conversion to cash payment on termination for accrued sick leave, that accrued sick leave will be treated as if is accrued under this agreement.

(d) Sick leave shall accrue, for the purposes of this clause, at the rate of one day at the beginning of each of the first ten calendar months of each year.

(e) Employees shall have the option of converting to a cash payment all sick leave entitlements over 5 days. Payment shall be made on the last pay period prior to the Christmas closedown.

10.—NEGOTIATION OF A SUBSEQUENT AGREEMENT

The parties agree to commence negotiations for a new collective agreement to succeed this agreement at least 3 months before the nominal expiry date. The parties intend to conclude these negotiations prior to the nominal expiry date. These negotiations shall be conducted on a collective basis between all of the parties with the negotiated outcome being subject to approval of a vote of the employees collectively.

11.—APPLICATION OF PROJECT AGREEMENTS

1. This agreement shall apply to all persons employed in the employer's business and every part thereof throughout Western Australia until **1st November 2002** except where the company commences work on a project where a site agreement to which the union is a party exists that provides for higher rates of pay and conditions.

2. The conditions contained in any such site agreement will take precedence over this agreement for the duration of the project.

12.—FARES AND TRAVELLING ALLOWANCE

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.

13.—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 Company 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 16—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.

14.—ALL IN PAYMENTS

1. All-in payments to employees will not be made. All-in payments are defined as an hourly rate or piece work rate which is meant to cover wages and all allowances, such as annual leave, sick leave, etc., on which tax is being paid using the Prescribed Payments System.

2. It is agreed that where a breach of this clause is discovered, the employer shall continue paying the "all-in" rate as the employees hourly rate, but shall pay all award and other entitlements on top of this amount, back-dated to the commencement of the all-in rate arrangement. The company shall not be entitled to offset any amount in excess of the ordinary hourly rate against any other entitlement in this agreement.

3. This clause shall not be applied to prevent the employer subletting specialised work outside of the normal scope of work which the employer performs. The union shall be notified when specialist sub-contractors are to be engaged.

15.—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.

16.—DISPUTE SETTLEMENT PROCEDURE

1. Disputes over any work related or industrial matter should be dealt with as close to its source as possible.

2. An employee or the union delegate should initially submit any work related grievance and/or industrial matter to the site foreperson, supervisor or other appropriate site representative of the company.

3. If the matter remains unresolved the union delegate may then submit the matter to the appropriate senior management person.

4. If still not resolved the delegate shall refer the matter to an appropriate official of the union, who shall discuss the matter with the nominated representative of the employer.

5. Whilst the above procedures are being followed work should continue as normal.

6. This procedure is to be followed in good faith and without unreasonable delay by any party.

7. Should the matter remain unresolved it shall be dealt with in one of the following ways as agreed to between the parties—

- referred to the Western Australian Industrial Relations Commission for conciliation and if required arbitration. The Commissions decision will be accepted by all parties subject to legal rights of appeal; or
- referred to a disputes board for determination; or
- referred to a private arbitrator agreed to between the parties, for determination.

8. This dispute settlement procedure does not apply to health and safety issues.

17.—SAFETY DISPUTE RESOLUTION

1. The parties to this agreement are committed to the safe operation of plant and equipment, to the observance of safe working practices, and the provision by the employer and correct use of all personal protective equipment. The company recognises its responsibilities to provide a safe and healthy workplace.

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 safety officer or workers' safety representative to be dealt with in accordance with the following procedures—

(i) Where any employee becomes aware of an unsafe situation, that employee will immediately notify the company safety officer or the workers' safety representative.

(ii) The company safety officer and the workers' safety representative will take immediate action to have the unsafe situation rectified.

(iii) Should the company safety officer consider that no safety precautions are necessary, he/she will notify the workers' safety representative accordingly as soon as possible.

(iv) While there is disagreement on the ruling of the company safety officer, the company safety officer will arrange for the immediate transfer of all employees from the disputed area.

(v) Should the company safety officer be of the opinion that no action is necessary and the worker's safety representative disagrees, an appropriate inspector from Worksafe/Workcover will be requested to undertake an inspection of the disputed area for the purpose of resolving any such matter.

(vi) If disagreement still exists the chief inspector or his/her nominee will be called in to assist in the resolution of the dispute.

(vii) If no agreement can be reached between the parties the matter will be dealt with in accordance with the dispute resolution procedure of this agreement.

(viii) 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.

(ix) 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.

18.—AMENITIES

1. The parties agree that it is the responsibility of the company to ensure that the amenities prescribed by the Award are provided as a minimum. Where, however, that standard is not maintained due to an action or event beyond the control of the company, the union agrees that the company should be allowed reasonable time in which to rectify the problem. If the company acts promptly to rectify the problem, there should be no interruption to work from industrial stoppages, bans and limitations.

2. In all instances, the following procedure shall be observed—

3. A uniformly high standard of amenities and facilities such as ablution blocks, change rooms, crib sheds, etc. shall be provided.

4. All Sheds shall be weatherproof and soundly constructed to an approved standard with sufficient windows and doors, adequate ventilation and lighting. They must have a floor above ground level and be lined on ceilings and walls.

5. Mess Shed/s fitted with fly screens are provided for exclusive use of workers and not for the storage of employers' equipment, tools and materials.

6. Shed/s shall provide not less that 0.75 square metres of floor space per person employed at any one time, provided that the area be not less than 4.65 square metres. Fixtures, other than tables and chairs, shall not be included when calculating floor space.

7. Where 5 or more persons are employed at one time, the floor area shall not be less than 9 square metres.

8. Adequate facilities are to be provided for warmth and for drying clothes eg. strip heaters.

9. Provided that 20 or more persons are employed on the site at any one time, the employer shall provide a separate shed or sheds for messing, which shall be of such dimension as to provide not less than 0.75 square metres of floor space per person.

10. Where less than 20 persons are employed on site, Regulation 3.20—Workplace Facilities of the Occupational Safety and Health Regulations 1996 shall apply to provisions of messing and changing facilities.

11. In the changing facilities, separate clothes-hanging facilities for each person employed are to be provided (coat hooks only to be used).

12. In the changing facilities, sufficient seating accommodation for the changing of work apparel is to be provided.

13. In the messing facilities, sufficient tables with fixed washable laminated or vinyl surface, and seating for the taking of meals, are to be provided.

14. Food warming facilities to be supplied, together with a supply of cool, clean water conveniently accessible, as well as boiling water at meal/rest breaks.

15. Receptacle for garbage with bin liner and rat and fly proof is to be supplied in mess area, and emptied regularly.

16. A washable vinyl floor surface in all facilities is to be provided.

17. Shelving is to be supplied in the mess shed for storage (cups, lunch bags, etc).

18. All facilities are to be cleaned and disinfected on a regular basis.

19. All mess sheds shall be supplied with reverse cycle air-conditioning.

20. Toilet blocks shall be soundly constructed and roofed with weatherproof material. The floor of each toilet shall be well-drained and constructed of concrete, bricks and cement, or other approved materials which shall be impervious to water. Every toilet shall be well lighted by natural or artificial light and shall be ventilated. Each toilet shall have a hinged door, capable of being fastened on the inside, lift seats/flaps and toilet paper.

21. Where practicable, toilets to be connected to sewerage before commencement of the job.

22. Toilet/urinal location to be conveniently accessible to employees, but not so close as to cause a nuisance to those persons.

23. Where necessary, portable water seal toilets of an approved standard are to be provided and regularly serviced.

24. Conveniently accessible toilets and urinals are to be distributed every 5th floor on multi-storey constructions.

25. Toilets and urinals are to be washed daily with disinfectant and kept in clean, hygienic condition.

26. Adequate washing facilities, suitably drained, and was basins/troughs are to be supplied with running water.

27. Soap and towels are to be supplied.

28. The following toilet/urinal ratio shall be applied in respect to all employees—

Employees	Toilets	Urinals
1-5	1	Nil
6-10	1	1
11-20	2	2
21-35	3	4
36-50	4	6
51-75	5	7
76-100	6	8

NB. For each additional 20 persons or part thereof up to 200 persons or part thereof up to 200 persons, one additional urinal and one additional toilet is required. For each additional 35 persons or part thereof in excess of 200 persons, one additional urinal and one additional toilet is required. If a slab urinal is provided, each 600mm shall be regarded as one urinal.

19.—TRAINING AND RELATED MATTERS

1. A training allowance of $13.00 per week per worker shall be paid by the employer to the Union Education and Training Fund. This shall increase to $14.00 per week on 1 November 2000 and a further increase to $15.00 per week on 1 November 2001.

2. Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calender year pro-rata to attend courses conducted or approved by the NBCITC. The employers approval shall not be unreasonably withheld.

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

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

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

20.—DRUG & ALCOHOL, SAFETY & 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.

21.—CLOTHING AND SAFETY 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, to 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.

22.—INCOME PROTECTION

The Company agrees to insure employees covered by this Agreement for injury and sickness. The scheme is to be negotiated between the parties

23.—ACCIDENT PAY

1. The Company agrees to pay each employee accident pay where the employee receives an injury for which weekly payments or compensation are payable by or on behalf of the Company pursuant to the provisions of the Workers' Compensation and Rehabilitation Act 1981, as amended.

2. "Accident Pay" means a weekly payment of an amount being the difference between the weekly amount of compensation paid to the employee pursuant to the Workers Compensation and Rehabilitation Act and the employee's ordinary wage under this Agreement.

3. The Company shall pay accident pay during the incapacity of the employee arising from any one injury for a total of 39 weeks whether the incapacity is in one continuous period or not.

24.—UNION MEMBERSHIP

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

25.—Y2K

On the following key dates the Company will issue written records of accrued entitlements to each employee. The accrued entitlements will include annual leave, sick leave, any accruing productivity bonuses, redundancy payments and Superannuation payments and also on each employees anniversary date—

- 31 December 1999
- 28 February 2000
- 31 December 2000
- 28 February 2001

26.—SIGNATORIES

BLPPU .....
Date: / /

CMETU .....
Date: / /

The Company: .....
Signature

Company Seal .....
Print Name

APPENDIX A—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

1. PRINCIPLE

People dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

2. FOCUS

- Site safety and the involvement of the site safety committee
- Peer intervention and support
- Rehabilitation

3. WORKPLACE POLICY

a) A person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.

b) The decision on a persons ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/employer representatives.

c) There will be no payment of lost time to a person unable to work in a safe manner.

d) If this happens 3 times the worker shall be given a written warning and made aware of the availability of treatment/counselling. If the worker refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.

e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.

f) A worker having problems with alcohol and or other drugs—

- Will not be sacked if he/she is willing to get help.
- Must undertake and continue with the recommended treatment to maintain the protection of this program.
- Will be entitled to sick leave or leave without pay while attending treatment.

4. IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will—

a) Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.

b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Program to address a meeting of employees to discuss and endorse the program.

c) Authorise the attendance of appropriate company personnel eg. Safety delegate/officer, safety committee members, union delegate, consultative committee members(s) at the two hour BTG Drug and Safety in the Workplace training course.

APPENDIX B—SITE ALLOWANCE

1. This agreement is between the parties referred to in Schedule A and shall apply to construction work undertaken by principal contractors who are members of CCA and 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 relevant building construction awards as nominated in schedule 'B' as well as any industrial or certified agreements made in conjunction with those awards which do 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 $2.17 m	$1.95
Above	$2.17m to $4.55m	$2.30
Over	$4.55m	$2.90

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17 m	$1.75
Above	$2.17m to $4.55m	$1.95
Over	$4.55m	$2.50

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 $2.17 m	$1.75
Above	$2.17m to $4.55m	$1.95
Over	$4.55m	$2.50

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$520,000	NIL
Above	$520,000 to $2.17 m	$1.65
Above	$2.17m to $4.55m	$1.85
Over	$4.55m	$2.10

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

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

Project Contractual Value		Site Allowance
Up to	$1 m	NIL
Above	$1 m to $2.17 m	$1.35
Above	$2.17m to 6m	$1.65
Above	$6m to $11.98m	$1.90
Above	$11.98m to $24.43m	$2.10
Above	$24.43m to $60.5m	$2.40
Over	$60.5m	$2.60

"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. (Refer attached Map 1).

"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. (Refer attached Map 2).

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

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

5. The site/project allowance and project contractual value detailed in this agreement shall be adjusted on 1 January each year by the total C.P.I. movements for Perth during the

preceding four quarters ending 30 September and accordingly, the site allowance amounts shall be adjusted up or down to the nearest five cents. Provided that where adjustment equates to less than two cents, existing allowance levels shall be maintained.

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 September. 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 BTA 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 contractor and the building trades group of unions for that project that may include matters regularly addressed within the industry, such as, but not limited to, the following—

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

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

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

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

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

12. It is agreed between the parties that this agreement will operate for a period of 12 months from the date the agreement is signed. However, the agreement will continue to operate beyond this date unless either party gives the other three (3) months written notice of intention to withdraw therefrom.

13. 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.

14. This agreement shall only apply to building contracts entered into on or tendered for on or after 1 January 2000.

15. **Application to Apprentices**

a) The rates prescribed in clause 4 of this agreement shall apply to **all** apprentices commencing employment after 31 December 1998 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%

b) Fares and Travel Allowances—Apprentices shall receive 100% of all fares and travel allowances paid.

16. **Provision of Canteen**

It is agreed that a staffed canteen 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. The Canteen shall come into operation when on site worker levels exceed 50 and to cease when the worker levels reduce to below 50.

17. **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 notwithstanding that forecasts may have been below that level. The nurse shall commence duties when staffing levels reach 50 (fifty) and shall terminate when levels reduce to 50 (fifty). The requirement for the provision of a nurse shall be waived if the project is adjacent to a hospital with a public emergency department.

18. **Apprentice Ratio to Tradespersons**

There shall be at least one apprentice employed on site to every 6 tradespersons employed on site.

SMITH'S SNACKFOOD COMPANY LIMITED (WESTERN AUSTRALIA) ENTERPRISE AGREEMENT 2000.

No. AG 220/00.

2000 WAIRC 00858

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	THE FOOD PRESERVERS' UNION OF WESTERN AUSTRALIA, UNION OF WORKERS APPLICANT *v.* SMITHS SNACK FOOD COMPANY LTD RESPONDENT
CORAM	COMMISSIONER S WOOD
DELIVERED	TUESDAY, 10 OCTOBER 2000
FILE NO	AG 220 OF 2000
CITATION NO.	2000 WAIRC 00858

Representation	
Applicant	Mr T J Pope
Respondent	Mr J Millen for the respondent company & Mr G Sturman for AFMEPKIU

Order.

HAVING heard Mr T J Pope on behalf of the applicant and Mr J Millen on behalf of the Smiths Snack Food Company Ltd and Mr G Sturman on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the agreement made between the parties as lodged in the Commission on the 7th day of September 2000 entitled the Smith's Snackfood Company Limited (Western Australia) Enterprise Agreement 2000 is hereby registered.

AND replaces the Smith's Snackfood Company Limited (Western Australia) Enterprise Agreement 1999 (AG 111 of 1999) which is hereby cancelled.

(Sgd.) S. WOOD,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement shall be referred to as "The Smith's Snackfood Company Limited (Western Australia) Enterprise Agreement 2000" and replaces "The Smith's Snackfood Company Limited (Western Australia) Enterprise Agreement 1999".

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope
4. Parties
5. Objectives

6. Term and Operation of Agreement
7. Leave Reserved
8. Union Business
9. Resolution of Disputes
10. Consultation and Team Member Involvement
11. Contract of Employment
12. Redundancy
13. Payment of Wages
14. Time and Wages Record
15. Wages
16. Career Structures and Training
17. Superannuation
18. Hours of Work
19. Rostered Days Off
20. Meal and Tea Breaks
21. Work on Public Holidays
22. Overtime
23. Shift Work
24. Sick Leave
25. Annual Leave
26. Jury Service/Bereavement Leave
27. Parental Leave and Adoption Leave
28. Special Leave
29. Long Service Leave
30. Protective Clothing and Equipment

Schedule A—Engineering Pay Rates and Definitions
Appendix A—Charter of the Consultative Committee
Appendix B—Rates of Pay and Job Definition Signatories

3.—SCOPE

(1) The area and scope of this Agreement shall be the same as that prescribed in the Food Industry (Food Manufacturing or Processing) Award (No. A 20 of 1990) as at the date of registration as this Award applied to the team members of The Smith's Snackfood Company Limited.

(2) This Agreement shall apply to approximately 95 people employed by The Smith's Snackfood Company Limited at the work site located at Bannister Road, Canning Vale in the State of Western Australia in the classifications listed in Schedule A and or Appendix B, who are eligible to be members of The Food Preservers Union Western Australia Union of Workers, or The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australia Branch.

(3) Unless otherwise expressly provided for in this Agreement or specified in any subsequent agreement, no team member shall be reduced in status or position or have his/her rate of remuneration reduced or any of his/her conditions of employment adversely affected as a consequence of making of this Agreement.

(4) In respect of the award referred to in subclause (1) of this clause—

(a) this Agreement shall be read in conjunction with the award;

(b) where the terms of this agreement are inconsistent with the award, the terms of this Agreement shall prevail;

(c) where this Agreement is silent on any matter, the award provisions shall apply.

(5) Except where agreed by the parties to this Agreement, the parties will oppose any applications by any other party to be joined to this Agreement.

4.—PARTIES

The parties to this Agreement are—

(1) The Smith's Snackfood Company Limited (hereinafter "the Company");

(2) The Food Preservers' Union of Western Australia, Union of Workers (hereinafter "the FPU");

(3) The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australia Branch (hereinafter "the AFMEPKIU").

5.—OBJECTIVES

(1) The parties acknowledge that the objective of this Agreement is to enhance business improvements and productivity through teamwork and empowerment, while also increasing team member remuneration over the term of the Agreement leading to enhanced financial security.

(2) The parties agree that the provisions of the Agreement are intended to support Canning Vales' Vision and stated values through—

(a) the enhancement and utilisation of team member skills and abilities;

(b) team development and empowerment activities

(c) training in team based responsibilities

(d) efficiency and flexibility of team structures and conditions

(e) provision of a healthy and safe working environment.

(3) The Company, the Union and all team members accept their joint responsibility to ensure this Agreement is effective and in the event of any ambiguity or dispute over interpretation the spirit and intention of this clause will be referred to for the proper interpretation of the provision the subject of the dispute or question.

6.—TERM AND OPERATION OF AGREEMENT

(1) Term

(a) This Agreement shall come into operation on 10 May 2000 and shall remain in force for a period of two years thereafter.

(b) All parties to this Agreement make a commitment to re-negotiate this Agreement and apply for its cancellation or replacement before 10 May 2002.

(2) Operation

(a) It is the intention of the parties to maintain this Agreement in its present form for its full term except when changes become necessary so as to ensure the Agreement's effective and practical operation and such changes are consistent with prevailing wage fixing principles.

(b) Notwithstanding paragraph (a) above, during the term of this Agreement, the parties will undertake to implement and participate in Continuous Improvement Activities.

7.—LEAVE RESERVED

The parties agree to discuss a proposal for annualised salaries for all team members subject to acceptance by 80% of team members within the identified area (warehouse, raw stores, packing, processing).

8.—UNION BUSINESS

(1) Right of Entry

Consistent with the terms of the Labour Relations Legislation Amendment Act 1997 and section 23(3)(c)(iii) of the Industrial Relations Act, 1979 a representative of the Union shall not exercise the rights under this 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.

(a) Accredited officials of the Union shall be permitted to interview team members on the business premises of the Company during non-working times or meal breaks.

(b) In the case of a dispute between the Union and the Company which is likely to lead to a cessation of work or to an application to the Western Australian Industrial Relations Commission and which involves the inspection of team members or of machines in the process of production on which such team members are engaged, such Union representatives shall have the right of inspection at any time during which the team members operating the machines concerned are working but this permission shall not be exercised, without the consent of the Company, more than once in any one week.

(c) Provided that the duly accredited official shall notify the Company prior to the official's intention to exercise their rights under this clause and the Union official exercising such rights shall not interfere with or inconvenience the work duties of the team member.

(2) Posting of Agreement

The Company shall ensure a copy of this Agreement is posted in a place easily accessible to all team members.

(3) Meetings of Team members

A Union may, from time to time wish to convene meetings of team members (being team members who are members or are eligible to become members of the Union) on site and during ordinary shift hours. This may be done after discussion between an official of the Union and an authorised Company representative. It is agreed by the parties that every effort will be made to conduct such meetings in such a way as to minimise disruption to the Company operations.

(4) Union Education

The Company will pay a Union representative's ordinary weekly wage, as prescribed by Appendix B of this Agreement whilst the representative is attending a trade union training course.

(a) Each representative will first obtain permission from the Company. Such permission will not be unreasonably withheld having in mind the operational needs in the representative's work area.

(b) Each request for permission to attend such course must be endorsed by the State Secretary of the Union.

(c) Each representative will be entitled to a maximum of five days paid leave in any one calendar year.

(d) Such leave will be granted subject to the Company being given at least two weeks' notice of the date upon which leave is to be taken together with advice as to the nature of the course and the subject matter included therein.

9.—RESOLUTION OF DISPUTES

(1) The following procedure shall be observed to deal with questions, disputes or difficulties arising under the agreement—

(a) discussions between the team member/s concerned (and Union representative if requested) and the immediate co-ordinator/s for the purpose of resolving the question, dispute or difficulty;

(b) discussions involving the team member/s concerned, the Union representative and the Company representative;

(c) discussions involving representatives from the Union concerned and Company representatives;

(d) discussions involving senior Union officials (State Secretary) and senior Company representatives;

(e) there shall be an opportunity for any party to raise the issue to a higher stage.

(2) Sensible time limits shall be allowed for the completion of the various stages of the discussions.

(3) In order to allow for the peaceful resolution of grievances the parties shall be committed to avoiding stoppages of work, lockouts or any other bans or limitations on the performance of work, while the procedures of negotiation and conciliation are being followed.

(4) The Company shall ensure that all the practices applied during the operation of the procedure are in accordance with safe working practices and consistent with established custom and practice at the workplace.

(5) Notwithstanding the procedure contained in sub-clause 1 hereof, there shall be commitment by the parties that in the event of a dispute, team members will not withdraw labour until all part processed materials have been processed throughout the production line to a complete stage without wastage and all equipment has been cleaned. This procedure shall be repeated each day of a dispute.

(6) Emphasis shall be placed on a negotiated settlement. However, if the negotiation process is exhausted without the dispute being resolved, the parties may jointly or individually refer the matter to the Western Australian Industrial Relations Commission for assistance in resolving the dispute, provided that at all times persons involved in the question, dispute or difficulty have conferred among themselves and made reasonable attempts to resolve questions, disputes or difficulties before taking those matters to the Commission.

10.—CONSULTATION AND TEAM MEMBER INVOLVEMENT

(1) Consultation

(a) It is recognised by the parties that the key to productive and harmonious working relationships lies in establishing effective consultative mechanisms at the workplace. Effective consultation mechanisms will—

(i) ensure that the views of the team members are known and taken into account by the Company;

(ii) provide management with an informed basis upon which to make decisions.

(b) To this end, it is agreed that a Consultative Committee is maintained by charter as provided for in Appendix A to this Agreement.

(c) The Committee shall consist of a minimum of six and a maximum to be determined by the Consultative Committee. A meeting quorum shall be a minimum of five committee members representing both team members and management.

(d) Team member representatives on the Committee shall be allowed reasonable time without loss of pay to research or prepare for such committee meetings with full access to all relevant information as necessary.

(e) Team member representatives on the Committee are required to keep their constituents advised on matters arising at the meeting.

(f) The Company will consult with team member representatives on the Committee and give prompt consideration to matters raised by team members—

(i) in order to encourage the involvement of all team members in the ongoing search for measures to improve productivity and efficiency;

(ii) to facilitate the on-going implementation of the Structural Efficiency Principle;

(iii) and to otherwise foster a fully committed and informed workforce.

(2) Introduction of Change

(a) Where the Company has made a definite decision to introduce major changes in production, programme, organisation, structure or technology that are likely to have significant effects on team members, the Company shall notify the team members who may be affected by the proposed changes and their Union.

(b) "Significant effects": include termination of employment, major changes in the composition, operational size of the Company 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 team members to other work or locations and the restructuring of jobs. Provided that where the Agreement makes provisions for alteration of any of these matters referred to herein an alteration shall be deemed not to have "significant effects".

(c) The Company's Duty to Discuss Change. The Company shall discuss with the team members affected and the Union, the introduction of the changes referred to in paragraph (a) above and among other things, the effects the changes are likely to have on team members, measures to avoid or minimise the adverse effects of such changes on team members and should give prompt consideration to matters raised by the team members and/or their Union in relation to the changes.

(d) The discussion shall commence as soon as is practicable after a definite decision has been made by the Company to make the changes referred to in paragraph (a) above.

(e) For the purposes of such discussion, the Company shall provide in writing to the team members concerned and their Union, all relevant information

about the changes including the nature of the changes proposed; the expected effects of the change on team members and any other matters likely to affect team members provided that the Company is not required to disclose confidential information the disclosure of which would be inimical to the Company interests.

11.—CONTRACT OF EMPLOYMENT

(1) A team member may be engaged as—

(a) A full time team member engaged to work 38 hours per week (excluding overtime).

(b) Part Time Team member

Means a team member engaged to regularly work for only part of any day or week as may be agreed between the Company and the team member concerned, provided such work is more than 8 hours and less than 38 hours per week.

(c) Casual Team member

Means a team member who is engaged by the hour and whose employment may be terminated by either party giving one hour's notice. The Company shall, wherever practicable, notify a casual team member that their services are not required the next working day. A casual team member is not entitled to the benefits of Clause 24.—Sick Leave, Clause 25.—Annual Leave, Clause 26.—Jury Service/Bereavement Leave, Clause 27.—Parental Leave and Adoption Leave, Clause 28.—Special Leave, or otherwise prescribed by this Agreement.

(d) Fixed Term Team member

Means a team member engaged to work for a fixed term determined in advance on a full time or part time engagement basis.

(2) Termination of Employment

(a) Notice of Termination by the Company

In order to terminate the employment of a team member, other than a casual team member, the Company shall give the following notice—

Period of Continuous Service:	Period of Notice—
Less than 1 year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4 weeks

(b) In addition to the notice in paragraph (a) above, team members over forty-five years of age at the time of the giving of notice with not less than two years' continuous service shall be entitled to additional notice of one week.

(c) Payment in lieu of the notice prescribed in paragraphs (a) and (b) above shall be made if the appropriate notice period is not given.

(d) The basis for calculation for any payment in lieu of notice shall be the wages a team member would have received in respect of the ordinary time he or she would have worked during the period of notice had his or her employment not be terminated.

(e) The period of notice in this clause shall not apply in the case of dismissal for conduct that at common law justifies instant dismissal or in the case of casual team members where termination of employment may occur by either party giving one hour's notice.

(f) Notice of Termination by Team member

In order to terminate employment a team member shall give the Company the following notice—

Period of Continuous Service:	Period of Notice—
Less than one year	1 week
One year and over	2 weeks

Failure by a team member to give the required notice will entitle the Company to withhold monies due on termination to the value of the number of days for which notice has not been worked.

(3) Time Off During Notice Period

(a) During the period of notice of termination given by the Company a team member shall be allowed up to eight ordinary hours time off without loss of pay during each week of notice for the purpose of seeking of other employment.

(b) The time off shall be taken at times which are convenient to the team member after consultation with the Company.

(c) If the team member has been allowed paid leave for more than one day for each week of the notice period for the purpose of seeking other employment, the team member shall, at the request of the Company, be required to produce proof of attendance at an interview otherwise forfeit payment for the time absent. For this purpose a statutory declaration will be sufficient.

(4) Statement of Employment

Upon ceasing employment, the Company shall, upon request, provide to the team member a written statement specifying the period of his or her employment and the classification of or the type of work performed by the team member.

(5) Performance of Work

Each team member bound by this Agreement—

(a) shall perform such work as the Company may, from time to time reasonably require;

(b) may be directed by the Company to carry out such duties and use such tools and equipment as may be required, provided that such work is within the limits of the team member's skill, competence and training;

(c) may be required to work reasonable overtime;

(d) shall comply with all safety regulations determined by the Company or as prescribed by Government regulation;

(e) shall use as directed by the Company all protective clothing and equipment provided;

(f) shall observe all the Company regulations, policies and procedures in order to maintain an orderly and safe workplace;

(g) shall at all times comply with the provision of Clause 9.—Resolution of Disputes of this Agreement.

(6) Standing Down of Team members

The Company may deduct payment for any day or part of a day on which a team member cannot be usefully employed arising out of any cessation of operations, either whole or partially, due to industrial disputes including any strikes, bans or limitations or any cause for which the Company is not reasonably responsible.

(7) Disciplinary Procedure

(a) The company may take one or any combination of the following kinds of disciplinary action depending on the seriousness of the offence or situation—

(i) Verbal warning;

(ii) Written warning;

(iii) Final written warning;

(iv) Suspension;

(v) Dismissal.

(b) Verbal warning

A verbal warning is an informal warning which will not be recorded on the team member's personal file.

(c) Written warning

A written warning may be given either when a verbal warning has failed or where the offence is so serious that a verbal warning would not be adequate.

A written warning shall stand for a reasonable period of time and will be placed in the team member's personal file.

(d) Final written warning

A final written warning may be given either where a written warning is considered inadequate because of the seriousness of the offence or when the same

or similar offence is committed within the time frame as specified in section (c) above, of receiving the written warning. Failure to heed a final warning may result in dismissal.

(e) Suspension

In special circumstances where serious misconduct is or appears to be involved, a team member may be suspended with pay for a period specified in writing, pending an investigation of the alleged offence. This suspension is without prejudice to the team member whose conduct is subject to an inquiry or to future employment of the team member concerned.

(f) Dismissal

(i) In the case of serious and wilful misconduct or in the case of a team member who, after having received a final written warning, commits an offence similar to that which incurred the final written warning or unreasonably fails to implement agreed changes to his or her work performance following a final written warning, the Company shall convene a hearing. No team member shall be dismissed or suspended without a hearing for disciplinary offences.

(ii) The following persons shall be present at a dismissal hearing—

The team member concerned, a shop steward or union official of his/her own choice and any witness required.

(iii) When all facts and surrounding circumstances have been heard, management shall inform the team member and persons present at the hearing of its decision and the disciplinary action intended to be taken, if any.

(f) A team member is entitled to elect to have either another team member or a Union Representative present during any discussions with the Company's Representative/s concerning the team member's performance which may lead to the disciplinary procedure being used.

(8) Employment of Full Time Team members

The Company reserves the right to select the best person with consultation with team members for any given full time employment vacancy. In doing so however, where all things being equal, the Company will give preference to part time and casual team members already employed by the Company.

(9) The Union acknowledge the right of the Company to engage a balanced workforce by utilising the various types of hire available through the Agreement. In particular, the right to engage part time, fixed term and casual labour as necessary to top up the existing workforce during periods of peak production requirement.

12.—REDUNDANCY

(1) "Redundancy" in this clause means the loss of employment due to the Company no longer requiring the job the team member has been doing to be performed.

(2) Discussions Before Terminations

The Company will notify the Union and affected Team members as soon as is practicable after a firm decision involving redundancy is made so as to allow reasonable consultation prior to redundancies taking place. The subject of such consultation will include but not be restricted to the reasons for redundancy, methods of mitigating job losses, selection process for redundant Team Members, outplacement support and the number and timing of redundancies.

(3) Notification to Commonwealth Employment Services

Where a decision has been made to terminate the employment of team members, on account of redundancy, the Company shall notify the Commonwealth Employment Service thereof as soon as possible, giving relevant information including a written statement of the reason(s) for the termination(s), the number and the categories of the team members likely to be affected, and the period over which the termination(s) are intended to be carried out.

(4) Severance Pay

(a) A minimum of four week's notice will be given to redundant Team Members prior to termination, or payment in lieu thereof. An additional week's notice will be given to Team Members aged 45 or over with not less than two years' continuous service.

(b) Team Members will receive four weeks pay for each year of service up to and including a maximum of 78 weeks' pay. A pro rata payment will be made for an incomplete year of service.

(c) A "week's pay" is defined as the base rate for ordinary work for the particular Team member and is exclusive of any allowances.

(d) The severance payment shall not exceed the amount which the team member would have earned if employment with the Company had proceeded to the team member's 65th birth date.

(5) Continuity of Service

For the purpose of this clause continuity of service shall not be broken on account of—

(a) any interruption or termination of the employment by the Company if such interruption or termination has been made merely with the intention of avoiding obligations under this agreement;

(b) any absence on account of personal sickness or accident for which a team member is entitled to claim sick pay as prescribed by this agreement or on account of leave lawfully granted by the Company; or

(c) any absence with reasonable cause, proof whereof shall be upon the team member.

Provided that in the calculation of continuous service under this paragraph any time in respect of which a team member is absent from work except time for which a team member is entitled to claim annual leave, sick pay, long service leave and public holidays as prescribed by this Agreement shall not count as time worked.

(6) Team Member Leaving During Notice

A team member whose employment is terminated on account of redundancy may terminate his or her employment during the period of notice and, if so, shall be entitled to benefits and payments under this clause up to the date that the person leaves the Company.

(7) Written Notice

In the case of redundancy the Company shall, as soon as practicable, but prior to the termination of the team member's employment, give to the team member a written notice containing, among other things, the following—

(a) the date and time of the proposed termination of the team member's employment;

(b) details of the monetary entitlements of the team member upon the termination of his/her employment including the manner and method by which those entitlements have been calculated;

(c) advice as to the entitlement of the team member to assistance from the Company, including time off without loss of pay in seeking other employment, or arranging training or retraining for future employment; and

(d) advice as to the entitlements of the team member should he/she terminate his/her employment during the period of notice.

(9) Transfer to Other Duties

A team member whose job has become redundant may be offered alternative work in a different department or on a different shift or at a lower level job and if the rate of pay is less than the rate of pay for the former position, the team member shall be entitled to the same period of notice of the date of commencement of work in the new position as if his/her employment has been terminated, and the Company may at its option, make payment in lieu thereof of any amount equal to the difference between the former rate of pay and the new lower rate for the number of weeks of notice still owing.

(10) Team Members with Less Than One Year of Service

This clause shall not apply to team members with less than one year's continuous service and the general obligation of the Company should be no more than to give relevant team members an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the team members of suitable alternative employment.

(11) Long Service Leave

Full time team members with ten years or more continuous service will receive a pro rata payment calculated according to the Long Service Leave provisions of the Western Australian Long Service Leave Act 1958.

(12) Team Members Exempted

This clause shall not apply where employment is terminated as a consequence of conduct that justifies dismissal or in the case of casual team members.

13.—PAYMENT OF WAGES

(1) Payment of wages for all team members shall be by electronic funds transfer (EFT) directly into a bank, building society, credit union or other recognised financial institution account on a day not later than Tuesday of each week as notified in writing to the Company.

(2) Where the Company and the majority of team members within a department or section agree, wages may be paid fortnightly or four weekly.

(3) The Company may deduct from wages due to a team member such amounts as authorised in writing by such team member on a Company approved authority form.

14.—TIME AND WAGES RECORD

The provisions of this clause are subject to the following requirements—

(1) The employer may refuse the representative access to the records if:—

(a) the employer is of the opinion that access to the records by the representative of the organisation would infringe the privacy of persons who are not members of the organisation; and

(b) the employer undertakes to produce the records to an Industrial Inspector within 48 hours of being notified of the requirement to inspect by the representative.

The power of inspection may only be exercised by a representative of an organisation of employees authorised for the purpose in accordance with the rules of the organisation.

(2) The Company shall keep, or cause to be kept, a record or records containing the following particulars—

(a) Full name and last known residential address.

(b) The classification under which he/she is remunerated.

(c) The starting and finishing times and the hours worked each day and each week.

(d) The number of ordinary hours and the number of overtime hours worked each week.

(e) The wages and overtime (if any) paid each week, and any deductions made therefrom.

Any automatic recording by machines shall be deemed to comply with this provision to the extent of the information recorded.

(3) Subject to this clause the time and wages record shall be open for inspection by a duly accredited official of the Union during the usual office hours at the Company's office or other convenient place and the official may be allowed to take extracts therefrom.

(4) Before an inspection takes place a Union Official shall give reasonable notice of not less than 24 hours to the Company.

15.—WAGES

(1) Wages Payable

(a) Progression to higher levels of the Jobs Matrix Wage Rates prescribed in Appendix B—Rates Of Pay and Job Definitions of this agreement shall be subject to successful assessment of competency in accordance with Clause 16.—Career Structures and Training of this Agreement.

(b) These payments are made in recognition of the right of the Company to pursue the implementation of efficiencies under this Agreement so as to achieve targeted improvements in the areas of costs of manufacture.

(2) Higher Duties

(a) Higher duties payments will be made when employees are rostered to cover absences for complete shifts, or when a employee is engaged for less than a whole shift they will be paid the actual hours, provided that the actual hours exceed one hour per day or 5 hours per week.

(3) Team Leader Allowance

(a) This allowance will be paid to employees designated by management to perform in leadership roles, with added responsibilities in the areas of team leadership, productivity requirements and continuous improvement.

(4) Productivity Payment

(a) If through the next 12 months (10.5.00 to 10.5.01) a favourable/positive trend has been exhibited in the agreed productivity measures, then an additional 1% will be paid in May 2001 to all employees.

16.—CAREER STRUCTURES AND TRAINING

(1) General Conditions

(a) The Company recognises and accepts its responsibility in the area of training and development and is committed to the design, provision and implementation of training programs to extend the knowledge and skills of its team members. The overriding objective is to enable each team member to gain the competence to perform, consistent with operational needs, all of the tasks and activities associated with a particular job to established performance criteria.

(2) Jobs Matrix and Training

(a) The jobs matrix (See Appendix B) of this Agreement sets out the various position levels in the main streams of Processing, Raw Materials and Warehouse.

(b) The definition of each position at each level will be supported by training modules for each of the tasks representing the positions together with the relevant required levels of performance competency and assessment criteria.

(3) Progression and Selection

(a) Progression to a higher level in the matrix (other than 3d below) will only be through successful application for a declared position vacancy.

(b) Employees for the positions will be selected from the applicants and according to the following criteria—

1. Functional Requirements.
2. Competence.
3. Workplace Standards.
4. Adaptability and Co-operativeness.
5. Results Focus.
6. Continuous Improvement.
7. Previous experience.
8. Has successfully completed the competencies for a position in the level immediately below.

(c) Training will be conducted full time in order that job knowledge and the desired competency be attained in a specified time, that time will depend upon the position.

(d) Relief personnel from the immediate level below will be paid at the appropriate rate for that higher position for the time of that relief period and will return to their original position and rate of pay at the cessation of that relief period.

(4) Competency Assessment

(a) Specific and objective knowledge and skill assessment will be carried out to assess levels of competence. All skills acquired will be required to be demonstrated. Specific Modules will not be regarded as complete until competency testing requirements, including both theoretical and practical tests where appropriate have been satisfied. No increase in level will be granted without having successfully completed all of the modules of the appropriate position.

(b) All competency assessment will be conducted by either of the following methods: (can be chosen by the trainee or assessor)—

(i) a workplace assessor who has been assessed as competent in the task and is and expert in the task. OR

(ii) a workplace assessor who has been assessed as competent in the task who is NOT an expert in the task must have an acknowledged expert in that skill to assist in assessing. In the event of a disagreement the results will be reviewed by the appropriate coordinator. If agreement is still not reached, the matter will be referred to the Consultative Committee for recommendation.

(5) Record of Training and Experience

Team members will each be issued with a team member Information and Training Document which will be the team member's endorsed record of skills attained and other relevant work experiences whilst employed by the Company. This statement will be updated on the completion of further training.

(6) Utilisation and Upkeep of Skills

All employees' will be required to work at all positions that they deemed competent at and the allocation of work will be subject to the operational needs of the business.

(7) Payment for Training

(a) It is agreed that additional training in accordance with this clause may be undertaken either on or off the job.

(b) Where training is undertaken during ordinary working hours the team member concerned shall not suffer any loss of pay. Where on-site job specific training is undertaken outside ordinary working hours payment for such time shall be according to clause 22.—Overtime of this Agreement.

(c) Any costs incurred in connection with the undertaking of such training shall be reimbursed by the Company upon production of evidence of such expenditure and report of satisfactory progress. Textbooks paid for by the Company shall be retained as Company property.

(8) Travel Costs

Travel costs incurred by a team member undertaking training in accordance with this clause which exceed those normally incurred travelling to and from work shall be reimbursed by the Company. Evidence of such costs incurred by a team member will be required by the Company.

17.—SUPERANNUATION

The superannuation provisions contained herein operate subject to the requirements of the hereinafter prescribed provision titled—Compliance, Nomination and Transition.

(1) Contributions

(a) The Company shall contribute to the Fund a prescribed percentage of the team member's wage in accordance with the provision of the Superannuation Guarantee Act 1992.

(b) The Company shall make such contributions monthly for pay periods completed in such months, or at such other time and in such manner as may be agreed in writing between the Trustees of a fund and the parties to this Agreement from time to time.

(c) Notwithstanding the provisions of this clause, the Company is not obliged to contribute to more than one Fund in respect of a team member unless ordered to do so by an Order from any Industrial Tribunal or by legislation.

(d) If at any time the Company becomes bound by an order of any industrial tribunal or by legislation to contribute to another superannuation fund in respect of a team member then the Company's liability to make contributions in respect of that team member pursuant to this clause will be reduced by the amount of the contribution the Company is required by any order made by any Industrial tribunal or by legislation to make from the date the Company becomes bound to make such contributions.

(2) Definitions

For the purposes of this clause—

(a) "Fund" means the Australian Retirement Fund or The Smith's Snackfood Company Superannuation Plan which complies with the Australian Government's Operational Standards for Occupational Superannuation funds.

(b) "Wage" means the ordinary periodic wage of an amount equal to or greater than $450 per month paid by the Company to a team member and includes other remuneration to be taken into account as "wages" under the Superannuation Guarantee (Administration) Act 1992.

(3) Compliance, Nomination and Transition

Notwithstanding anything contained elsewhere herein which requires that contribution be made to a superannuation fund or scheme in respect of an employee, on and from 30 June 1998—

(a) Any such fund or scheme shall no longer be a complying superannuation fund or scheme for the purposes of this clause unless—

(i) the fund or scheme is a complying fund or scheme within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; and

(ii) under the governing rules of the fund or scheme, contributions may be made by or in respect of the employee permitted to nominate a fund or scheme;

(b) The employee shall be entitled to nominate the complying superannuation fund or scheme to which contributions are to be made by or in respect of the employee;

(c) The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable;

(d) A nomination or notification of the type referred to in paragraphs (b) and (c) of this subclause shall, subject to the requirements of regulations made pursuant to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the employee to whom such is directed;

(e) The employee and employer shall be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made;

(f) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by a employee;

(g) Until an employee nominates a complying superannuation fund or scheme, the employer shall make contributions to a fund nominated in accordance with this clause.

18.—HOURS OF WORK

(1) Ordinary Hours

The ordinary hours of work shall be an average of 38 hours per week over any five days of the week worked over any one of the following cycles.

(a) 38 hours within a work cycle not exceeding 5 consecutive days.

(b) 152 hours within a work cycle not exceeding 28 consecutive days provided that this work cycle is subject to agreement as provided by subclause (2) of Clause 19. -Rostered Days Off of this Agreement.

(2) Day Work

The ordinary hours of work for day workers shall be worked continuously except for meal breaks between 6.00am and 6.00pm Monday to Friday, subject to subclauses (1) of Clause 21.—Work on Public Holidays of this Agreement.

(3) Shift Work

The ordinary hours of shift work are provided for in subclause (2) of Clause 23.—Shift Work of this Agreement.

(4) Changes to shifts

The time commencing and finishing shifts may be varied by the Company by the giving of seven days notice to the team member/s concerned or a shorter period of notice by agreement.

(5) Implementation of 38 Hour Week

The ordinary hours shall be an average of 38 per week to be worked on the following basis—

(a) By team members working less than eight ordinary hours each day; or

(b) By fixing one weekday on which all team members will be off during a particular work cycle; or

(c) By rostering team members off on various days of the week during a particular work cycle so that each team member subject to agreement as provided by subclause (2) Clause 19.—Rostered Days Off, has one week day off during that cycle.

(d) By team members working up to a maximum of 40 hours in any week provided that over a period of six months the average weekly hours shall not exceed 38 hours.

(e) By team members working ordinary hours in excess of eight but not exceeding ten on any one day over a four day working week.

19.—ROSTERED DAYS OFF

(1) Where the ordinary hours of work for a team member are to be worked in accordance with paragraph (d) of subclause (5) of Clause 18.—Hours of Work of this Agreement such team member will accrue a credit of two (2) hours each week which shall accumulate. Such accumulation may be taken as a rostered day off duty at a time that is agreed between the Company and the team member, or where appropriate, the Company and the majority of team members in the enterprise, section or sections concerned.

(2) Six (6) RDO's may be accrued by agreement between the Company and the team member.

20.—MEAL AND TEA BREAKS

(1) The time of taking scheduled meal and tea breaks once having been determined may be altered by the Company if it is necessary to do so in order to meet the requirements for continuity of production. The duration of the meal break shall be 30 minutes and tea break 15 minutes.

(2) No team member shall be required to work more than six hours without a meal break. No team member shall be required to work more than four hours without a paid tea break.

21.—HOURS WORKED ON PUBLIC HOLIDAYS

(1) Public Holidays

(a) All team members (other than casuals) shall be entitled to those public holidays as prescribed by the Award; provided that another day may be taken as a holiday by agreement between the Company and team member in lieu of any of the public holidays.

(b) Where a Public Holiday falls on a Saturday or a Sunday or on a day on which a team member is not rostered to work ordinary hours, the public holiday shall be observed on the next succeeding working day or on such other day as may be agreed by the Company and the team member.

(c) All work performed by team members on any of the public holidays listed above shall be paid for at the rate of double time and a half.

(d) Where a team member (other than a casual) is required for work on a public holiday the team member shall be paid for a minimum of four hours at the rate of double time and one half.

(e) With respect to shift workers this clause shall not apply to ordinary hours worked on a shift of which the minor portion falls on a Public Holiday.

22.—OVERTIME

(1) Payment For Overtime

(a) Subject to the provisions of this subclause, all work performed outside a team member's ordinary working hours as defined in Clause 18.—Hours of Work or Clause 23.—Shift Work shall be paid for at the rate of time and one half for the first two hours and double time thereafter, double time will apply for hours worked on Sunday and for hours worked after 12.00 noon Saturday.

(b) In computing overtime each day shall stand alone but when a team member works overtime which continues beyond midnight on any day, the time worked after midnight shall be deemed to be part of the previous days work for the purposes of the subclause.

(2) Call Out

Where a team member (except casuals) is recalled to work without prior notice after leaving the Company premises they shall be paid for a minimum of four hours' work at the appropriate overtime rate.

(3) On Call

A team member shall be paid at ordinary rates for all time required by the Company to hold in readiness to work outside ordinary working hours until release.

(4) Meal Allowance

A team member who works overtime in excess of two hours shall be entitled to a paid meal break of not less than 20 minutes to be taken at a time agreed to between the team member and the Company. In addition, a team member shall also be paid a meal allowance of $8.50 where a day's prior notice of the requirement to work such overtime has not been given.

(5) Rest Period After Overtime

(a) Where overtime work is necessary it shall, wherever reasonably practicable, be so arranged that team members have at least ten consecutive hours off duty between the work of successive days.

(b) A team member who works so much overtime between the termination of work on one day and the commencement of ordinary hours on the next day, that the team member has not had at least 10 consecutive hours off duty between those times, shall, subject to this subclause be released after completion of such overtime until the team member has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(c) If, on the instructions of the Company, a team member resumes or continues work without having had 10 consecutive hours off duty, the team member shall be paid at double rates until the team member is released from duty for the rest period and shall be entitled to be absent until having had 10 consecutive hours off duty without loss of pay.

(6) Travel Home After Overtime

Where a team member, except for a shift team member, is detained at work until it is too late to travel by the last ordinary bus, train or other regular public conveyance to his/her usual place of residence, the Company shall provide transport to the team members usual place of residence, free of charge. This clause shall not apply to any team member who has their own means of transport.

(7) Overtime Restrictions

The Union or any team member/s covered by this agreement shall not in any way, whether directly or indirectly, be a party to or concerned in any ban, limitation or restriction upon the working of reasonable overtime in accordance with the requirements of this clause.

23.—SHIFT WORK

(1) Definitions

For the purposes of the clause—

(a) "Afternoon Shift" means any shift finishing after 6.00pm Monday to Friday inclusive and at or before 12.30am Tuesday to Saturday inclusive.

(b) "Night Shift" means any shift finishing at or before 8.30am Monday to Friday inclusive.

(c) "Early Morning Shift" means any shift starting between 4.00am and 6.00am Monday to Friday inclusive.

(d) "Rostered Shift" means a shift for which the team member concerned has had at least two working days notice.

(e) "Permanent Night Shift" means a night shift which does not rotate or alternate with another shift so as to give a team member at least 1/3rd of their working time off night shift in each shift cycle.

(2) Ordinary Hours of Shift Work

(a) The ordinary hours for a shift worker shall not be worked in accordance with subclause (5) of Clause 18.—Hours of Work.

(b) Subject to the following conditions, a shift worker shall work shifts at such times as the Company may require—

(i) A team member shall not be required to work more than one shift in each 24 hours.

(ii) Shift rosters will specify the commencing and finishing times of ordinary work hours of the respective shifts.

(iii) The method of working shifts may in any case be varied as to all or a section of the team members by agreement between the Company and the majority of team members concerned and the Union. The agreement by the Union will not be unreasonably withheld.

(iv) The time of commencing and finishing shifts once having been determined may be varied by the Company by the giving of seven days notice to the team member/s concerned of a shorter period of notice by agreement.

(c) Where a team member works a shift which continues beyond midnight or commences before midnight on any day the team member shall be deemed to have worked on the day on which the majority of hours were worked

(3) Shift Work Allowances

A shift worker shall be paid the following percentage allowances in addition to his/her ordinary rate for the duration of work on a rostered shift—

(a)	on early morning shift	10%
(b)	on afternoon shift	17.5%
(c)	on night shift	17.5%
(d)	on permanent night shift	30%

24.—SICK LEAVE

(1) Sick Leave

(a) Subject to the other provisions of this clause a team member, other than a casual, unable to attend or remain at work because of personal illness or injury is entitled to be absent from work without loss of ordinary pay ("sick leave").

(b) Sick leave accrues at the rate of 1.46 hours per week for full time team members, and on a pro rata basis for part time and fixed term team members.

(c) Sick leave entitlements not taken shall accrue from year to year.

(2) Entitlement Conditions

(a) A team member shall before or at the usual time of commencement (and in any event not later than 24 hours after the commencement of absence unless extraordinary circumstances apply) inform the Company of the nature of the injury or illness and the estimated duration of the absence.

(b) A team member shall prove to the satisfaction of the Company their inability to attend for duty on the day or days for which sick leave is claimed. Provided that a team member will be allowed two single days absence each year without the need for evidence to be provided.

(3) Supplementary Sick Leave

(a) It is recognised that team members may experience serious and long term illnesses resulting in disablement/disability. Team members may apply for Supplementary Sick leave except in the following circumstances—

(i) absences of less than two (2) weeks duration after ordinary sick leave has expired;

(ii) any deliberate self inflicted injury or illness;

(iii) alcohol or drug related illness/accident;

(iv) injury and illness arising from professional and paid activity.

(b) Payment for supplementary sick leave requires medical certification for the whole period off work, specifying the condition suffered by the team member. Back dated certificates will not be accepted, and, in some cases the Company, at its expense, may require a second opinion from a nominated Medical Practitioner.

In determining the request for Supplementary Sick Leave the Company may amongst other things, review the file records of the applicant in relation to work performance and sick leave.

(c) Each supplementary sick leave claim will stand alone.

(d) A team member may make application for supplementary sick leave up to twelve (12) weeks in any continuous twelve (12) month period.

(e) Supplementary sick leave entitlement will only apply when a team member exhausts ordinary sick leave entitlements.

(f) Should the team member qualify for future ordinary sick leave entitlements during a period of supplementary sick leave, supplementary sick leave will be suspended until ordinary sick leave entitlements have again expired.

(g) Payment will be made at the ordinary time rate immediately following the expiry of ordinary sick leave.

(h) Payment for the first two weeks of supplementary sick leave will be made retrospectively.

(i) Supplementary sick leave does not accumulate.

(j) Supplementary sick leave shall not affect continuity of service.

25.—ANNUAL LEAVE

(1) Entitlement/Period of Leave

At the end of each 12 months' employment with the Company, all team members will be entitled to four (4) weeks annual leave, exclusive of Public Holidays and may be taken in any manner agreed between the Company and the team member. No team member will accrue more than four (4) weeks without written approval from management.

(2) Payment

The following payments shall be made to each team member, immediately before proceeding on annual leave—

(a) Day Workers—ordinary pay plus a loading of 17.5%; or,

(b) Shift workers—ordinary pay as defined plus "Shift Allowance" as provided for in subclause (3) of Clause 23.—Shift Work of this Agreement or 17.5% whichever is the greater.

(3) Taken In Advance

(a) If the Company and the team member so agree, annual leave may be taken wholly or partly in advance before the team member has become entitled to annual leave.

(b) Unless a team member has taken all annual leave in advance for the current year, the team member

becomes entitled at the end of a year of employment, to that part of the annual leave not already taken.

(4) Termination of Employment

A team member whose employment is terminated shall be entitled to—

(a) Payment for their accrued annual leave entitlements including 17.5% leave loading and in accordance with subclause (1) of this clause; and

(b) In respect of their current year of employment, all accumulated pro rata annual leave.

26.—JURY SERVICE/BEREAVEMENT LEAVE

(1) A team member who is required to attend jury service during ordinary working hours will be reimbursed by the Company an amount equal to the difference between the amount paid in respect of the attendance for such jury service and the amount of ordinary wages that would have been earned had the team member not been on jury service.

(2) In the event of death of the team member's spouse, defacto spouse, child or step child, parent or step parent, brother, sister and grandparents, paid bereavement leave of up to two (2) days will be granted. Where requested, the team member is to supply evidence of the death and the relationship to the deceased.

27.—PARENTAL LEAVE AND ADOPTION LEAVE

Parental leave shall be granted in accordance with Schedule 14 of the Industrial Relations Act 1988 (Cth).

28.—SPECIAL LEAVE

(1) A team member may be granted paid leave for emergency or compassionate reasons of up to three days in a calendar year.

Examples of circumstances where leave may be granted include—

(a) Family illness;

(b) Moving house;

(c) Emergency domestic situations (eg. fire, theft, burst plumbing);

(d) Natural disasters (e.g. bush fires, floods).

(2) Each case will be considered on its merits. Management may grant such leave as it considers necessary in the circumstance, and shall not necessarily grant the full three days in each case.

(3) The Company may, in its sole discretion, grant special replacement leave where a team member has, for reasons of sickness or accident, been prevented from enjoying the benefits of annual leave. In exercising this discretion, the Company will have regard to the duration of the illness/incapacity relative to the period of leave.

29.—LONG SERVICE LEAVE

A team member shall be entitled to long service leave in accordance with the Long Service Leave General Order as printed in Volume 78 of the West Australian Industrial Gazette at page one.

30.—PROTECTIVE CLOTHING AND EQUIPMENT

(1) Personal Clothing

(a) Subject to the terms and conditions of this clause the Company will issue uniforms to team members.

(b) An original issue of new clothing will be made to each team member on commencement and individual garments will be replaced by the Company on a reasonable wear and tear basis as determined between the team member and the team member's coordinator.

(2) Protective Clothing/Equipment

(a) Suitable gloves, goggles, masks and other protective clothing and equipment will be provided by the Company for such work that reasonably requires their use.

(b) A team member who is supplied with any of the clothing or equipment specified will wear or use, as the case may be, this clothing and equipment.

(c) The Company requires, as a condition of employment of all team members, that they wear safety shoes. The Company will provide team members with one pair of shoes free of charge on commencing and replace these shoes on a reasonable wear and tear basis.

(d) Team members supplied with clothing and protective clothing/equipment in accordance with this clause will replace or pay for any such clothing so supplied if lost or damaged through the team member's negligence.

(e) All clothing issued to a team member will be returned to the Company on the termination of employment in good condition, fair wear and tear excepted, or paid for at replacement cost by the team member.

(3) First Aid Equipment

The Company shall provide and maintain first aid kits in all sections of the enterprise.

SCHEDULE A

Engineering Pay Rates And Definitions

	Current	10/5/00	10/5/01
Level 4	$655.82	$668.94	$685.66
Level 5	$710.47	$724.68	$742.80
Level 6	$765.14	$780.44	$799.96

Level 6

Persons with Electronic/PLC/Instrumentation qualifications to certificate level and completion of all Engineering Modules, and participates in most team skills.

Level 5

Proficient in Electronics/PLC as determined by a training module, or

A person who works above and beyond a Tradeperson Level 4 and has a National Restricted Electrical Licence.

In addition to the above, the following tasks are indicative of what an employee at this level may perform—

(1) Modifies, commissions, fault finds on complex machinery and equipment within the production complex at the Company by demonstrating competency in all Engineering Training Modules; and

(2) Able to demonstrate multi skilling across trade boundaries ie: fitters able to weld thin gauge stainless steel used on the complex (TIG and MIG) and perform any turning task assigned to themselves. Electricians are able to carry out limited turning tasks on a lathe; and

(3) Works on complex or intricate circuitry which involves examining, diagnosing and modifying systems comprising interconnected units; or

(4) Competently operates production equipment and has completed all relevant modules for level 1-3 in the production steam as outlined in the main matrix.

(5) Participate in most team skills

Please note: For existing Mechanical Tradesperson, if they have successfully completed the Theory Examination for the National Restricted Electrical Licence and continuing with the relevant Electrical training, they will be paid a weekly allowance until they have successfully completed their practical training.

Level 4

Entry Level Mechanical Fitter who has a National Restricted Electrical Licence; Or

Entry Level Electrician who has a minimum "A" Class Electrical Licence

And

Carry out safe installation, property maintenance and routine checking of all equipment; and

Install, repair, maintain and test machinery within the production complex ; and

Able to perform some multi skilling across trade boundaries ie: Electricians will be able to arc weld, fitter will possess a National Restricted Electrical Licence.

APPENDIX A—CHARTER OF THE CONSULTATIVE COMMITTEE

Members of this committee are committed to achieving improvements in productivity at the same time providing more secure and rewarding employment through cooperation.

(1) The Consultative Committee has the authority to make decisions within the scope as defined by this charter.

(2) The Consultative Committee members will be responsible for—

(a) Attending all meetings and discussing all matters raised except any matter which are likely to give rise to an industrial dispute or grievance or which is of a personal nature.

(b) Consulting with other team members in order to encourage their involvement in the ongoing search for measures to improve productivity and efficiency and to foster a fully committed and informed work place.

(c) Reporting back regularly and representing team members.

(d) Ensuring effective implementation of change through proper planning and consultation.

(e) Promoting to management and team members the importance and benefits of systematic training, job satisfaction and personal development of all team members.

(f) Assisting with the design, conduct and administration of the training syllabus.

(g) Making recommendations to management as required regarding any objections or protests lodged by a team member arising out of matters concerning training or assessment (non industrial disputes).

(3) The Committee shall have the right to present information and or seek advice from the Union and or relevant bodies.

APPENDIX B—RATES OF PAY AND JOB DEFINITIONS

Job Matrix Wage Rates

	Current	10/5/00	10/5/01
Level 3	529.97	540.57	554.08
Level 2	466.87	476.21	488.11
Level 1	441.64	450.47	461.73
Team Leader Allowance		$20	$40

Level 4 has been abolished from this agreement, any employees who are currently on level 4 or in between the prescribed levels above will received a 2% increase for the life of this agreement.

Payment for the following levels will be made when a team member has been assessed as competent in all the modules required for that level.

Job Definitions—Level 1

Packer

Responsibilities/ Duties may include but are not limited to—

Maintaining the quality of their own work and required performance standards

Working in a team environment

Undertaking duties in a safe and responsible manner

Possess basic interpersonal and communication skills

Performs the following tasks—

- Packing duties
- Data Collection
- Cleaning duties
- Quality Tests

Potato Loader/Inspector

Responsibilities/ Duties may include but are not limited to—

Maintaining the quality of their own work and required performance standards

Working in a team environment

Undertaking duties in a safe and responsible manner

Possess basic interpersonal and communication skills

Performs the following tasks—

- Potato inspection
- Potato loading
- Waste Removal
- Data Collection
- Quality Tests
- Cleaning duties

General Hand

Responsibilities/ Duties may include but are not limited to—

Maintaining the quality of their own work and required performance standards

Working in a team environment

Undertaking duties in a safe and responsible manner

Possess basic interpersonal and communication skills

- Order Picking/wrapping
- Palletising duties
- Product Receival
- Unloading Containers
- Quality Checks
- Data Collection
- Cleaning duties

Level—2

Packer/Relief Operator

Responsibilities/Duties may include but are not limited to—

Possess sound interpersonal and communication skills

Able to recognise faults and take corrective action

Perform all functions of a Packer level 1 as directed

- Carton Sealer operation
- Carton Date Coder operation
- Data Collection duties
- X-ray duties
- Change Rewind
- Conduct Magnet Checks
- Check Weigh
- Set up & operate wip scales
- Quality tests
- Cleaning duties
- Relief operator duties

Flavour Operator

Responsibilities/Duties may include but are not limited to—

Possess sound interpersonal and communication skills

Able to recognise faults and take corrective action

Perform all functions of a Potato Loader/Inspector level 1 as directed

- Set up flavour system
- Feed flavour
- Quality tests
- Data Collection
- Console/oven duties
- Relief Operator duties
- Cleaning duties

Level—3

Packing Machine Operator

Responsibilities/Duties may include but are not limited to—

Possess excellent interpersonal and communication skills

Able to work from complex instructions and procedures

Possess sound decision making ability

Able to co-ordinate their work load in a team environment under limited supervision

Perform all functions of a Packer/Relief Operator level 2 as directed

- Operate machine
- Cleaning duties
- Data Collection
- Change rewind
- Pack date coder
- Operate inserter
- Product flow optimisation
- Quality duties

Fryer & Extruder Operators

Responsibilities/Duties may include but are not limited to—

Possess excellent interpersonal and communication skills

Able to work from complex instructions and procedures

Possess sound decision making ability

Able to co-ordinate their work load in a team environment under limited supervision

Perform all functions of a Flavour Operator level 2 as directed

- Operate machine
- Set up system
- Cleaning duties
- Labour allocation
- Quality tests
- Data Collection
- Weekly boil out

Storeperson

Responsibilities/Duties may include but are not limited to—

Possess excellent interpersonal and communication skills

Able to work from complex instructions and procedures

Possess sound decision making ability

Able to co-ordinate their work load in a team environment under limited supervision

Perform all functions of a General Hand level 1 as directed

- Stock counting
- Con notes & transport
- Data Collection
- Quality tests
- Labour allocation
- Stock putaway & rotate
- Stock ordering outside
- Dispatch orders

Central Lab Technician

Responsibilities/Duties may include but are not limited to—

Possess excellent interpersonal and communication skills

Able to work from complex instructions and procedures

Possess sound decision making ability

- Quality testing
- Instrument Calibration
- Data Collection
- Cleaning duties
- Conducting audits

Potato Supply

Responsibilities/Duties may include but are not limited to—

Possess excellent interpersonal and communication skills

Able to work from complex instructions and procedures

Possess sound decision making ability

Perform all functions of a Storeperson as directed

- Quality Testing
- Data Collection
- Stock Counting
- Stock Receival
- Stores Monitoring
- Cleaning Duties
- Grower Liaison

SIGNATORIES—

For and on behalf of The Smith's Snackfood Company Limited

(SIGNED) (John Millen)

(DATE) 28.8.2000

For and on behalf of the The Food Preservers Union Western Australia Union of Workers.

(SIGNED) (Joseph Bullock) ***Common Seal***

(DATE) 4.9.00 6.9.00

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

(SIGNED) (John Ferguson) ***Common Seal***

(DATE) 22.8.00

WESTERN AUSTRALIAN GOVERNMENT RAILWAYS COMMISSION (RAILWAY EMPLOYEES' AWARD) AGREEMENT 2000.

No. AG 236 of 2000.

2000 WAIRC 00853

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES	WESTERN AUSTRALIAN GOVERNMENT RAILWAYS COMMISSION APPLICANT *v.* THE AUSTRALIAN RAIL, TRAM AND BUS INDUSTRY UNION OF EMPLOYEES, WEST AUSTRALIAN BRANCH, COMMUNICATIONS, ELECTRICAL, ELECTRONIC, ENERGY, INFORMATION, POSTAL, PLUMBING, AND ALLIED WORKERS UNION OF AUSTRALIA, ENGINEERING & ELECTICAL DIVISION, WA BRANCH, THE AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION OF WORKERS — WESTERN AUSTRALIAN BRANCH RESPONDENT
CORAM	COMMISSIONER J H SMITH
DELIVERED	WEDNESDAY 11OCTOBER 2000
FILE NO/S	AG 236 OF 2000
CITATION NO.	2000 WAIRC 00853

Result	Agreement Registered
Representation	
Applicant	Ms J Hayman
Respondent	Ms J Kaur

Order.

HAVING heard Ms J Hayman on behalf of the Applicant and Ms J Kaur on behalf of the Respondents and by consent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders that the Western Australian Government Railways Commission (Railway Employees' Award) Agreement 2000 as filed in the Commission on 26 September 2000 in the terms of the following schedule be and is hereby registered as an industrial agreement.

(Sgd.) J.H. SMITH,
Commissioner.

[L.S.]

Schedule.

ARRANGEMENT

1 Title
2 Application and Parties to this Agreement
3 Term of Agreement
4 Number of Employees Bound
5 Relationship with Parent Award

6 Rates of Pay
7 No Further Claims
8 Disputes Settlement Procedure
9 Signatories to this Agreement

1.—TITLE

This Agreement will be known as the Western Australian Government Railways Commission (Railway Employees' Award) Agreement 2000.

2.—APPLICATION AND PARTIES TO THIS AGREEMENT

This Agreement will be binding on—

(1) the Western Australian Government Railways Commission ("the employer");

(2) the employees of the employer whose designations are provided for in the Railway Employees' Award No 18 of 1969 (the "Award"), excluding employees subject to other industrial agreements to which the employer is a party;

(3) the Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch;

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

(5) the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch.

3.—TERM OF AGREEMENT

This Agreement shall operate from the date of registration of this Agreement and expire on 28 February 2002.

4.—NUMBER OF EMPLOYEES BOUND

It is estimated that 149 employees will be bound by this Agreement on registration.

5.—RELATIONSHIP WITH PARENT AWARD

This Agreement shall be read and interpreted in conjunction with the Award, provided that where any inconsistency exists between this Agreement and the Award, this Agreement shall take precedence.

6.—RATES OF PAY

The rates of pay payable to employees covered by this Agreement shall be as follows—

(1) A 4% pay increase is payable to each classification on the first pay period commencing on or after the date of registration of this Agreement.

The 4% pay increase shall be applied to the weekly Award rate of pay paid immediately prior to the date of registration of this Agreement.

(2) A 3% pay increase is payable to each classification on or after the expiry of 12 months from the date of registration of this Agreement.

Provided that where an employee accepts an offer of employment with Westrail Freight Employment Pty Ltd, the 3% increase is payable on the employee's last day of employment with the employer.

The 3% increase shall be applied to the weekly rate of pay received by an employee pursuant to subclause (1) inclusive of the 4% increase.

7.—NO FURTHER CLAIMS

No further claims shall be pursued for the term of this Agreement except pursuant to the State Wage Case Principles or for the insertion of test case provisions in the Award.

8.—DISPUTES SETTLEMENT PROCEDURE

(1) The objective of this procedure is to avoid and settle disputes between the parties to this agreement and between employees and the employer by direct consultation and negotiation so as to avoid disruption of customer services.

(2) Where an issue comes to an employee's notice the employee shall raise the matter with the employer as soon as reasonably possible and discussions shall take place between the employee and the local manager within three clear days of the issue being raised with a view to resolving the matter at the local level. Both the manager and the employee may involve other relevant persons in the discussions.

(3) Where the issue is not resolved, or a way to resolve the issue is not agreed, after the three clear days, the issue may be referred to senior management of the employer and the state branch of the union. Employer and union representatives will attempt to resolve the issue within a further four days.

(4) Where an issue is first raised with the employer by the union the parties will attempt to resolve the issue within fourteen clear days of the issue being raised.

(5) While the parties are endeavouring to resolve the issue in accordance with this procedure the provision of services to customers will be maintained and the employer and employees will continue to work in accordance with normal practice. No action taken by either party to maintain services while this procedure is being complied with will be deemed to prejudice the position of either party in respect of the dispute.

(6) Where, having complied with this procedure, the parties are unable to resolve the issue in dispute either party may seek the assistance of the W.A. Industrial Relations Commission.

9.—SIGNATORIES TO THIS AGREEMENT

The Common Seal of the Western Australian Government Railways Commission was hereunto affixed in the presence of

_____A/Commissioner

_____Secretary

Date

Signed for and on behalf of the Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch by

_____A/State Secretary

Date

Signed for and on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing, and Allied Workers Union of Australia, Engineering & Electrical Division, WA Branch by

_____State Secretary

Date

Signed for and on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch by

_____State Secretary

Date

WESTRAIL FREIGHT TERMINAL SERVICES AGREEMENT 2000.

AG 235 of 2000.

2000 WAIRC 00852

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	WESTERN AUSTRALIAN GOVERNMENT RAILWAYS COMMISSION APPLICANT *v.* THE AUSTRALIAN RAIL, TRAM AND BUS INDUSTRY UNION OF EMPLOYEES, WEST AUSTRALIAN BRANCH RESPONDENT
CORAM	COMMISSIONER J H SMITH
DELIVERED	WEDNESDAY, 11 OCTOBER 2000
FILE NO/S	AG 235 OF 2000
CITATION NO.	2000 WAIRC 00852

Result Agreement Registered
Representation
Applicant Ms J Hayman
Respondent Ms J Kaur

Order.

HAVING heard Ms J Hayman on behalf of the Applicant and Ms J Kaur 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 Westrail Freight Terminal Services Agreement 2000 as filed in the Commission on 26 September 2000 in the terms of the following schedule be and is hereby registered as an industrial agreement.

(Sgd.) J.H. SMITH,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Westrail Freight Terminal Services Agreement 2000.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties Bound
4. Application
5. Term of Agreement
6. Number of Employees Bound by this Agreement
7. Rates of Pay
8. Disputes Settlement Procedure
9. Signatories to this Agreement

3.—PARTIES BOUND

This Agreement shall be binding on the Western Australian Government Railways Commission and the Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch.

4.—APPLICATION

This Agreement shall apply to employees of the Western Australian Government Railways Commission (the employer) employed in the classifications set out in clause 7 of this Agreement and in respect of those employees shall replace any award which might otherwise apply and when this Agreement ceases to operate the relevant award will apply.

This Agreement shall be read and interpreted in conjunction with the *Westrail Freight Services Depot and Yard Agreement 1998 No. AG 159 of 1998* provided that where any inconsistency exists between this Agreement and the *Westrail Freight Services Depot and Yard Agreement 1998 No. AG 159 of 1998* this Agreement shall take precedence.

5.—TERM OF AGREEMENT

This Agreement shall operate from the date of registration of this Agreement and expire on 28 February 2002.

6.—NUMBER OF EMPLOYEES BOUND BY THIS AGREEMENT

The estimated number of employees bound by this Agreement at the date of registration is 90.

7.—RATES OF PAY

(1) The aggregated base rates of pay to apply to each classification are as follows—

(a) Fortnightly Rate of Pay

Classification	Level	Fortnightly Rate of Pay Prior To Registration of Agreement	Column A Fortnightly Rate of Pay (4% Increase)	Column B Fortnightly Rate of Pay (3% Increase)
Operational Maintainer	Trainee	971.00	1009.80	1040.10
	Level 1	1097.50	1141.40	1175.60
	Level 2	1144.90	1190.70	1226.40
	Level 3	1194.80	1242.60	1279.90
	Level 4	1244.50	1294.30	1333.10
Tradesperson	Level 1	1187.00	1234.50	1271.50
	Level 2	1239.30	1288.90	1327.50
	Level 3	1291.50	1343.20	1383.50
	Level 4	1343.80	1397.60	1439.50
Team Leader (Trades)		1372.30	1427.20	1470.00
Team Leader	Level 1	1352.70	1406.80	1449.00
	Level 2	1549.60	1611.60	1659.90

(b) (i) Column A is inclusive of a 4% pay increase and is payable to each classification on the first pay period commencing on or after the date of registration of this Agreement;

(ii) Column B is inclusive of a 3% pay increase and is payable to each classification on or after the expiry of 12 months from the date of registration of this Agreement.

Provided that where an employee accepts an offer of employment with Westrail Freight Employment Pty Ltd, Column B is payable on the employee's last day of employment with the employer.

(c) The Tradesperson and Team Leader (Trades) rates detailed in the table at subclause (a) of this clause include a component for the provision, maintenance and insurance of tools.

(d) All rates detailed in the table at subclause (a) of this clause include a component in recognition of the conditions associated with the examination, servicing, maintenance and repair of locomotives and/or rollingstock.

(2) An all purpose aggregated shift work allowance will be paid as per the table in paragraph (b) of this subclause to compensate for the requirement to work regular shift work.

(a) The allowance will be paid to employees who are required to regularly work ordinary hours between 1800 and 0600 hours. The allowance will be paid to the applicable employees while at work or on paid leave.

(b) Table of Aggregated Shift Work Allowances:

DEPOT	ROLE	Rate per fortnight
Avon Yard	Team Leader	80.00
	Tradesperson	43.00
	Operational Maintainer	34.00
Forrestfield	Team Leader	59.00
	Operational Maintainer (On Signal Cabin and Train Despatching Duties) (level 4)	72.00
	Operational Maintainer (Other) (level 3)	36.00
Kwinana	Team Leader	59.00
	Operational Maintainer	38.00
Narngulu	Team Leader	108.00
Picton Junction	Team Leader	59.00
	Tradesperson	58.00
	Operational Maintainer	64.00
West Kalgoorlie	Team Leader	59.00
	Tradesperson	77.00
	Operational Maintainer	64.00

(c) The rates detailed in the table at paragraph (b) of this subclause are payable on the first pay period commencing on or after the date of registration of this Agreement.

(d) The rates detailed in the table at paragraph (b) of this subclause relate directly to the proposed rosters at the respective depots at the commencement of this Agreement. Changes to those rates will be by the method detailed below—

(i) where during the course of this Agreement the master roster at any depot is permanently changed resulting in a variation to the aggregated shift work amounts, by a factor of plus or minus 5% or more, the parties shall agree on the new rate(s) to apply and such rate(s) shall commence from the first pay period on

or after the date of agreement or some other operative date agreed between the parties;

(ii) calculation of the rate(s) shall be undertaken by applying the rate and conditions for the Occasional Shift Work Allowance as provided for in subclause (3) of this clause and dividing the total shift work amount on the master roster by the number of employees on that roster, including an allowance for annual and long service leave.

(3) Occasional Shift Work Allowance

(a) Should an employee be required to carry out shift work and is not paid the applicable aggregated shift work allowance as detailed in the table at paragraph (2)(b) of this clause an amount of $2.48 per hour will be paid for all ordinary hours worked between 1800 and 0600 hours.

(b) For the purpose of paragraph (a) of this subclause, part hours will be paid as follows—

(i) for any part of an hour worked less than 30 minutes the allowance will not be paid; and

(iii) any part of an hour between 30 and 59 minutes will be paid as an hour.

(4) Appointment to levels within the classification structure detailed in subclause (1) of this clause will be subject to the employee meeting the criteria for each classification as provided for in Appendix A—Classification Criteria of the *Westrail Freight Services Depot and Yard Agreement 1998 No. AG 159 of 1998.*

8.—DISPUTES SETTLEMENT PROCEDURE

(1) The objective of this procedure is to avoid and settle disputes between the parties to this agreement and between employees and the employer by direct consultation and negotiation so as to avoid disruption of customer services.

(2) Where an issue comes to an employee's notice the employee shall raise the matter with the employer as soon as reasonably possible and discussions shall take place between the employee and the local manager within three clear days of the issue being raised with a view to resolving the matter at the local level. Both the manager and the employee may involve other relevant persons in the discussions.

(3) Where the issue is not resolved, or a way to resolve the issue is not agreed, after the three clear days, the issue may be referred to senior management of the employer and the state branch of the union. Employer and union representatives will attempt to resolve the issue within a further four days.

(4) Where an issue is first raised with the employer by the union the parties will attempt to resolve the issue within fourteen clear days of the issue being raised.

(5) While the parties are endeavouring to resolve the issue in accordance with this procedure the provision of services to customers will be maintained and the employer and employees will continue to work in accordance with normal practice. No action taken by either party to maintain services while this procedure is being complied with will be deemed to prejudice the position of either party in respect of the dispute.

(6) Where, having complied with this procedure, the parties are unable to resolve the issue in dispute either party may seek the assistance of the W.A. Industrial Relations Commission.

9.—SIGNATORIES TO THIS AGREEMENT

The Common Seal of the Western Australian Government Railways Commission was hereunto affixed in the presence of

_____A/Commissioner

_____Secretary

Date

Signed for and on behalf of the Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch by

_____A/State Secretary

Date

WESTERN POTATOES ENTERPRISE AGREEMENT OF 2000.

No. PSA AG 59 of 2000.

2000 WAIRC 00668

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES	CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED, APPLICANT *v.* CHIEF EXECUTIVE OFFICER WESTERN POTATOES, RESPONDENT
CORAM	SENIOR COMMISSIONER G L FIELDING
DELIVERED	FRIDAY, 22 SEPTEMBER 2000
FILE NO/S	PSA AG 59 OF 200
CITATION NO.	2000 WAIRC 00668

Result	Agreement registered
Representation	
Applicant	Mr D A Ellis as agent
Respondent	Mr S G Blackburn as agent

Order

HAVING heard Mr D A Ellis as agent on behalf of the Applicant and Mr S G Blackburn as agent on behalf of the Respondent, 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 lodged in the Commission on 12 September 2000 entitled the Western Potatoes Enterprise Agreement of 2000 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 Western Potatoes Enterprise Bargaining Agreement PSA AG 156 of 1996 which is hereby cancelled.

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

Schedule.

WESTERN POTATOES ENTERPRISE AGREEMENT 2000

1.—TITLE

This Agreement shall be known as the Western Potatoes Enterprise Agreement of 2000.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope of the Agreement
4. Employees Covered
5. Definitions
6. Parties to the Agreement
7. Term of Agreement
8. No Further Claims
9. Relationship to Parent Award
10. Single Bargaining Unit
11. Shared Mission and Objectives
12. Continuous Improvement
13. Enterprise Bargaining Payments and Targets
14. Hours
15. Annual Leave Loading
16. Conversion of Leave
17. Bereavement Leave
18. Public Holidays
19. Higher Duties Allowance
20. Ceremonial Leave
21. Carers Leave

22. Parental Leave
23. Salary Packaging
24. Notification of Change
25. Dispute Resolution Procedure
26. Signature of Parties
Schedule A—Salaries

3.—SCOPE OF THE AGREEMENT

This Enterprise Agreement shall apply to all employees of Western Potatoes who are members of or are eligible to be members of the Civil Service Association of Western Australia (Inc.).

4.—EMPLOYEES COVERED

This Agreement shall apply to all employees covered by Clause 3—Scope of the Agreement and upon the date of registration of the Agreement the number of employees covered is fourteen (14).

5.—DEFINITIONS

"Agreement" means the Western Potatoes Enterprise Agreement 2000.

"Corporation" means the WA Potato Marketing Corporation.

"Employer" means the Chief Executive Officer of the WA Potato Marketing Corporation, trading as Western Potatoes.

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

"WAIRC" means the Western Australian Industrial Relations Commission.

6.—PARTIES TO THE AGREEMENT

This Agreement shall be binding upon the WA Potato Marketing Corporation and the Civil Service Association of Western Australia (Inc.).

7.—TERM OF AGREEMENT

(a) This Agreement shall operate from the date of registration and shall remain in operation for a period of two (2) years from that date.

(b) The parties agree to commence negotiations for a new Agreement six (6) months prior to the expiration of this Agreement.

(c) The parties will assess achievements in performance, productivity and efficiency against the targets detailed at Clause 13 Enterprise Bargaining Payments and Targets during the term of this Agreement.

(d) The pay quantum achieved as a result of this Agreement will remain and form the new base pay rate for future Agreements except where the Award salary rate is higher, in which case the Award salary rate shall apply.

(e) The Agreement will continue in force after the expiry of the term until such time as any of the parties withdraws from the Agreement by notification in writing to the other party and to the WAIRC, or this Agreement is replaced by another Agreement.

8.—NO FURTHER CLAIMS

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

(b) The parties recognise that it is important to encourage further productivity improvements beyond those currently identified in the Agreement and where such improvements are identified and implemented they will be considered as part of the next Enterprise Agreement.

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

9.—RELATIONSHIP TO PARENT AWARD

Except as provided by the Agreement the conditions of employment and rates of salary payable to employees are those provided by the Government Officers Salaries, Allowances and Conditions Award, 1989. In the case of any inconsistencies, the Agreement shall have precedence to the extent of the inconsistencies. Where this Agreement is silent the Award shall prevail.

10.—SINGLE BARGAINING UNIT

This Agreement has been negotiated through a Single Bargaining Unit comprising representatives from Western Potatoes and the Civil Service Association of WA (Inc.).

11.—SHARED MISSION AND OBJECTIVES

(a) The parties to the Agreement are committed to achieving the Vision and Mission of Western Potatoes through the adoption of organisational values, and working towards identified Team Goals.

To be recognised as a leader in fresh produce and maintain a sustainable potato industry.

(b) Western Potatoes commitment to the consumer is contained in its Mission as follows—

To provide a superior, affordable, convenient, quality product, readily recognisable by consumers, within a secure and efficient industry for local and export markets.

12.—CONTINUOUS IMPROVEMENT

The Corporation is committed to continually improving its productivity and overall performance. Enterprise bargaining and the implementation of a Continuous Improvement Programme assists by—

(a) Achieving pay rises for employees based on improvements in efficiency, service provision, quality and general productivity.

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

(c) Achieving continuous improvement of all processes to achieve improved quality, work organisation, customer service, delivery, timelines, safety and training.

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

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

13.—ENTERPRISE BARGAINING PAYMENTS AND TARGETS

(a) Two salary adjustments shall apply—

(i) An increase of 3.5% in accordance with Column A of Schedule "A", payable from the first pay period commencing on or after the date of registration.

(ii) An increase of 3.5% in accordance with Column B of Schedule "A", payable from the calendar date twelve (12) months after the date of registration, subject to the achievement of the productivity index score detailed below.

(b) The Single Bargaining Unit will appoint a representative committee to monitor progress towards the achievement of targets. The Committee shall comprise representatives of the employer, employees and the Union.

(c) (i) The abovementioned salary increases are payable on the basis of implementation and continued co-operation in the achievement of those initiatives and targets outlined below.

(ii) Payment of the second salary increase of 3.5% is dependent on meeting a productivity index score of 350 provided that where the target score is not met within twelve (12) months of the registration of the Agreement a proportional salary increase shall be paid based on the ratio of the actual score to the target score. Unmet targets shall be reviewed on a three (3) monthly basis and salary increases paid accordingly, until such time as the full 3.5% second increase has been paid or the Agreement is three (3) months from date of expiry.

(iii) The employees will not be disadvantaged by other factors outside the control of the employee which impact directly on the achievement of targets outlined in the Agreement.

(iv) Productivity initiatives may be altered where the parties decide that due to unforeseen circumstances a productivity initiative has become obsolete or unachievable and in such circumstances an equivalent initiative may be substituted by agreement between the parties.

Initiatives

The Corporation is organised into four (4) primary programs and initiatives to be pursued over the next two (2) years fall within those programs as follows—

Marketing

- Program to create a modern and fashionable image of potatoes using mainstream advertising.
- Emphasise the versatility of potatoes through the development of healthy, easy to prepare recipe ideas.
- Conduct in-store demonstrations that provide consumers with simple and interesting ways of cooking potatoes.
- Develop variety tickets to be used at the point of sale, aimed at providing consumers with improved product information.
- Develop and implement new advertising campaign to combat eastern states imports.
- Continue to grow relationship marketing strategy originally implemented in 1998/99 to improve communications with all industry members.

Operations

- Separate business and regulatory functions in order to improve commercial competitiveness.

Quality Assurance

- Conduct information sessions for growers in each district, emphasising the benefits to be gained from achieving SQF 2000^{CM} Quality Code accreditation.
- Carry out individual farm visits to identify, monitor and control all farm processes that may have an impact on the safety and/or quality of potatoes.
- Implement program to ensure all farm staff are adequately trained to carry out the requirements of the SQF 2000^{CM} Quality Code.
- Implement program to supply growers with spray diaries, calibration procedures and registered chemicals guide.
- Implement program to collect random samples of potatoes and test for chemical levels.

Finance and Administration

- Separate business and regulatory functions in order to improve commercial competitiveness.
- Achieve ISO 9002 Accreditation—this will affect all Divisions but in particular Operations and Finance and Administration

Targets

The following targets relate to the initiatives detailed above and aim at increasing the overall efficiency of the Corporation's operations. While the individual targets are important, it is recognised that these initiatives, and others pursued by the Corporation during the life of the Agreement, have a general effect on the performance of Western Potatoes.

Specific Targets to be achieved are as follows—

- Achieve ISO 9002 Accreditation

  12 month target: Agency to have completed all requirements for Accreditation
- Total average weekly consumption of fresh potatoes

  12 month target: Increase of 6% over base figure
- Number of industry participants commencing and/or receiving SQF 2000^{CM} accreditation

  12 month target: Increase of 50% over base measure
- Percentage of consumers rating quality of fresh potatoes good/very good

  12 month target: Increase of 5%

In order to measure the achievement of these targets the following productivity index has been established. Initiatives are weighted according to their importance to the organisation, with the greatest weight being given to increasing potato consumption, industry participation in achieving SQF 2000^{CM} Accreditation and the achievement of ISO 9002 Accreditation by the organisation.

In order to gain access to the second pay increase due twelve (12) months from registration the organisation shall achieve a minimum total productivity score of 350. Should this target not be met then the provisions of sub clauses (c) (ii) and (iii) of this clause shall apply.

Productivity Index

Performance Scores	Percentage of requirements for ISO 9002 Accreditation met by agency	Total Potato Consumption % increase	Number of industry participants receiving and/or commencing SQF 2000^{CM} accreditation % increase	Percentage consumers rating quality of fresh potatoes good/very good
7		+8.4%	+70%	79%
6		+7.2%	+60%	77%
5	**100%**	**+6%**	**+50%**	**75%**
4	80%	+4.8%	+40%	73%
3	60%	+3.6%	+30%	71%
2	40%	+2.4%	+20%	69%
1	20%	+1.2%	+10%	67%
0	0.00	0.00	0.00	65%
-1		-1.2%	-2%	63%
-2		-2.4%	-4%	61%
-3		-3.6%	-6%	59%
Weighting	20	15	20	10
Target Score 12 months	100	100	100	50

14.—HOURS

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

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

(b) thirty eight (38) hours instead of thirty seven (37) hours thirty (30) minutes per week;

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

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

All leave entitlements and overtime shall be calculated and accrued on the basis of a thirty eight (38) hour week instead of a thirty seven (37) hours thirty (30) minutes week.

15.—ANNUAL LEAVE LOADING

(a) The provisions of Clause 19 of the Government Officer's Salaries, Allowances & Conditions Award shall apply to this Agreement except Clause 19 (15) of the award which relates to leave loading.

(b) Annual leave loading shall be paid on the first pay period in December for each years annual leave entitlement of twenty (20) days.

16.—Conversion of Leave

Employees may make application for payment in lieu of accrued annual or long service leave. Such application may be approved subject to the following—

(a) The application is received prior to the end of February in respect of the following financial year.

(b) A minimum of ten (10) days annual and/or long service leave shall be taken in the calendar year for any application approved.

(c) Payment in lieu of leave shall not exceed the equivalent of four (4) weeks annual leave and thirteen (13) weeks long service leave in any one calendar year. However, an application to have greater amounts of leave paid out will be considered where special circumstances exist.

17.—BEREAVEMENT LEAVE

(a) This clause replaces the provisions of Clause 26.—Short Leave in the Government Officers Salaries, Allowances and Conditions Award, 1989.

(b) The employee will be entitled to paid bereavement leave for up to two (2) days on the death of a spouse, de facto spouse, child, step-child, parent, step-parent or any other person who immediately before that person's death lived with the employee as a member of the employee's family.

(c) The two (2) days need not be consecutive.

(d) An employee who claims to be entitled to paid leave under sub clause (b) of this clause is to provide to the employer, if requested by the employer, evidence that would satisfy a reasonable person as to—

(i) the death that is the subject of the leave sought; and

(ii) the relationship to the employee of the deceased person.

18.—PUBLIC HOLIDAYS

(a) The following days shall be allowed as holidays with pay.

(b) New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Anzac Day, Foundation Day, Sovereign's Birthday, Christmas Day, Boxing Day provided that another day may be taken as a day in lieu of any of the above mentioned days by an employee required to work on the above days.

(c) When any of the days mentioned in sub clause (b) of this clause falls on a Saturday or Sunday, the holiday shall be observed on the next succeeding Monday. When Boxing Day falls on a Sunday or Monday, the holiday shall be observed on the next succeeding Tuesday.

(d) 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.

(e) The public service holidays prescribed in paragraph (b) of sub clause (1) of Clause 20 Public Holidays of the Award shall not apply.

19.—HIGHER DUTIES ALLOWANCE

Employees acting in a position classified at a higher level than their substantive position for a continuous period of twenty (20) or more consecutive working days shall be paid a Higher Duties Allowance in accordance with the provisions of the Government Officers Salaries, Allowances and Conditions Award, 1989. Provided that support staff shall continue to be eligible for payment of Higher Duties Allowance where the period of acting is five (5) consecutive working days of more.

20.—CEREMONIAL LEAVE

An employee who is legitimately required to be absent from work for their tribal/ceremonial/cultural purposes shall be entitled to take accrued annual leave entitlements or leave without pay.

Such ceremonial/cultural leave shall include leave to meet the employee's customs, traditional law and to participate in ceremonial/cultural activities.

21.—CARERS LEAVE

An employee may utilise up to five (5) days of his or her annual sick leave entitlements to care for spouse, de facto spouse, child, step-child, parent, step-parent, parent-in-law or any other person who lives with the employee as a member of the employee's family in the event of illness or other debilitating circumstances. In such cases an application for sick leave exceeding two (2) consecutive days or five (5) single days must be supported by a certificate from a registered medical practitioner or registered dentist. Sick leave used for family care purposes is not cumulative from year to year but if unused continues to be cumulative as personal sick leave.

22.—PARENTAL LEAVE

(a) Definition

"Employee" includes full time, part time, permanent and fixed term contract employees.

"Replacement employee" is an employee specifically engaged to replace an employee proceeding on parental leave.

(b) Eligibility for Parental Leave

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

(ii) Where the employee applying for the leave is the partner of a pregnant spouse one (1) week's leave may be taken at the birth of the child concurrently with parental leave taken by the pregnant employee.

(iii) An employee seeking to adopt a child under the age of five (5) years shall be entitled to three (3) weeks unpaid parental leave at the placement of the child and a further period of parental leave up to a maximum of fifty two (52) weeks unpaid.

(iv) An employee seeking to adopt a child shall be entitled to two (2) days unpaid leave for the employee to attend interviews or examination required for the adoption procedure. Employees working or residing outside the Perth metropolitan area are entitled to an additional days leave. The employee may take any paid leave entitlement in lieu of this leave.

(v) Subject to sub clause (ii) of this clause where both partners are employed by Western Potatoes the leave shall not be taken concurrently except under special circumstances and with the approval of the Chief Executive Officer.

(c) Other Leave Entitlements

(i) An employee proceeding on parental leave may elect to utilise any accrued annual leave or accrued long service leave for the whole or part of the period of parental leave or extend the period of parental leave with such leave.

(ii) An employee may extend the maximum period of parental leave with a period of leave without pay subject to the Chief Executive Officer's approval.

(iii) An employee on parental leave is not entitled to paid sick leave and other paid award absences.

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

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

(d) Notice and Variation

(i) The employee shall give not less than four (4) weeks notice in writing to Western Potatoes of the date the employee proposes to commence maternity leave stating the period of leave to be taken.

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

(e) Transfer to Safe Job

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

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

(f) Replacement Employee

Prior to engaging a replacement employee Western Potatoes shall inform the person of the temporary nature of the employment and the entitlements relating to return to work of the employee on parental leave.

(g) Return to Work

(i) An employee shall confirm the intention to return to work by notice in writing to Western Potatoes not less than four (4) weeks prior to the expiration of the period of parental leave.

(ii) An employee on return from parental leave shall be entitled to the position which the employee occupied immediately prior to proceeding on parental leave. Where an employee was transferred to a safe job pursuant to sub clause (e) hereof the employee is entitled to return to the position occupied immediately prior to the transfer.

(iii) An employee may return on a part time basis to the same position occupied prior to the commencement of leave or to a different position at the same classification level on a part time basis in accordance with the part time provisions of the relevant award.

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

(h) Effect of Leave on Employment Contract

(i) Fixed Term Contract

An employee employed for a fixed term contract shall have the same entitlement to parental leave, however the period of leave granted shall not extend beyond the term of that contract.

(ii) Continuous Service

Absence on parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose under the relevant award or this Agreement.

(iii) Termination of Employment

An employee on parental leave may terminate employment at any time during the period of leave by written notice in accordance with the relevant award.

23.—SALARY PACKAGING

(a) An employee may, by agreement with the Chief Executive Officer, enter into a salary packaging arrangement in accordance with the provisions of this clause.

(b) Salary packaging is an arrangement whereby the entitlements under the Agreement, contributing toward the Total Employment Cost (TEC) of an employee, can be reduced by and substituted with another, or other benefits.

(c) 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 TEC for the purpose of salary packaging is calculated by adding—

(i) the base salary;

(ii) other cash allowances, eg annual leave loading;

(iii) non cash benefits, eg superannuation, motor vehicles etc;

(iv) any Fringe Benefit Tax liabilities currently paid; and

(v) any variable components, eg performance based incentives (where they exist).

(d) 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 arrangement.

(e) The salary packaging arrangement must be cost neutral in relation to the total cost to the employer.

(f) 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.

(g) In the event of any increase or additional payments of tax or penalties associated with the employment of the employee under the salary packaging agreement, or the provision of employer benefits under the salary packaging agreement, such tax, penalties and any other costs shall be borne by the employee.

(h) In the event of significant increases in Fringe Benefit Tax liability or administrative costs relating to arrangements under this clause, or for any other reason mutually agreed between the employer and employee, the employee may vary or cancel a salary packaging arrangement.

(i) The cancellation of salary packaging will not cancel or otherwise affect the operation of this Agreement.

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

(k) The Dispute Resolution Procedure contained at Clause 25 of 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.

24.—NOTIFICATION OF CHANGE

(a) Where the employer proposes to introduce changes in program, organisation, structure or technology that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and the Union before implementation.

(b) For the purpose of this clause "significant effects" shall include, but not be limited to, termination of employment; changes in the composition, operation or size of the workforce or the skills required; elimination or diminution of job opportunities, promotion opportunities or job tenure; alteration to hours of work; the need for retraining or transfer of employees to other work; or the restructuring of jobs.

(c) The employer will discuss with the affected employees and the Union, the introduction of changes referred to in sub clause (a), the effects that those changes may have on employees and measures to avert or mitigate adverse effects. The employer shall give prompt and genuine consideration to matters raised by the employees and/or the Union in relation to the changes.

(d) Discussions shall commence with affected employees and the Union as early as practicable after a firm decision has been made by the employer to make changes referred to in sub clause (a).

(e) For the purposes of such discussion, the employer shall provide to the employees concerned, and the Union, all relevant information, including the nature of changes proposed, the expected effects of the changes on employees 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 the employer's interests.

25.—DISPUTE RESOLUTION PROCEDURE

(a) In the event of any question, difficulty or dispute under the Agreement or Award arising between an employee, group of employees or the union and management concerning any implementation or the interpretation of this Agreement, the following procedure shall apply—

(i) The employee/s concerned shall discuss the matters with the immediate supervisor or employer's representative, as appropriate.

(ii) If the matter is not resolved within five (5) working days following the discussions in accordance with (i) above the matter shall be referred to the Chief Executive Officer, or his nominee, for resolution.

(iii) If the matter is not resolved within ten (10) working days following notification in (iii) above it may be referred by either party to the WAIRC for resolution.

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

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

(i) Decisions made are unbiased and are seen to be unbiased.

(ii) All parties to the dispute have the opportunity to put their cases fully.

(iii) Appropriate confidentiality is to be maintained.

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

26.—SIGNATURE OF THE PARTIES

Signed for and on behalf of the
CIVIL SERVICE ASSOCIATION
OF WESTERN AUSTRALIA (INC) by—
D Robinson *Common Seal*
.....
Date ..*12*../*.9*../*.00*.

Signed for and on behalf of the
WA Potato Marketing Corporation by—
Paul Pillay
.....
Date .*12*./*.09*./*.00*.

SCHEDULE A—SALARIES

Level	Salary Per Annum	3.5% Increase	3.5% Increase
Level 1			
Under 17 years	11,880	12,296	12,726
17 years	13,884	14,370	14,873
18 years	16,195	16,762	17,348
19 years	18,746	19,402	20,081
20 years	21,052	21,789	22,551
21 years or 1st year of adult service	23,125	23,934	24,772
22 years or 2nd year of adult service	23,838	24,672	25,536
23 years or 3rd year of adult service	24,549	25,408	26,298
24 years or 4th year of adult service	25,256	26,140	27,055
25 years or 5th year of adult service	25,967	26,876	27,816
26 years or 6th year of adult service	26,679	27,613	28,579
27 years or 7th year of adult service	27,497	28,459	29,455
28 years or 8th year of adult service	28,063	29,045	30,062
29 years or 9th year of adult service	28,900	29,912	30,958
Level 2			
1st Year	29,902	30,949	32,032
2nd Year	30,670	31,743	32,854
3rd Year	31,477	32,579	33,719
4th Year	32,331	33,463	34,634
5th Year	33,223	34,386	35,589
Level 3			
1st Year	34,450	35,656	36,904
2nd Year	35,406	36,645	37,928
3rd Year	36,392	37,666	38,984
4th Year	37,404	38,713	40,068
Level 4			
1st Year	38,791	40,149	41,554
2nd Year	39,879	41,275	42,719
3rd Year	40,997	42,432	43,917
Level 5			
1st Year	43,152	44,662	46,226
2nd Year	44,609	46,170	47,786
3rd Year	46,122	47,736	49,407
4th Year	47,692	49,361	51,089
Level 6			
1st Year	50,217	51,975	53,794
2nd Year	51,934	53,752	55,633
3rd Year	53,710	55,590	57,535
4th Year	55,607	57,553	59,568
Level 7			
1st Year	58,515	60,563	62,683
2nd Year	60,528	62,646	64,839
3rd Year	62,718	64,913	67,185
Level 8			
1st Year	66,276	68,596	70,997
2nd Year	68,825	71,234	73,727
3rd Year	71,986	74,506	77,113
Level 9			
1st Year	75,934	78,592	81,342
2nd Year	78,601	81,352	84,199
3rd Year	81,643	84,501	87,458
Class 1	86,243	89,262	92,386
Class 2	90,843	94,023	97,313
Class 3	95,441	98,781	102,239
Class 4	100,041	103,542	107,166

PUBLIC SERVICE ARBITRATOR— Awards/Agreements— Variation of—

GRAYLANDS SELBY-LEMNOS AND SPECIAL CARE HEALTH SERVICES AWARD 1999.

No. PSA A1 of 1999.

2000 WAIRC 00747

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	HOSPITAL SALARIED OFFICERS ASSOCIATION OF WESTERN AUSTRALIA (UNION OF WORKERS), APPLICANT
	v.
	METROPOLITAN HEALTH SERVICE BOARD AND THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED, RESPONDENT
CORAM	COMMISSIONER P E SCOTT
DELIVERED	THURSDAY, 28 SEPTEMBER 2000
FILE NO/S	P 15 OF 2000
CITATION NO.	2000 WAIRC 00747

Result Award varied

Order.

HAVING heard Ms C Thomas on behalf of the applicant, Mr J Ross on behalf of the Civil Service Association of Western

Australia Incorporated, and having been advised in writing of the Metropolitan Health Service Board's agreement, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Graylands Selby-Lemnos and Special Care Health Services Award 1999 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 1st day of January 2000.

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

Schedule.

1. Schedule D—District Allowance: Delete subclauses (a) and (b) of this schedule and insert the following in lieu thereof—

(a) Officers Without Dependants (paragraph 31(3)(a))—

Column I	Column II	Column III	Column IV
District No.	Standard Rate $ p.a.	Exceptions To Standard Rate Town or Place	Rate $ p.a.
6	3,032	Nil	Nil
5	2,481	Fitzroy Crossing Halls Creek Turner River Camp Nullagine	3,341
		Liveringa (Camballin) Marble Bar Wittenoom	3,104
		Karratha	2,922
		Port Hedland	2,718
4	1,250	Warburton Mission	3,359
		Carnarvon	1,177
3	788	Meekatharra Mount Magnet Wiluna Laverton Leonora Cue	1,250
2	565	Kalgoorlie Boulder	189
		Ravensthorpe Norseman Salmon Gums Marvel Loch Esperance	746
1	Nil	Nil	Nil

(b) Officers with dependants (paragraph 31(3)(b))

Double the appropriate rate as prescribed in (a) above for officers without dependants.

The allowances prescribed in this schedule shall operate from the beginning of the first pay period commencing on or after January 1, 2000 and shall be varied in accordance with any movement in the equivalent allowances in the Public Service Award 1992.

HOSPITAL SALARIED OFFICERS' AWARD 1968.
No. 39 of 1968.

2000 WAIRC 00751

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	HOSPITAL SALARIED OFFICERS ASSOCIATION OF WESTERN AUSTRALIA (UNION OF WORKERS), APPLICANT *v.* ASHBURTON HEALTH SERVICE AND OTHERS, RESPONDENTS
CORAM	COMMISSIONER P E SCOTT
DELIVERED	THURSDAY, 28 SEPTEMBER 2000
FILE NO	P 14 OF 2000
CITATION NO.	2000 WAIRC 00751

Result Award varied

Order.

HAVING heard Ms C Thomas on behalf of the applicant and Ms K Carter on behalf of the respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Hospital Salaried Officers' Award 1968 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 1st day of January 2000.

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

Schedule.

1. Clause 30.—District Allowance: Delete subclause (7) of this clause and insert the following in lieu thereof—

(7) DISTRICT ALLOWANCES

(a) Officers without dependants [Subclause (2)(a)]

Column I	Column II	Column III	Column IV
District No.	Standard Rate $ p.a.	Exceptions To Standard Rate Town or Place	Rate $ p.a.
6	3,032	Nil	Nil
5	2,481	Fitzroy Crossing Halls Creek Turner River Camp Nullagine	3,341
		Liveringa (Camballin) Marble Bar Wittenoom	3,104
		Karratha	2,922
		Port Hedland	2,718
4	1,250	Warburton Mission	3,359
		Carnarvon	1,177
3	788	Meekatharra Mount Magnet Wiluna Laverton Leonora Cue	1,250
2	565	Kalgoorlie Boulder	189
		Ravensthorpe Norseman Salmon Gums Marvel Loch Esperance	746
1	Nil	Nil	Nil

(b) Officers with dependants [Subclause (2)(b)]

Double the appropriate rate as prescribed in (a) above for officers without dependants.

The allowances prescribed in this subclause shall operate from the beginning of the first pay period commencing on or after January 1, 2000.

AWARDS/AGREEMENTS— Variation of—

ACTIV FOUNDATION (SALARIED OFFICERS) AWARD.

No. 13 OF 1977.

2000 WAIRC 00748

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES	HOSPITAL SALARIED OFFICERS ASSOCIATION OF WESTERN AUSTRALIA (UNION OF WORKERS), APPLICANT
	v.
	THE BOARD OF MANAGEMENT, ACTIV FOUNDATION INCORPORATED, RESPONDENT
CORAM	COMMISSIONER P E SCOTT
DELIVERED	THURSDAY, 28 SEPTEMBER 2000
FILE NO	APPLICATION 800 OF 2000
CITATION NO.	2000 WAIRC 00748

Result Award varied

Order.

HAVING heard Ms C Thomas on behalf of the applicant and Mr M O'Connor on behalf of the respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the ACTIV Foundation (Salaried Officers) Award, No. 13 of 1977 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 13th day of September 2000.

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

Schedule.

1. Clause 32.—District Allowance: Delete subclauses (6) and (7) of this clause and insert the following in lieu thereof—

(6) Adjustment of Rates

The allowances prescribed in this clause shall be varied in accordance with any movement in the equivalent allowances in the Public Service Award 1992.

(7) District Allowances

(a) Officers without dependants (subclause (2)(a))—

Column I District No.	Column II Standard Rate $ p.a.	Column III Exceptions To Standard Rate Town or Place	Column IV Rate $ p.a.
6	3,032	Nil	Nil
5	2,481	Fitzroy Crossing Halls Creek Turner River Camp Nullagine	3,341
		Liveringa (Camballin) Marble Bar Wittenoom	3,104
		Karratha	2,922
		Port Hedland	2,718
4	1,250	Warburton Mission	3,359
		Carnarvon	1,177
3	788	Meekatharra Mount Magnet Wiluna Laverton Leonora Cue	1,250
2	565	Kalgoorlie Boulder	189
		Ravensthorpe Norseman Salmon Gums Marvel Loch Esperance	746
1	Nil	Nil	Nil

(b) Officers with dependants (Subclause (2)(b))

Double the appropriate rate as prescribed in (a) above for officers without dependants.

BUILDING TRADES (GOLDMINING INDUSTRY) AWARD.

Nos. 29 and 32 of 1965 and 4 of 1966.

2000 WAIRC 00540

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES	THE WESTERN AUSTRALIAN BUILDERS' LABOURERS, PAINTERS & PLASTERERS UNION OF WORKERS, CONSTRUCTION, MINING, ENERGY, TIMBERYARDS, SAWMILLS AND WOODWORKERS UNION OF AUSTRALIA—WESTERN AUSTRALIAN BRANCH V LAKE VIEW AND STAR LIMITED, GREAT BOULDER GOLD MINES LTD, GOLD MINES OF KALGOORLIE (AUST) LTD
CORAM	COMMISSIONER J F GREGOR
DELIVERED	WEDNESDAY, 6 SEPTEMBER 2000
FILE NO/S	APPLICATION 898 OF 2000

Result	Application Granted.
Representation	
Applicant	Ms J Harrison on behalf of the applicant.
Respondent	Mr R Gifford on behalf of the respondent.

Reasons for Decision.

(Ex Tempore)

1 On 13 June 2000, the Western Australian Builders' Labourers', Painters and Plasterers Union of Workers and the Construction, Mining, Energy, Timberyards, Sawmills

and Woodworkers Union of Australia Western Australia Branch (the Union), applied to the Commission to vary the Building Trades Goldmining Industry Award No. 29 and 32 of 1965, No. 4 of 1966 (the Award), by inserting a clause relating to superannuation. The proposal clause is in the same terms as similar clauses in the major industry building industry awards and at least seven of eight of the subsidiary awards which follow movements in the parent award.

2 On 7 July 200 the WMC Resources Ltd filed a notice of answer opposing the inclusion of the proposed clause in the award. The opposition is predicated on the basis that it is considered by the answerer that there was no purpose to be achieved by the inclusion of the proposed clause in the award.

3 The Union, represented by Ms Harrison, takes the view that the proposed clause reflects the current situation concerning superannuation in the industry and clarifies various elements of confusion that have potential to arise because of complex superannuation legislation. According to the Union, the State Wage Principles do not prohibit the Commission granting a clause of the nature sought.

4 The Union's position can be summarised in the following way: inclusion of the proposed clause will ensure that entitlements relating to superannuation are clear and transparent. If the proposed clause is not included in the award members of the Union will find it difficult to find out what their entitlements are, and finally, it is consistent with other awards in the building industry. The proposed variation does not seek to extend the terms and conditions already applicable under other awards, nor does it extend entitlements created by the *Superannuation Guarantee Act (Commonwealth)*, or vary in any way the provisions operating in favour of workers under Section 49C of the *Industrial Relations Act* 1979.

5 Mr Gifford represents the only two employers who have responded to the Notice of Hearing There is no other appearance on behalf of any respondent. Mr Gifford submits that there is no purpose in this application. There is already adequate coverage in existing legislation. Relevantly, for what I will say afterwards, Mr Gifford says that the entities for whom he appears do not employ anyone covered by the award. Any employees who may be within the scope of the award is removed by the force of legislation if they are party to workplace agreements, or by virtue of the status of their employment if they are subcontractors performing the type of work usually covered by the award. The entities for whom he appears have no employees who will be affected by any variation the Commission might make to the award.

6 There are a number of issues arising from the general submissions. It is true that presently workplace agreements displace the jurisdiction of the Commission in relation to matters contained in those workplace agreements which may also be contained in awards or orders of the Commission. However, the legislative bar to the Commission dealing with such matters can easily be reversed at the stroke of a legislative pen, and if that were to happen the award would not contain a superannuation clause where many other awards do.

7 There is also the question raised about the effect of this award in any event. Mr Gifford, in *[Exhibit G1]* drew my attention to an investigation which was ordered by Senior Commissioner Fielding following upon the presentation in other proceedings of a survey which indicated this award may have very little real effect. Deputy Registrar Lovegrove was directed to conduct an investigation. He was able to find one company who was covered by the award and a worker in Kalgoorlie named 'Pete' who may well have been covered if Mr Lovegrove had the wherewithal to further investigate his individual circumstances.

8 Arising from that investigation, importantly for these proceedings, was a recommendation that the award not be cancelled. It was not and remains in force. It is a common rule award. The number of employees under its terms varies from day to day but while it exists it has potential to cover any employees who fall within the proper scope and coverage of the award.

9 The other point to be made, and Mr Gifford makes it strongly, is that the *Superannuation Guarantee Act* and the relevant provisions of the *Industrial Relations Act* in Section 49C describe the entitlements. Even though there is complexity, the Taxation Department publishes explanatory documents which assist employees to understand their entitlements.

10 The fact is the inclusion of the proposed clause in the award would be legislatively benign. It would not change the *Superannuation Guarantee Act* or the *Industrial Relations Act*. It does not create entitlements that do not already exist. The only attack Mr Gifford makes on the wording of the proposed clause, is that page 3 of the clause needs to be examined to ascertain that an employee has an opportunity to use a fund other than the first fund nominated. That, I say, is not a major flaw.

11 I have to take into account the scheme of the award system at the moment. Under the wage policy established through the State Wage principles, awards are a safety net, the Commission is directed by the Wage Principles to ensure that the safety net is maintained. The award subject this application is the same as many other awards that emanate from the building industry, but it is the only one that does not have a superannuation provision in it. It seems a matter of logic that if a safety net is to be maintained it is not at odds with that principle to include in this award a superannuation clause which would help maintain the safety net.

12 The fact of the matter is, whatever the Commission does will not affect or prejudice the employers represented by Mr Gifford. There is not sufficient substance in the opposition to refuse to justify that the application be refused. The application will be granted and the award will be amended to operate on from 21 August 2000 in the form of the proposed clause. Minutes of the proposed amendment will issue in due course for the parties perusal.

2000 WAIRC 00542

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	THE WESTERN AUSTRALIAN BUILDERS' LABOURERS, PAINTERS & PLASTERERS UNION OF WORKERS, CONSTRUCTION, MINING, ENERGY, TIMBERYARDS, SAWMILLS AND WOODWORKERS UNION OF AUSTRALIA—WESTERN AUSTRALIAN BRANCH V LAKE VIEW AND STAR LIMITED, GREAT BOULDER GOLD MINES LTD, GOLD MINES OF KALGOORLIE (AUST) LTD
CORAM	COMMISSIONER J F GREGOR
DELIVERED	WEDNESDAY, 6 SEPTEMBER 2000
FILE NO/S	APPLICATION 898 OF 2000

Result	Award Varied.
Representation	
Applicant	Ms J Harrison on behalf of the applicant.
Respondent	Mr R Gifford on behalf of the respondent.

Order.

HAVING heard Ms J Harrison, on behalf of the (Applicant) and Mr R Gifford on behalf of WMC Resources Ltd and Central Norseman Gold Corporation, the Commission pursuant to the powers conferred on it under the *Industrial Relations Act, 1979*, hereby orders—

THAT the Building Trades (Goldmining Industry) Award (Nos. 29 and 32 of 1965 and No. 4 of 1966) be varied in accordance with the following Schedule and

that such variation shall have effect on and from 21 August 2000.

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

Schedule

1. Clause 2.—Arrangement: Immediately following 31. Resolution of Disputes Procedure of this clause insert the following—

32. Superannuation

2. Clause 31.—Resolution of Disputes Procedure: Immediately following this clause insert the following new clause.

32.—SUPERANNUATION

The superannuation provisions contained herein operate subject to the requirements of the hereinafter prescribed provision tilted—Compliance, Nomination and Transition.

(1) DEFINITIONS

For the purpose of this clause—

(a) "Superannuation Legislation" means the Federal legislation as varied from time to time, governing the superannuation rights and obligations of the parties, which includes the Superannuation Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act 1992, the Superannuation Industry (Supervision) Act 1993 and the Superannuation (Resolution of Complaints) Act 1993.

(b) "Fund" means a complying fund, as defined in the superannuation legislation.

(c) "Eligible employee" shall mean an employee who is entitled to receive employer superannuation contributions in accordance with the superannuation legislation.

(d) "The relevant fund" means the fund selected in respect of an employee pursuant to subclause (4) hereof.

(e) "Ordinary time earnings" (which, for the purposes of the Superannuation Guarantee (Administration) Act 1992, will operate to provide a notional earnings base) shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including tool allowance, industry allowance, trade allowances, shift loading, special rates, qualification allowance (eg. First aid, laser safety officer), multistorey allowance, district/location allowance, piecework rates, underground allowance, award site allowances, 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 for ordinary hours of work. All other allowances and payments are excluded.

(2) CONTRIBUTIONS

(a) In accordance with the Superannuation legislation and subject to the Trust Deed of the relevant fund, an employer shall contribute an amount on behalf of each eligible employee into a relevant superannuation fund, which reflects the employers' liability as prescribed in Part 3 of the Superannuation Guarantee (Administration) Act 1992 (as set out in (b) below).

(b) The level of contributions required under the Superannuation Guarantee (Administration) Act 1992 are as follows—

Financial Year (1 July-30 June)	Percentage
1996-97	6
1997-98	6
1998-99	7
1999-00	7
2000-01	8

(3) EMPLOYEE CONTRIBUTIONS

(a) Subject to the rules of the Fund, employees of a respondent employer who wish to make contributions to the Fund additional to those being paid pursuant to subclause (2) hereof, shall be entitled to do so. Such employees may either forward their own contribution directly to the Fund administrators or, where it is practicable to do so, authorise the employer to pay into the Fund from the employee's wages, amounts specified by the employee.

(b) Employee contributions to the Fund deducted by the employer at the Employee's request shall be held in Trust on the employee's behalf and be subject to the following conditions—

(i) The amount of contributions shall be expressed in whole dollars.

(ii) Employees shall have the right to adjust the level of contributions made on their own behalf from the first of the month following the giving of three months' written notice to the employer. Provided that by agreement with the employer, employees may vary their additional contributions in extenuating circumstances at other times.

(iii) Contributions deducted under this clause shall be forwarded to the Fund at the same time as contributions under subclause (2) hereof.

(4) SUPERANNUATION FUND

(a) The employer shall make superannuation contributions, or improvements pursuant to this clause, to any of the following funds (that meet the definition set out in subclause (1)(b))—

(i) C+BUS, CTRF, the Westscheme Superannuation Scheme- Building Employees Superannuation Trust; or

(ii) any fund agreed between the employer and eligible employees, and the union or unions where applicable; or

(iii) any fund which has application to employees in the principal business of the employer, where eligible employees covered by this award are a minority of award-covered employees; or

(iv) any other approved occupational superannuation fund to which an employer or eligible employee who is a member to the religious fellowship known as The Exclusive Brethren elects to contribute.

(b) Provided that an employer shall not be required to contribute to more than one fund in respect of eligible employees employed under this Award.

(c) Subject to the terms of this clause, where there is a dispute over the choice of fund in respect of one or more employees, the matter shall be referred to the WA Industrial Relations Commission for determination.

(5) FUND MEMBERSHIP

(a) The employer shall make an eligible employee aware of his/her entitlements under this clause and shall arrange for such eligible employee the opportunity to become a member of the relevant Fund. An eligible employee shall, within a period of 30 days from commencement of employment complete the necessary application forms to become a member of the relevant Fund, to the satisfaction of the Trustees of that Fund, in order to be entitled to the contributions prescribed in subclause (2) hereof.

(6) EXEMPTION

(a) This clause shall be deemed to be satisfied by an employer, who as at 1 December 1991 or at the date of becoming respondents to this award, is already satisfying and continues to satisfy the requirements of subclause (2) hereof by providing superannuation contributions which reflects the employers' liability as prescribed in Part 3 of the Superannuation Guarantee (Administration) Act 1992, or higher amount as required by the Trust Deed of the relevant fund.

(7) ABSENCE FROM WORK

Subject to the Trust Deed to the Fund of which an employee is a member, the following provisions shall apply.

Paid Leave

(a) Contributions shall continue whilst a member of a Fund is absent on annual leave, sick leave, long service leave, public holidays, jury service, bereavement leave, or other paid leave.

Unpaid Leave

(b) Contributions shall not be required in respect of any period of absence from work without pay of one day or more.

Work Related Injury or Illness

(c) In the event of an eligible employee's absence from work being due to work related injury or work related illness, contributions at the normal rate shall continue for the period of the absence provided that—

(i) the member of the fund is receiving workers compensation payments or is receiving regular payments directly from the employer in accordance with statutory requirements or the provisions of this Award-,

(ii) the person remains an employee of the employer.

Compliance, Nomination and Transition

Notwithstanding anything contained elsewhere herein which requires that contribution be made to a superannuation fund or scheme in respect of an employee, on and from 30 June 1998—

(a) Any such fund or scheme shall no longer be a complying superannuation fund or scheme for the purposes of this clause unless—

(i) the fund or scheme is a complying fund or scheme within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; and

(ii) under the governing rules of the fund or scheme, contributions may be made by or in respect of the employee permitted to nominate a fund or scheme;

(b) The employee shall be entitled to nominate the complying superannuation fund or scheme to which contributions are to be made by or in respect of the employee;

(c) The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable;

(d) A nomination or notification of the type referred to in paragraphs (b) and (c) of this subclause shall, subject to the requirements of regulations made pursuant to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the employee to whom such is directed;

(e) The employee and employer shall be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made;

(f) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by an employee;

Provided that on and from 30 June 1998, and until an employee thereafter nominates a complying superannuation fund or scheme—

(g) if one or more complying superannuation funds or schemes to which contributions may be specified herein, the employer is required to make contributions to that fund or scheme, or one of those funds or schemes nominated by the employer;

or

(h) if no complying superannuation fund or scheme to which contributions may be specified herein, the employer is required to make contributions to a complying fund or scheme nominated by the employer.

SECURITY OFFICERS' AWARD.

No. A25 of 1981.

2000WAIRC 00742

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	AUSTRALIAN LIQUOR, HOSPITALITY AND MISCELLANEOUS WORKERS UNION, WESTERN AUSTRALIAN BRANCH, APPLICANT
	v.
	TRANSURETY LTD, RESPONDENT
CORAM	COMMISSIONER S WOOD
DELIVERED	THURSDAY, 21 SEPTEMBER 2000
FILE NO	APPLICATION 978 OF 2000
CITATION NO.	2000 WAIRC 00742

Result	Area and scope clause of award varied
Representation	
Applicant	Mr D H Schapper, (of Counsel), by leave
Respondent	No appearance
Intervenor	Mr C Keys, as agent, by leave

Reasons for Decision.

1 This matter is an application by the Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch ("the applicant") to vary the Security Officer's Award No A25 of 1981 ("the Award").

2 The application being properly lodged on 27 June 2000, served on 30 June 2000 and advertised in the Gazette at 80 WAIG 3038.

3 The matter came on for conference on 28 August 2000 and then for hearing on 21 September 2000.

4 The applicant seeks to vary the area and scope clause of the award, to assist the effective administration and enforcement of the award before the Industrial Magistrate. The applicant says that the amendments will effectively reduce the need to bring evidence to prove what is the business of the company and hence whether it operates in the security industry.

5 Mr Keys as agent for Jett Pty Ltd, Nightguard Security Services Pty Ltd and Lythven Pty Ltd operating in the Security Industry had no objection to the application in those terms.

6 Having considered the application and the submissions I am satisfied that the application on merit should be granted.

2000 WAIRC 00757

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	AUSTRALIAN LIQUOR, HOSPITALITY AND MISCELLANEOUS WORKERS UNION, WESTERN AUSTRALIAN BRANCH, APPLICANT
	v.
	TRANSURETY LTD, RESPONDENT
CORAM	COMMISSIONER S WOOD
DELIVERED	THURSDAY, 21 SEPTEMBER 2000
FILE NO	APPLICATION 978 OF 2000
CITATION NO.	2000 WAIRC 00757

Representation	
Applicant	Mr D H Schapper, (of Counsel), by leave
Respondent	No appearance
Intervenor	Mr C Keys, as agent, by leave

Order.

HAVING heard Mr D H Schapper, of Counsel on behalf of the applicant and Mr C Keys intervening on behalf of Jett Pty Ltd and others, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Security Officers' Award No. A25 of 1981 as varied, be further varied in accordance with the following Schedule and that such variation shall have effect from 21 September 2000.

(Sgd.) S. WOOD,
[L.S.] Commissioner.

Schedule.

1. **Clause 3.—Area and Scope—**

Delete this clause and insert in lieu thereof the following—

3.—AREA AND SCOPE

This award shall apply to all officers in the callings set out in Clause 21A.—Wages, alternatively Clause 21.—Classification Structure and Wage Rates, in the security industry and shall apply throughout the State of Western Australia; provided that this award shall not apply to those employees employed as Control Room Operators pursuant to the Clerks' (Control Room Operators) Award No. A14 of 1981.

INDUSTRIAL MAGISTRATE—Complaints before—

IN THE INDUSTRIAL MAGISTRATE'S COURT HELD AT PERTH WESTERN AUSTRALIA

Complaint No. 21 of 2000

Heard: 17 August 2000; and 6 September 2000

Delivered: 22 September 2000

BEFORE: MR G. CICCHINI I M.

Between—

JANET SEARLE

Complainant

and

STRIDE NOMINEES PTY LTD

Defendant.

Reasons for Decision.

Appearances—

Mr T C Crossley of T C Crossley and Associates Industrial Agents appeared for the Complainant.

Mr M C Hotchkin instructed by Messrs. Hotchkin Hanly Solicitors appeared for the Defendant

The Complaint

By complaint made on or about 18 January 2000 Mrs Janet Searle alleges that on 27 December 1999 the defendant being her employer bound by *Workplace Agreement Numbered 99/15413.002* unfairly dismissed her. She claims that the defendant did so without a valid reason and without giving notice. The complainant accordingly seeks that orders be made pursuant to Sections 51(1)(a) and 57(1)(a), (c), and (d)(ii) of the *Workplace Agreements Act 1993.*

The Workplace Agreement

At the material time the defendant operated a business within the pool supply and service industry. The business was and is conducted under the name "Pooltime." The complainant was an employee of the defendant working within the defendant's business pursuant to the terms of the said workplace agreement. She commenced working for the defendant on or about 1 July 1999 and entered into a workplace agreement on 2 July 1999. Subsequently on 14 September 1999 she entered into a second workplace agreement which superceded the first agreement. The second workplace agreement was still in force on the date of the alleged dismissal.

The complainant by her pleadings and evidence claims to have been employed as a store manager of Pooltime's Malaga store. That is denied by the defendant. The workplace agreement itself does not describe her as a manager. All it does is to outline the types of duties that she was required to perform. The defendant says that the complainant was employed in the capacity of chemical packer, store person and sales trainee. However it does concede that the complainant was regarded as a senior employee and had authority to supervise other employees.

Background

All the Pooltime stores including the Malaga store were organised and overseen by Mr Robin Stride, the defendant's director. He structured the work rosters for each of the stores. At the material time the complainant was rostered to work at the store on Mondays through to Fridays and also on Sundays. From time to time servicemen who were rostered to work during busy periods assisted her in that store. One of those servicemen was Phil Senior. It is the complainant's dispute with Mr Senior over the ownership of tools, which gives rise to the regrettable set of circumstances, which has resulted in this action.

What happened was that in mid December 1999 the complainant was away from her employment on account of jury duty. In her absence Mr Senior who was in search of his tools went to the complainant's toolbox and removed tools, which he claimed to be his. Upon her return from jury duty the complainant confronted Mr Senior about the tools taken from her toolbox. It suffices to say that an impasse developed over the tools. Mrs Searle maintained that whilst she was absent her tools had been stolen by Mr Senior and Mr Senior maintained that he had only recovered what was rightfully his.

The issue of the tools was raised by the complainant with Mrs Stride one of the defendant's directors. Her stance was that the complainant should put her grievance in writing and that if she felt it necessary that she should make a complaint to police. The complainant was not happy with that outcome. It is clear from the testimony that she gave that she wanted the defendant's management to conduct some form of inquisition into the matter. That did not occur. It is clear that the complainant was most unhappy with what she perceived to be inaction on the part of management. Further she regarded Mr Senior to be a thief and a liar. Mrs Searle had no time for Mr Senior.

The Material Incident

The next time Mrs Searle saw Mr Senior following their confrontation was on the morning of 27 December 1999. On that day being the first day following the Christmas break, the complainant's husband drove her to work. Upon arrival at the work premises the complainant noticed Mr Senior's parked in the car park at the front of the store. Upon seeing Mr Senior's car in the car park she told her husband to wait for her. Although it is clear that the complainant's husband waited for her, the evidence even on the complainant's version differs as to where he waited for her whether it be in the car, outside the store or within the office of the store. For his part Mr Senior testified that Mr Searle waited for his wife within the office. In any event what transpired was that Mrs Searle entered the shop and marched past Mr Senior making her way to the office where she telephoned Mr Robin Stride. It is that telephone conversation with Mr Stride lasting about twenty minutes which gives rise to the pivotal issue in dispute in this case being whether during the course of that conversation the complainant resigned or alternatively had her employment terminated. The complainant says that she was terminated. The defendant says she resigned.

Each of Mrs Searle and Mr Stride has given evidence as to what was said during the conversation. Their recollections of

material issues discussed differ. It seems that some parts if not all of Mrs Searle's side of the conversation was over-heard by Mr Senior and Mr Searle. Mr Senior was called as a witness and has given evidence of what he over-heard. The complainant's husband who I am satisfied over-heard at least a part of the conversation has not been called to give evidence in this matter.

The complainant testified that the conversation she had with Mr Stride was heated. She claims that Mr Stride swore at her. Mr Stride vehemently denies swearing at the complainant. It is common ground that the complainant told Mr Stride during the conversation that she could not work with Mr Senior because he (Senior) was a thief and a liar. She had in fact formed the intention even before she spoke to Mr Stride that there was no way in which she was going to work with Mr Senior (see page 51 of the transcript). She told Mr Stride that given that she was accountable for the store she was concerned about being held responsible for anything that went missing whilst she worked at the store with Mr Senior. It is obvious that the complainant had formed the intention not to work with Mr Senior under any circumstance. Mr Stride for his part wanted the complainant to work at the Malaga store with Mr Senior on that day as had been rostered. He wanted to avoid dislocation to his business on what was a very important trade day. Any change to the existing arrangements would have inevitably affected the business' ability to cater for the trade and was to be avoided. Mr Stride testified that he pleaded with the complainant to stay and work with Mr Senior but she refused to do so. He said that she effectively gave him an ultimatum that he should either remove Mr Senior to another store or she would go home. Mr Stride said that he told the complainant that he had no other person who could work at the store on that day. He suggested that the complainant should sort the matter out with Mr Senior and remain at work at the store that day. The complainant however was not willing to compromise. Consequently he told the complainant *"I need you in the store but if you're going to go…leave your key"*. The complainant's version of the relevant exchange is that Mr Stride told her, *"If you cannot be responsible and work with Mr Senior you are to leave your key and walk out the door."*

Mr Stride testified that he could not recall whether or not during that initial telephone conversation the complainant told him that "she quit" however he was left in no doubt by what she had said to him that she had left her employment with the defendant. Mr Senior who over-heard the conversation testified that the complainant used the words "I quit". The complainant vehemently denies that she uttered those words. The complainant maintains that she was directed to leave the store and go home, which is what she did. She said that she simply followed orders. The complainant strongly denies having resigned or using any words that gave rise to the apprehension that she resigned.

It is common ground that the complainant left the store following the telephone conversation with Mr Stride and was driven home by her husband. Upon her arrival at home she again telephoned Mr Stride. Mr Stride told the Court that he was initially unaware that the complainant had left the store as threatened. The fact that the complainant had implemented her threat to resign only became apparent when the complainant telephoned him from her home. Mrs Searle testified that during that conversation with Mr Stride she told him that she loved her job but was not able to work with Mr Senior and asked to be transferred to another store. She told him that she was prepared to work at other Pooltime stores but not at the Malaga store with Mr Senior. Mr Stride testified that he responded by saying that he had no work for her at other stores and told her that she was needed at the Malaga store. He said that she refused to return to the Malaga store and the matter was left there. He told her that given that she had quit her job he did not want to further talk to her about the matter. Mr Stride on behalf of the defendant subsequently wrote to the complainant confirming that her services were no longer required.

Resignation or Termination ?

In order to establish her claim the complaint must prove on the balance of probabilities that her employment with the defendant was terminated by Mr Stride on behalf of the defendant. She must accordingly negate any contention of resignation raised by the defendant.

The issue of whether there was a dismissal or termination will to a very large extent be determined on my assessment of the credibility or otherwise of the witnesses and in particular Mrs Searle and Mr Stride.

It was submitted forcefully by the defendant that the complainant's evidence should not be accepted. I accept the defendant's submission in that regard and agree with the arguments put forward to support the submissions. There were a number of aspects of the complainant's evidence that gave rise to considerable concern about the complainant's veracity. They included the many differing versions as to why her husband waited for her. Her responses when challenged on that issue demonstrated a propensity to say whatever would advance her case. Such is aptly demonstrated at pages 47 to 52 of the transcript. Furthermore the evidence overwhelmingly dictates that when the complainant spoke to Mr Stride during their first telephone conversation on 27 December 1999 she did so with the intention of giving him an ultimatum. She required Mr Stride to either move Mr Senior to another store or else she would go home (see pages 47 to 52 of the transcript). The complainant's account of having been instructed by Mr Stride to go home simply is not credible. Mr Stride did not want her to go home. Her leaving the store would have caused him difficulty and would have disrupted the business. That was something he sought to avoid particularly on an important trading day. Mr Stride was not looking to create dislocation in the running of business or cause himself consequent inconvenience but rather avoid it.

The cross-examination of the complainant seriously impugned her credibility. A relevant example is to be found at page 53 of the transcript. I quote the passage—

> "MR HOTCHKIN: Mr Stride says that when he received the phone call from you—- he will say words to the effect that you told him that Phil was a thief and a liar? - -
>
> That's correct.
>
> That you were responsible for the store and if you were going to be held responsible - - that if you were responsible for the store, you were going to be held responsible for anything missing. You agree with all of that so far?- - I agree.
>
> And then he says that if you had to work with Mr Senior you were leaving? - - - I agree.
>
> You said that? - - - I agree. I did say that if I had to work with Mr Senior in that store then I was leaving.
>
> Right. And Mr Stride says - - -? No, sorry, sorry, sorry..
>
> Oh? - - - Sorry, sorry. Can I change - - - sorry. No, sorry.
>
> Yes. You can change it, you know? - - - That's not - - -
>
> Tell us whatever you want? - - - I never said to Mr Stride that I was leaving so, no, I'm sorry, you're misleading me.
>
> I didn't mislead you, Ms Searle. I just asked you a question? - - - It's "Mrs" actually and, yes, you did."

It will be noted from the passage that not only did the complainant agree with counsel's proposition that she told Mr Stride that if she had to work with Mr Senior she was leaving but she also affirmed that by saying—

"I did say that if I had to work with Mr Senior in that store then I was leaving."

There can be no mistake. It is not a situation of inadvertently agreeing to a proposition, which was misunderstood. She used her own words to affirm and reinforce the proposition that had been put to her. Then when the penny dropped she sought to retract what she had said on the basis that counsel had misled her. There was no misleading at all. No one put words into her mouth in making the statement that she made. That passage of the transcript demonstrates the complainant's total lack of credibility. Her testimony on this issue and other issues including the incident about the early closing was totally unsatisfactory. I do not accept her testimony on such matters and other matters in issue.

That passage of the transcript to which I have just referred permits the finding that the defendant left her employment. I do make such a finding. I have no doubt that the complainant left her employment. She resigned her employment during

the initial conversation that she had with Mr Stride. I do not accept that Mr Stride swore at the complainant. His demeanor in the witness box is suggestive of the fact that he did not. In any event I far prefer his evidence in all contested issues between himself and the complainant.

The evidence of Mr Senior and of Mr Littlewood also support the fact that the complainant resigned. Although I cannot conclude that Mr Senior is clear in his recollection that the words "I quit" were used by the complainant, I am nevertheless satisfied that as a result of what he over-heard he concluded that the complainant had "quit". I am satisfied that was the effect of what Mr Senior over-heard. Mr Littlewood's evidence is also significant. He testified that whilst at the St. George Bank in Perth in early January 2000 that the complainant went up to him and told him that she had left the company. I accept Mr Littlewood's evidence in that regard.

I am left in no doubt that the complainant gave Mr Stride an ultimatum, which he could not reasonably accept. In consequence of his refusal to accept that ultimatum the complainant resigned in an impetuous act. There can be no doubt about the fact that she resigned intentionally and voluntarily. It was not a forced resignation. The complainant dictated the events.

The Law

In my view the demands made of Mr Stride by the complainant on 27 December 1999 particularly in the circumstances in which they were made were totally unreasonable. Reasonableness works both ways. Not only must an employer be reasonable but also so must an employee. The complainant's demand that Mr Senior be removed to another store on a very busy trading day was totally unreasonable and put the defendant's business to disadvantage. The situation in this matter is not too dissimilar to the circumstances in the ***Avery v Air Design Pty Ltd*** (1996) 67 IR.95. In that case the employee refused to accept the employer's decision about the employee's duties and workload and resigned in anger as an impetuous act. The resignation was confirmed shortly afterwards. The termination in that case was found not to be at the initiative of the employer. The relevant circumstances in that case are strikingly similar to this matter and the case must be appropriately considered as supporting the defendant's argument

Mr Crossley for the complainant argues that this is a matter which is factually similar to ***Bramwell v Swan Yacht Club (Inc)*** 77 WAIG 1997. The Full Bench upheld that decision at first instance on appeal. The Full Bench's decision is reported at 78 WAIG 579. In that case the Commissioner held that it was incumbent upon the employer to ensure that the resignation was really intended before he accepted the same in circumstances where she resigned as a result of having been sworn at by her employer. Mr Crossley argues that if I find that the complainant resigned (which I do) then such resignation should not be regarded as a resignation freely and voluntarily made. That is so particularly given the circumstance in which it was made, that is during a heated discussion with Mr Stride. It is submitted that any resignation made in those circumstances cannot therefore be considered to be intended. For that argument to have any force I must find as a matter of fact that there was a heated discussion between the complainant and Mr Stride during which the complainant was sworn at and was overborne by Mr Stride. The state of the evidence does not permit such a finding. As stated previously I reject the contention that Mr Stride swore at the complainant or otherwise behaved toward the complainant in an improper manner. I find that Mr Stride was at all times conciliatory. He unsuccessfully appealed to the complainant not to go. He did not want her to go. Her leaving would have and did cause logistical difficulties for him being something he did not want on that day. Accordingly ***Bramwell*** must be distinguished on its facts.

Further Mr Crossley submits that I should consider and apply the dicta in ***Kwik-Fit (G.B.) Ltd v Lineham*** (1992) IR 183 at 188 in which Wood J observed.

> "If words of resignation are unambiguous then prima facie an employer is entitled to treat them as such, but in the field of employment personalities constitute an important consideration. Words may be spoken or actions expressed in temper or in the heat of the moment or under extreme pressure ("being jostled into a decision") and indeed the intellectual make-up of an employee may be relevant: see Barclay v. City of Glasgow District Council (1983) I.R.L.R. 313. These we refer to as "special circumstances". Where "special circumstances" arise it may be unreasonable for an employer to assume a resignation and to accept it forthwith. A reasonable period of time should be allowed to lapse and if circumstances arise during that period which put the employer on notice that further inquiry is desirable to see whether the resignation was really intended and can properly be assumed, then such inquiry is ignored at the employers risk. He runs the risk that ultimately evidence may be forthcoming which indicates that in the "special circumstances" the intention to resign was not the correct interpretation when the facts are judged objectively."

Although what His Honour said in ***Kwik Fit (G.B)*** is good law in the Australian context, it has no application to the facts of this case because I do not accept that the words spoken by the complainant were spoken under any pressure put on her by Mr Stride on behalf of the defendant. In any event her intention to resign was confirmed by her about a half-hour after the initial telephone conversation. The second telephone conversation took place when the complainant was in the sanctuary of her own home. During that conversation she calmly reaffirmed her decision previously made not to work for the defendant on the defendant's terms. She again during that telephone discussion put an unacceptable ultimatum to the defendant. She wanted to work for the defendant but only upon her terms. The second call made was not made for the purpose of withdrawing the resignation but rather in confirmation of it. The complainant offered to return to work for the defendant only upon her terms. No employer is or can be required to succumb to such an ultimatum. The resignation was clearly intended and was not withdrawn. The authorities cited by Mr Crossley for the complainant have no application in this matter given the facts of this case.

Other Issues

Although evidence was heard on a number of other issues it appears to me that such evidence is not relevant to the pivotal matter under consideration in this case. The issues raised include, inter alia, warnings about smoking and the complainant's early closing of the Malaga store. I only mention these issues because quite a deal of evidence was given concerning those matters. It simply suffices to say at this point that where there is a conflict in the evidence on such issues I prefer the evidence given by the witnesses called by the defendant to that given by the complainant. Indeed the evidence given by Ms Higgins, Mrs Stride and also as is reflected in exhibit 10 go to demonstrate the complainant's lack of credibility on the issue of closing early. I do not intend to make any other comment on the peripheral issues raised by the pleadings with respect to which evidence has been given.

Conclusion

I find that the complainant resigned with intention of doing so and that such resignation was not withdrawn. Given that the complainant resigned there has been no dismissal and therefore the claim made alleging unfair dismissal cannot be and is not made out.

C. CICCHINI,
Industrial Magistrate.

UNFAIR DISMISSAL/ CONTRACTUAL ENTITLEMENTS—

2000 WAIRC 00821

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	GARRY EDMUND MARSHAL BOARDLEY APPLICANT *v.* SKILL HIRE PTY LTD RESPONDENT
CORAM	COMMISSIONER J F GREGOR
DELIVERED	MONDAY, 9 OCTOBER 2000
FILE NO/S	APPLICATION 1390 OF 1999
CITATION NO.	2000 WAIRC 00821

Result	Applicant found unfairly dismissed/ compensation awarded
Representation	
Applicant/ Appellant	Mr N Graham (Of Counsel) on behalf of the Applicant.
Respondent	Mr B Hocking (Of Counsel) on behalf of the Respondent.

Reasons for Decision.

1 By an application filed on 9 September 1999, Garry Edmund Marshal Boardley (the Applicant) seeks orders from the Commission arising from what he says is the unfair dismissal of him by Skill Hire Pty Ltd (the Respondent). The facts in this matter are not complicated. It is common ground, that the applicant was employed by the respondent as a casual during 1998 at the Fletcher International WA Meatworks in Albany. He applied for a position with the respondent as a meat trainee in August 1998. The application form included information relating to the applicant's medical condition. It is common ground that he declared that he had suffered a back injury in the mining industry but had stabilised the injury through a rehabilitation program. At that time, he was examined by the Plant nurse, who asked him to demonstrate flexibility by undertaking some simple exercises. His application was accepted.

2 The applicant was unsuccessful with the application but subsequently worked at the abattoir doing fibreglass laminating. Prior to this he had been employed as a casual on the slaughter floor until the laminating job started. The laminating position lasted for about three months and during that time he was paid as a 'permanent' and received holiday pay and sick leave. He did not enter a formal employment agreement during that time. He reported no circumstances where he was unable to perform duties even though these included working in the skinning shed in elevated and confined spaces, lifting and performing other physical labour. When the work was finished the applicant was supplied with a Separation Certificate which indicated that he left on his own accord.

3 After the applicant had finished the laminating work he says he received a call from the respondent asking if he would be interested in doing an induction course as a meat industry trainee at the abattoir. He was anxious to do so and entered into an employment agreement on 12 October after having completed an induction as a Skill Hire employee for work at the Fletcher International WA site. The induction course became important for these proceedings and I will mention more about it during my analysis, suffice to say the applicant completed the course and was given duties in the load-out section. His evidence was because of the history of back injury he thought it his duty operating under duty of care to bring to the attention of the site nurse that he had a back injury. He did so in order that the site nurse could make a decision after appropriate discussions and advise him whether the respondent wished him to continue to work in the area. He says he never refused to work in any area of the plant, but he brought his back situation to the notice of the employer as a part of duty of care. It is relevant to note that the medical information, which the applicant presented in August 1998 was rolled over in the new application in August 1999. That is, there was no new application form filed, nor was there any medical conducted.

4 After the applicant raised the question with the site nurse, he was allocated to work for the balance of the day in the skin shed. He understood that he would work there until the situation was clarified. The applicant says he was then asked to see Mr Greg Stocks, a principal of the respondent, who terminated his permanent work and advised him he could only offer him casual work from then on because he was unsuitable for abattoir work.

5 The storys of the parties differs at this point. The respondent says that at no time during the induction period, until he was allocated to the load-out, did the applicant say he was not prepared to rotate through the plant. This question of rotation was fundamental to the training program. If an employee did not agree to rotate through the works he was not offered the training program. The respondent admits that Mr Stocks, the respondent's site manager on the day, interviewed the applicant during a lunch break. He told the applicant that if he was not prepared to rotate through the plant he could not take up a multi-skilled position as an abattoir employee. Mr Stocks then told the applicant that the respondent would offer continued work but on a casual basis. The respondent admits that the applicant had expressed dismay at the offer of casual work as opposed to full time traineeship. It was explained to him that the decision was made because his failure to rotate prejudiced the respondent's ability to provide its client with multi-skilled workers. The respondent admits that it relied on the applicant's confidence prior to the induction course about his ability to perform work at the plant and it was only subsequently that he raised these doubts about his capacity. This left them no opportunity but to offer him a casual position. When this offer was made he was unhappy but indicated he would think about his position. He then put a proposition to Mr Stocks, that if he could buy a drum of resin for $800 from Fletcher International WA he would probably be better off doing so. That is, he would leave. He asked that inquiries be made on the basis that if the resin was supplied and if the respondent paid for it that would settle the matter of what he considered to be his unfair dismissal. This was refused. The applicant was then invited to pursue the matter through the appropriate channels if that was his wish.

6 I had the opportunity of seeing the applicant give his evidence. Evidence was also taken from Mr Stocks and from his partner, Mr Fitzpatrick and from Mr K Gould who is a Training Officer for Fletcher International WA and who conducted the Induction Course. I must say that I have no grounds to conclude anything other than all of these gentlemen told the Commission the truth from their point of view. However, with different emphasis as one would expect. I need now to analyse the information and reach a conclusion on which of the version of events is more likely, on the balance of probabilities, to be correct.

7 It is clear from the documentation that has been presented to the Commission, that the respondent runs a professional personnel business, that there is adequate documentation, is clear from the Workplace Handbook, *[Exhibit G4]*. This document describes the respondent's offers and policies covering such things as equal opportunity and affirmative action, grievance procedures, policies dealing with the harassment and discrimination and rules concerning smoking. There is a code of conduct which requires employees to be honest and fair in all dealings with the respondent and with Fletcher International WA, its customers, clients, co-workers, company management and the general public. Importantly, for these proceedings, the Code of Conduct requires each employee to comply

with the *Occupational Health and Safety Act of Western Australia*. In page 13, headed Disciplinary and Termination Procedures, a series of offences are set out which would justify instant dismissals at the discretion of the respondent and Fletcher International WA. There are 18 separate offences, if they can be so described, from wilfully endangering the safety of other employees, theft, fighting and assault, excessive absenteeism, refusal of duties, horseplay, skylarking, cigarette smoking on site. The document records that each of those offences will not be tolerated and may result instant dismissal. There is a scaled disciplinary action procedure with a verbal warning followed by a level 2 formal warning in writing, then suspension and dismissal. There is considerable attention given to safety, to the extent of advice concerning warm up exercises to be used prior to starting work to prevent injury. The duties of the employers and employees under the *Occupational Health and Safety Act* are promulgated. An employee is advised that he is to take reasonable care to ensure his own safety and health at work and if he fails to comply so far as he is reasonably able with instructions given by his employer for his own safety or health or safety of other persons, he contravenes the *Occupational Heath and Safety Act*. He is told that the policy of the respondent is to consider safe working principles when planning future developments. There is an industry reporting profile together with daily exercise programs, information concerning hand washing, details of training, description of a trainee, provisions for payment of bonuses and how quality bonuses are assessed. There is also advice concerning Que Fever and other health information.

8 The Commission heard evidence from Mr Gould, who is a Training Officer, responsible for the delivery of the induction course. There is an induction check list on pages 47 and 48 of the Workplace Handbook. This check list, as I understand the evidence of Mr Gould, encapsulates the significant and major points of the two day induction process. It is clear from the evidence of Mr Gould and the writing that this is a very thorough induction program. Mr Gould presented as a man who ensures that trainee employees who have been processed through the induction know exactly what is required of them by their employers, and their own responsibilities concerning safety and health. To ensure that they do, each successful trainee has to signify that he has fully understood the conditions set out in the workplace manual and has agreed to abide by them, that he has undergone a medical assessment with the nurse and is fit and competent for the work and that he has clearly disclosed to his employer and the nurse any previous illness or injury that may affect the ability to work. When that certification is given it is signed and witnessed.

9 The proceeding is a sufficient recitation of the data upon which the Commission makes its decision on this matter. I find that the applicant applied for work as a trainee in 1998. As part of that application he made admissions concerning a back injury. He was examined by the site nurse who tested him for flexibility and that test was accepted a year later when the applicant again made an application for a traineeship, this time by invitation. The applicant therefore had, as is required by the Workplace Handbook, undergone a medical assessment, certified he was fit and competent to do the work and clearly stated to the respondent and the nurse any previous injury that may affect his ability to work at the Fletcher International WA work site. He therefore had met fundamental obligations which arise from the contract he accepted on 11 August by appending his signature to the certification in the Workplace Handbook.

10 The applicant went through his induction course, he was exposed to the induction course delivered by Mr Gould, who on my finding, delivered a very thorough and professional induction. There would be no doubt that the applicant would know at the end of that course what his obligations for safety were. I find that he did. It is open to find he had it in his mind, that if he failed to comply with instructions concerning safety and health, he could lose his job. He was aware that it was his duty that he take reasonable care to ensure his own safety and health at work and that he had a duty under the code of ethics he had recently accepted, that he should tell his employer about the circumstances he found himself in when working in the loading area.

11 I accept his evidence because there is none from the contrary, the nurse not being called to give evidence, that he did not refuse to work in the load-out area; what he did was raise his concerns with the nurse about potential to injure his back on the basis that he had a duty of care to advise his employer. I accept his evidence when he said that if his employer had accepted responsibility for him working in the load-out area he would have continued to work there. This must follow because he had worked for a number of months doing laminating which, according to Mr Stocks, was hard physical work which involved lifting and working in unusual postures. Mr Stocks knew that the applicant was prepared to work in that way and it would be passing strange that he was prepared to do that type of work for three months and then refuse to do it after he had done an induction. It makes sense to conclude, and I do, that the applicant was sincere when raised the issue of his back with the site nurse. He thought he had a duty to bring it to the attention of his employer. He is a man who had disclosed the injury to the respondent. It is the respondent's responsibility to ensure that appropriate medicals were performed. The applicant's medical by the site nurse that had been asked for in 1998, there was no new medical requested in 1999. The respondent appears to be willing to accept medicals from other than a medical practitioner, if it does so, then of course that is a matter for it but this applicant complied with whatever the respondent asked him to do in that respect.

12 The applicant's employment has been ended summarily, he was told he was no longer permanent and he could start as a casual. That is a complete and separate contract of employment. A casual engagement is quite different to permanent work, it changes the employment status of the applicant. Mr Stocks appears to have based his action on the contention that the applicant had refused duty. There are no grounds on which one could reasonably conclude that was the case. He did not refuse duty in the way which went to the root of the contract. He raised with his employer, because he had been invited to do so by a thorough induction course, that he may have difficulties in doing the work in the load-out. In response he suffered such a fundamental alteration in his contract of service so that he was dismissed. *Undercliff Nursing Home v FMWU* (1985) 65 WAIG 385 specifies that there must be a fair go all round. This applicant was not given a fair go. He was given no chance at all. This is a clear case as one can get of an unfair dismissal. It is not to the point that after the applicant was dismissed by the respondent fundamentally altering his employment status that he tried to negotiate an outcome for himself. He tried to settle the matter for a drum of resin. Nor is it to the point that he said to the employer that if there was not an appropriate settlement he would exercise his rights under the law. Those rights are his to exercise and that he tells an employer he will do so cannot be held against him as a reason to bring his contract of employment to an end. In any event he had already been dismissed by the time he attempted to negotiate compensation.

13 It is clear that the chances of a viable relationship being recreated by reinstatement are extremely slim, the applicant has moved on to other work and it seems to me that the respondent would not want him back in any case.

14 I move now to assess compensation which is payable if as described in the Full Bench in *Boganovich v Bayside Western Australia Pty Ltd* (1999) 79 WAIG 8, there is; "*loss or injury [which] may include hurt and stress*". His Honour the President expressed the principles to apply: these include inter alia that the Commission—

- Make a finding as to the loss or injury which the person has suffered by reason of dismissal.
- The employee is required to establish the loss or injury on the balance of probabilities.

- The Commission is then required to compensate to the fullest extent of the loss or injury up to an including the statutory limit as specified in Section 23A(4) of the Act.
- Compensation is not compensation as defined, if it does not, as much as possible put the person who has suffered the injury or loss or damage back into the position which, but for the loss or damage or injury the person would have been.
- If the Commission does not do so, then there will be error and the Commission will act in conflict of equity, good conscious and the substantial merits of the case.

15 Applying those rules to this case, there has been no submission concerning injury and it appears the applicant seeks compensation in the form of loss. The submissions by both Counsel on compensation were limited. As best as I can ascertain the applicant tried to mitigate his loss , but was unsuccessful. There is no opposition to the contention that the applicant received no earnings for four (4) months. His Counsel has submitted that the loss is four (4) months pay. As I understand it, the earnings for a period of four months is $16,500 and that amount will be awarded to the applicant.

16 Orders will issue that the applicant was unfairly dismissed, reinstatement is unavailing and that he be awarded $16,500 in compensation.

2000 WAIRC 00811

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	GARRY EDMUND MARSHAL BOARDLEY V SKILL HIRE PTY LTD
CORAM	COMMISSIONER J F GREGOR
DELIVERED	FRIDAY, 6 OCTOBER 2000
FILE NO/S	APPLICATION 1390 OF 1999

Result	Applicant found unfairly dismissed/ compensation awarded.
Representation	
Applicant	Mr N Graham (of Counsel) on behalf of the applicant.
Respondent	Mr B Hocking (of Counsel) on behalf of the repondent.

Order.

HAVING heard Mr N Graham (of Counsel) on behalf of the applicant and Mr B Hocking (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—

1. Garry Edmund Marshall Boardley was unfairly dismissed by Skill Hire Pty Ltd.
2. Reinstatement would be unavailing.
3. Skill Hire Pty Ltd pay Garry Edmund Marshall Boardley compensation of $6,528.

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

2000WAIRC 00599

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	BRETT CAMPBELL, APPLICANT *v.* KIMBERLEY BUILDING SUPPLIES, RESPONDENT
CORAM	COMMISSIONER P E SCOTT
DELIVERED	THURSDAY, 14 SEPTEMBER 2000
FILE NO/S	APPLICATION 948 OF 2000

Result	Application Dismissed
Representation	
Applicant	Mr A Mackey (of Counsel) appeared on behalf of the applicant
Respondent	Mr E Thornborough appeared on behalf of the respondent

Reasons for Decision.

1 The applicant claims that he has been harshly, oppressively or unfairly dismissed from his employment with the respondent.

2 In response to the Notice of Application filed by the applicant, the respondent filed a Notice of Answer and Counter Proposal in which it said that there had been a conference in the Australian Industrial Relations Commission which dealt with the applicant's dismissal. At that conference an agreement was reached between the parties that the applicant would discontinue further action in both the Australian Industrial Relations Commission and in this Commission on the basis that—

1. The employment separation certificate issued to him be amended to indicate "unsuitability for the type of work"; and
2. The respondent pay to the applicant one week's wages.

3 On the basis of this response, the Commission wrote to the applicant setting out the above information and inviting the applicant to respond.

4 The applicant's solicitor responded, confirming that such an agreement had been reached, and stated that the applicant was unrepresented at a conference convened by Mr Negus of the Australian Industrial Relations Commission on 7 July 2000, that the conference progressed at "a very fast rate" with Mr Negus emphasising certain matters and that the applicant's main consideration had been ensuring that the employment separation certificate was amended to enable him to pursue a claim for mortgage insurance pursuant to a mortgage held by the applicant and his mother. It was also stated in the response that the applicant felt intimidated by the presence of Mr Thornborough, the respondent's owner and director, and that the applicant did not obtain comprehensive legal advice prior to his attendance at the conference. On this basis, the applicant's solicitor said that the applicant should not be estopped from pursuing a claim before this Commission on account of the agreement reached on 7 July 2000.

5 The Commission convened a hearing for the applicant to show why the application should not be dismissed. At this hearing, the applicant was represented by his solicitor. He gave evidence of the conference convened by Mr Negus and that he, Mr Negus and Mr Thornborough were the only ones present. The applicant says that during that conference, Mr Negus made certain comments to him about the court system being clogged up, that things had moved fairly fast, that "my main focus was the separation certificate which was the whole cause of my problems that I was having with—an insurance company." The difficulty the applicant was having with an insurance company was that he and his mother had entered into a mortgage which had an insurance policy associated with it. The insurance company would not honour the policy on the basis that the employment separation certificate

indicated that the termination took place on account of the applicant's misconduct. The applicant says "all I wanted was that separation certificate changed. I was willing to sort of give up anything that I was entitled to—in order to get that." He says that Mr Negus commented to him that on the basis that he had been employed for 18 months he was entitled to two week's pay in lieu of notice but the applicant says that he was prepared to "trade a week's in lieu for this separation certificate to be amended and to hopefully clear up the problems that I was having, so I was willing to give up that—that extra week's—week in lieu as long as I could get .. it changed to what is should have been". So the applicant sought the amendment of the employment separation certificate and one week's pay.

6 He reiterated that "as long as the one week's in lieu was paid and the separation certificate was amended, I did agree to stop all proceedings against (the respondent)". The applicant says that he did not obtain legal advice prior to attending the conference, during the conference Mr Thornborough interrupted on a number of occasions and that Mr Negus asked him "if he would mind just letting me go on".

7 The applicant also says that Mr Negus mentioned that he was possibly not in the correct jurisdiction and the applicant says that he has subsequently found out that a state award covers him.

8 In summary the applicant says that his primary consideration in reaching the agreement at conference was the mortgage and to make sure that he would be covered in that regard, that provided the separation certificate was amended that that would satisfy him.

9 Following the conference, the applicant received the amended employment separation certificate and one week's pay in lieu of notice. The difficulty which has arisen is that although an amended employment separation certificate has been provided to the applicant, the insurance company has still not paid what the applicant says it ought on the basis that it now has two conflicting separation certificates, one saying that the termination was on account of misconduct and the other saying that it was on account of unsuitability.

10 Mr Thornborough gave evidence that the terms of settlement being a week's pay in lieu of notice and the amendment of the reasons for dismissal in the employment separation certificate were at the applicant's initiative and that Mr Negus advised him that "it was not a gross misconduct". Mr Thornborough says that he was receptive to the applicant's requirements. Mr Thornborough says that he accepted Mr Negus' comment about it not being gross misconduct and the parties agreed to terms of settlement on the basis that the claims in the Australian Industrial Relations Commission and in this Commission would be resolved.

11 In cross-examination, Mr Thornborough gave evidence that he suffered no disadvantage in reaching the agreement by paying the applicant one week's pay in lieu of notice. As to his amending the terms of the employment separation certificate, he said that he had suffered no disadvantage "not at this point".

12 The essence of the applicant's case is this lack of detriment or disadvantage. Mr Mackey for the applicant says that on the basis of the respondent suffering no real detriment or material prejudice by the terms of the agreement reached on 7 July 2000, the authorities say there is "no evidence of promissory estoppel" to enable the respondent to rely on the principle of estoppel to have the claim before this Commission disallowed. (*Chin v Miller 1982* 37 ALR 171 @ 185—6, see also *Legione v Hatley (HC) 1983* 152 CLR 406 and *Walton Stores (Interstate) Limited v Maher and Another 1988* 62 ALJR 110).

13 The Commission is bound by s.26 of the Industrial Relations Act 1979 ("the Act") to exercise its jurisdiction in accordance with equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms. That is not to say that the Commission is to act in disregard of or contrary to the law. Section 27 of the Act provides that the Commission may dismiss a matter at any stage of the proceedings for a number of reasons including that the proceedings are not necessary or desirable in the public interest, or that for any other reason the matter or part should be dismissed or the hearing thereof discontinued as the case may be.

14 In this case, the applicant filed applications in both this Commission and in the Australian Industrial Relations Commission in which he alleged that he had been unfairly dismissed from his employment with the respondent. The applicant and the respondent attended a conference with Mr Negus. During that conference the applicant sought an amendment to the employment separation certificate to enable an insurance policy to be activated. The issue of the appropriate pay in lieu of notice appears to have been raised by Mr Negus and the applicant was prepared to trade off a certain portion of his entitlement to achieve the amendment to the employment separation certificate. The applicant acknowledges that the terms of the settlement were at his initiative. The respondent accepted comments made by Mr Negus as to the proper description of the termination of employment and agreed to amend the employment separation certificate and agreed to pay the applicant one week's pay in lieu of notice and on the basis of those things satisfying both claims. The terms of settlement have now been met. However, the applicant's position has been affected by the insurance company's failure to accept the amended employment separation certificate.

15 Up to the date of the hearing the respondent appears to have suffered no detriment as a result of reaching the agreement with the applicant.

16 Having considered the evidence, I conclude that the applicant's change of heart following the execution of the agreement reached on 21 July 2000 arose because of the insurance company's response to the amended employment separation certificate. The terms of the agreement were at the applicant's initiative and were accepted by the respondent. The respondent has acted in good faith. It should not be obliged to face a further claim about the same matter, having originally resolved the matter to the applicant's complete satisfaction. I conclude that it would be contrary to the public interest for parties to reach agreements on certain terms, in this case the terms which the applicant established, which satisfied him at the time and yet later, because of the actions of a third party, one party is no longer satisfied with the agreement reached and seeks to proceed. Substantial difficulties would arise if parties reached agreements as part of the conciliation process and then, having received the benefits of the agreement, decide to pursue their original claims. One can foresee situations where parties might refuse to negotiate on the basis that they could not be sure that any agreement reached and executed would resolve the matter in dispute because after an agreement had been reached and executed, the other party would seek to revisit the issue on the basis of changed circumstances.

17 Notwithstanding the authorities to which Mr Mackey referred, I conclude that the applicant should not be entitled to proceed. This would be contrary to equity and the substantial merits of the case and contrary to the public interest. Accordingly, this application ought be dismissed. Order accordingly.

2000 WAIRC 00600

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	BRETT CAMPBELL, APPLICANT
	v.
	KIMBERLEY BUILDING SUPPLIES, RESPONDENT
CORAM	COMMISSIONER P E SCOTT
DELIVERED	THURSDAY, 14 SEPTEMBER 2000
FILE NO/S	APPLICATION 948 OF 2000

Result	Application Dismissed
Representation	
APPLICANT	MR A MACKEY (OF COUNSEL) APPEARED ON BEHALF OF THE APPLICANT
RESPONDENT	MR E THORNBOROUGH APPEARED ON BEHALF OF THE RESPONDENT

Order.

HAVING heard Mr A Mackey (of Counsel) on behalf of the applicant and Mr E Thornborough on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT this application be, and is hereby dismissed.

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

2000 WAIRC 00636

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	GEORGE CAMPLIN, APPLICANT
	v.
	JIGALONG COMMUNITY INC, RESPONDENT
CORAM	COMMISSIONER P E SCOTT
DELIVERED	WEDNESDAY, 20 SEPTEMBER 2000
FILE NO/S	APPLICATION 1987 OF 1998

Result	Application alleging unfair dismissal dismissed
Representation	
Applicant	Mr T Kucera (of Counsel) on behalf of the applicant
Respondent	Ms J Stevens (of Counsel) on behalf of the respondent

Reasons for Decision.

Extempore

1 These are my reasons for decision in response to the respondent's submission that this application, being an application made pursuant to section 29(1)(b)(i), is out of time.

2 I note that the application originally claimed unfair dismissal and unpaid contractual benefits. However, by correspondence dated 30 April 1999, the applicant advised that the application in respect of contractual benefits would not be pursued and therefore the application which is before the Commission is one of harsh, oppressive and unfair dismissal.

3 Section 29(2) of the Industrial Relations Act, 1979 says that a referral by an employee of a claim that he has been harshly, oppressively or unfairly dismissed from employment cannot be made more than 28 days after the day on which the employee's employment terminated. The question then is on what day did the applicant's employment terminate? That is a question of fact.

4 The letter of dismissal about which there has been evidence is before the Commission and this letter is dated 30 September 1998. It is addressed to the applicant and the first paragraph reads—

> "We write to regretfully inform you that the Executive Council has decided to terminate your contract of employment to be effective two weeks from the date of this letter" (i.e. from 30 September 1998).

5 The second paragraph reads—

> "Council has also decided that there is no need for your to serve out the two weeks period of notice and accordingly has arranged for you to be paid two weeks salary in lieu of notice. Our Accountants, Glen Simpson & Associates will pay all other entitlements into your account upon finalisation of calculations. As you are no longer be (sic) an employee of Jigalong Community Incorporated, your permit to remain in Jigalong is also hereby revoked and you are required to leave Jigalong by the 3rd October 1998."

6 The final paragraph reads—

> "You are also required to surrender all keys, equipment and tools currently under your control to Mr Brian Samson."

7 The letter is signed by Nyaparu (Billy) Cadigan, the Chairperson, for and on behalf of Jigalong Community Incorporated.

8 I earlier invited the parties to comment on what appears to be a contradiction between the first and second paragraphs and in particular, the third sentence of the second paragraph. The first paragraph says that the termination of the contract of employment is to be effective 2 weeks from the date of the letter, being 30 September 1998, that being 14 October 1998. Yet the second paragraph says that the applicant is not required to serve out his notice and he will be paid 2 weeks' pay in lieu of notice. The third sentence says that as he is no longer an employee his permit to remain is thereby revoked and he is required to leave by 3 October 1998.

9 I note that there is a typographical error in that third sentence and that it could be read as either—

> "As you are no longer an employee"; or
>
> "As you are no longer to be an employee".

10 The first is a statement of the facts as they stood at that point, that is "You are no longer an employee". The second is a statement of intent for the future, "As you are no longer to be an employee".

11 If the first (reading) is to apply, then employment ceased at that point, that is on 30 September 1998. If it was that the applicant was to continue as an employee for some time then the question is for how long was he to continue to be an employee. I have taken the meaning to be "As you are no longer an employee", on the basis that the letter advises the applicant that he is to be paid in lieu of the 2 weeks' notice and that he was required to leave the Community by 3 October 1998.

12 Accordingly, I conclude that it was the respondent's intention, by the letter of termination, to have the applicant's employment end immediately and that the termination was effective on 30 September 1998.

13 As the application was not filed until 6 November 1998, the application is out of time and is to be dismissed.

2000 WAIRC 00721

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	GEORGE CAMPLIN, APPLICANT
	v.
	JIGALONG COMMUNITY INC, RESPONDENT
CORAM	COMMISSIONER P E SCOTT
DELIVERED	TUESDAY, 26 SEPTEMBER 2000
FILE NO/S	APPLICATION 1987 OF 1998
CITATION NO.	2000 WAIRC 00721

Result	Application alleging unfair dismissal dismissed
Representation	
Applicant	Mr T Kucera (of counsel) on behalf of the applicant
Respondent	Ms J Stevens (of counsel) on behalf of the respondent

Supplementary Reasons for Decision.

1 On Tuesday, 19 September 2000, the Commission upheld the respondent's submission that the application was out of time and dismissed the application. The applicant sought liberty to apply in respect of costs. The Commission convened on 20 September 2000 for the purpose of hearing from the parties in respect to the applicant's claim for costs. The applicant has submitted a schedule of costs and expenses incurred in dealing with this matter and the parties have referred the Commission to various authorities dealing with the issue of costs.

2 The main authority in dealing with costs is the decision of the Full Bench of this Commission in Denise Brailey v Mendex Pty Ltd t/a Mair and Co Maylands 73 WAIG 26. At page 27 of that decision the Full Bench says—

> ""Costs" includes fees, charges, disbursements, expenses and remuneration (see Halsbury's Laws of England (4th Edition), vol 37, para 712). Costs chargeable under party and party taxation are all that are necessary to enable the adverse party to conduct the litigation and no more (see Smith v Buller (1875) LR 19 Eq 473 at 475).
>
> The general policy in industrial jurisdictions is that costs ought not to be awarded, except in extreme cases.
>
> In this case, we are concerned with s.27(1)(c) of the Act. S.27(1)(c) gives a discretion to the Commission clearly conferred by the use of the word "may" (see s.3 and s.56 of the Interpretation Act 1984) to order any party to the matter to pay to any other party costs and expenses, including expenses of witnesses as are specified in the order. No costs are to be allowed for the services of any legal practitioner or agent.
>
> The question is what does the phrase "costs and expenses" mean? "Costs", as defined above, includes all of the expenses. No costs are allowed for the services of a legal practitioner or agent. Thus, the professional costs element is eliminated.
>
> So then what are costs? It would seem to us that "costs and expenses" must, without the distinguishing ingredient of legal or professional costs, be read as a phrase which means all of the cost and expense which the applicant under s.27(1)(c) is entitled to claim. It seems to us that this can only be done on a party and party basis.
>
> The application, too, must be determined under s.26 of the Act. However, part of that equity and good conscience includes what is settled law in industrial matters that costs ought not to be awarded, except in extreme cases, (eg) where proceedings have been instituted without reasonable cause (see Hospital and Benevolent Homes Award (1983) AILR 409 where costs were awarded in a matter where the applicant terminated the proceedings after putting the respondent to the expense of defending without obtaining an order)."

3 The history of this matter includes that the application was filed on 6 November 1998. Between January and April 1999, the Deputy Registrar conducted meetings with the parties with a view to investigating the application. The Commission convened a conciliation conference on 3 August 1999 and the matter was set down for hearing on 27 August 1999. The applicant sought the adjournment of that hearing on 24 August 1999. One of the important aspects of this matter is that the applicant resides in Queensland and it is necessary for him to travel to Western Australia to participate in hearings. He sought the adjournment on the basis of a medical condition. The Commission granted the adjournment, subject to certain conditions including that the applicant was to confirm his intentions to attend the hearing a number of days before the hearing.

4 The matter was then set down for 25 January 2000, however, at the respondent's request it was adjourned due to one of its main witnesses being unable to attend because of the cyclone season and damage done to the community. On this basis, and in consideration of the applicant's advice that he did not seek reinstatement and therefore would not be prejudiced by the adjournment, the hearing was adjourned.

5 The hearing of the matter commenced on 4 April 2000. At 3.37pm on that day the hearing was adjourned due to the respondent not having provided minutes of meetings of some significance to the matter due to inability to access a computer, and to the new chief executive not being familiar with records and documents held by the respondent. Those documents were said to be important for the applicant's solicitor's cross examination of the respondent's witnesses. On this basis, the applicant sought an adjournment and the respondent agreed to it. The parties were hopeful that the documents referred to might assist in the resolution of the matter and some documents appear to have been provided.

6 On 3 July 2000, the Commission convened a conference for the parties to report back and for scheduling of the continuation of the hearing. The hearing was due to reconvene on Tuesday, 19 September 2000, at 10.30am. According to the respondent's solicitors, an unsuccessful attempt was made to telephone the applicant's solicitors on the previous afternoon to advise that, at the commencement of the hearing the next day, the respondent would be raising that the application was filed out of time. According to the respondent's solicitor on failing to make telephone contact with the applicant's solicitor, an email was sent to that solicitor soon after 5.00pm on that day. The applicant's solicitor says that he did not receive advice of the point being raised by the respondent until he attended for the hearing on the next day.

7 The applicant says that costs ought be awarded. He says that costs are only awarded in extreme cases and that this is such a case. It is argued by the applicant that while the applicant bears the onus of proving its case as to the merits and must file an application within time, it does not bear the onus of drawing to the respondent's attention any weaknesses in its case. Further, it says that the Commission has recognised in the reasons for decision in dismissing the application for it being out of time, that there were two possible interpretations of the letter of dismissal which had an impact on the finding that the application was out of time, and, that the issue of the merits of the application have not been determined. He says that he has been forced to incur expenses when the respondent has raised, at a very late time, the issue which resulted in the application being dismissed.

8 The respondent says that there was always a risk that the issue of lateness of the application would be raised and that issue was not realised by the respondent until a clear copy of the application was examined only a very short time before the hearing was due to reconvene. The applicant must have understood the inherent risks in the application and has been advised and represented by

solicitors almost from the beginning of the application's life.

9 It is true that in industrial jurisdictions costs ought not be awarded except in extreme cases. The history of this matter demonstrates that it is quite unusual in the length of time that has been taken and, generally speaking, in the endeavours made by the respondent to attempt to settle the matter. The Commission has not considered the merits of the application, as the hearing of that matter was far from concluded by the time the respondent raised the issue of the application being filed out of time. A further two days of hearing were about to commence. The Commission has made no findings, nor could it make such findings, as to whether the application has been frivolously or vexatiously pursued or defended, nor can it come to any conclusions as to whether either party has unreasonably pursued its position.

10 The essence of the applicant's claim for costs is that the respondent raised the issue of the application being out of time at such a late point, by which time the applicant had had to travel from Queensland and incur expenses in the process of pursuing his claim.

11 The real issue of the applicant having to travel from Queensland to participate in the hearing is one of a number of unusual aspects of this case. However, it does not make it exceptional in the sorts of circumstances referred to by the Full Bench in Brailey v Mendex (op cit). The respondent is entitled to raise an issue when it becomes aware of the issue. One would have thought that the issue of whether the application was out of time might have been examined some time ago. However, I am not satisfied that that of itself constitutes sufficient to make an award to the applicant for costs incurred, particularly as he is the unsuccessful party. The applicant could reasonably complain that the respondent had acted improperly if the issue of the application being out of time had been known but not raised until it did the applicant more damage. There is no suggestion that the timing was other than inconvenient. There is no suggestion of vexatiousness or malice in the timing of the point being raised. Although my sympathies lie with the applicant for having had to incur expenditure in this way, it was always a possibility that he would not be successful in his application for any one of a number of reasons and the respondent is entitled to raise this issue albeit it could have been raised at a more convenient time. Accordingly, the application for costs will be dismissed.

2000 WAIRC 00640

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	GEORGE CAMPLIN, APPLICANT *v.* JIGALONG COMMUNITY INC, RESPONDENT
CORAM	COMMISSIONER P E SCOTT
DELIVERED	WEDNESDAY, 20 SEPTEMBER 2000
FILE NO/S	APPLICATION 1987 OF 1998

Result	Application alleging unfair dismissal dismissed
Representation	
Applicant	Mr T Kucera on behalf of the applicant
Respondent	Ms J Stevens on behalf of the respondent

Order.

HAVING heard Mr T Kucera (of Counsel) on behalf of the applicant and Ms J Stevens (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—

1. Liberty shall apply to the applicant in respect of an application for costs.
2. The application be, and is hereby otherwise dismissed.

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

2000 WAIRC 00727

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	GEORGE CAMPLIN, APPLICANT *v.* JIGALONG COMMUNITY INC, RESPONDENT
CORAM	COMMISSIONER P E SCOTT
DELIVERED	TUESDAY, 26 SEPTEMBER 2000
FILE NO/S	APPLICATION 1987 OF 1998
CITATION NO.	2000 WAIRC 00727

Result	Application for costs dismissed
Representation	
Applicant	Mr T Kucera (of Counsel) on behalf of the applicant
Respondent	Ms J Stevens (of Counsel) on behalf of the respondent

Order.

HAVING heard Mr T Kucera (of Counsel) on behalf of the applicant and Ms J Stevens (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 for costs be, and is hereby dismissed.

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

2000 WAIRC 00606

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	FELICITY FIONA FRENCH V NATIONAL ELECTRICAL SERVICES PTY LTD
CORAM	CHIEF COMMISSIONER W S COLEMAN
DELIVERED	THURSDAY, 14 SEPTEMBER 2000
FILE NO.	APPL 144/1999

Result	Dismissed
Representation	
Applicant	Mr T Crossley
Respondent	Mr F Kroon

Reasons for Decision.

The applicant commenced employment with National Electrical Services Pty Ltd (NES) on 5th October 1998. This company is a member of the J-Corp group and operates as a division of that organisation. Mr B Martin is the manager of NES and that company installs electrical wiring in houses built by J Corp. At the time of Mrs French's employment Mr Martin was NES' only other employee. Mrs French's title was office administrator. The electrical installations were undertaken by subcontractors.

Under a verbal arrangement conveyed to the applicant at an interview for the position her appointment was subject to a probationary period of three months. On 29th January 1999 her services were terminated. This followed discussions and

correspondence with Mr T Meyers, building manager of J Corp and the person to whom Mr Martin reported. Mr Meyers was also identified in the contract of employment signed by Mrs French on 13th October 1998 as the person to whom she was responsible (Exhibit 4).

It is claimed that the circumstances of the termination of employment rendered the dismissal unfair. Compensation is the relief being sought. Mrs French is in permanent employment elsewhere.

The respondent objects to and opposes the claim. In fact it submits that the employer did not initiate the termination of employment and that in all the circumstances acted fairly and reasonable towards Mrs French.

This submission gives rise to the necessity to address the issue of whether or not the application can be considered under section 29(1)(b)(i) of the Act. The respondent's arguments take the line that because of difficulties and differences between Mr Martin the manager of NES and Mrs French which precipitated a complete breakdown in their working relationship, Mr Meyers offered to transfer Mrs French to another division within the J Corp group. When the terms of this transfer were unacceptable to Mrs French it is submitted that she tendered her resignation and negotiated an arrangement for payment in lieu of working out a period of notice. As far as the respondent is concerned its position in offering to transfer Mrs French is based on a recognition of her value in bookkeeping duties to the J Corp group and that a continuing working relationship with Mr Martin was completely untenable.

It must be said that notwithstanding the corporate perception that various entities operated as divisions under the umbrella of the J Corp group, the applicant's employment was with NES. The offer of a transfer within the group could not overcome the legal effect of the termination of employment between Mrs French and NES unless of course that was to agreed to by the parties.

I am satisfied that there is a termination of Mrs French's employment upon which to ground the application pursuant to section 29(1)(b)(i) of the Act.

On 21st December following an incident between Mr Martin and Mrs French over his request for her to undertake photocopying, he resolved that he did not want her working with him any longer. He conveyed this position to Mr Meyers that day. The initiative was then taken by Mr Meyers to secure a replacement employee through the employment agency that had recruited Mrs French. This action was taken at that time to ensure that NES availed itself of the guarantee given by the employment agency to provide a replacement within three months.

With the disposition of the jurisdictional issue the question to be answered is whether the right of NES to terminate Mrs French's employment has been exercised so harshly or oppressively or unfairly as to amount to an abuse of that right (Undercliffe Nursing Home v Federated Miscellaneous Workers' Union of Australia (1985) 65 WAIG 385). In this respect the applicant carries the onus.

Mrs French's evidence is that while she worked with Mr Martin he was not her supervisor. She claims that at the interview with him and Mr Naumovski the J Corp group accountant, when she was being considered for the position Mr Martin's role was never really explained to her, nor was it stated that Mr Martin was her supervisor. Mrs French went on to claim that at no time during her probationary period did Mr Martin say that he was her supervisor. In her view the contract of employment reflected her line of responsibility. It was to Mr Meyers. Although he did not work in the NES office at Malaga and attended the office infrequently, this was in her view explained on the basis that she was required to work with a degree of autonomy. Mrs French liaised with Mr Naumovski on her bookkeeping duties. One estimate put this as taking up 50% of her time.

A document which purports to record the employment agency's comments on Mrs French's placement with NES with feedback on her suitability for the position from the employer and Mrs French's comments about the work and the work environment, notes that in December 1998 she was finding "Brian (Martin) a very difficult person to work with." (Exhibit 5). Mrs French's evidence is that she found him rude and placed demands on her which she claimed were time wasting. He would require her to make telephone calls to clients and require confirmation that this had been done. She felt that Mr Martin expected her to do "all of his work as well as try to do my own work."

On 21st December Mr Martin directed her to undertake photocopying duties. Mrs French claims that she was flat out making up payments for subcontractors and was too busy. As well as this she was required to get invoices sorted out for the end of month report for Mr Naumovski. Mrs French refused to undertake the photocopying. She claims she asked Mr Martin to do it and offered to show him how to use the photocopier. Mrs French insisted that he wanted her to do it. According to her nothing more was said about it but several minutes later Mr Martin left the office. Mrs French subsequently had cause to speak with Mr Naumovski, a person with whom she had good rapport. He knew about the photocopying incident from Mr Martin who had attended his office. Mrs French claims Mr Naumovski told her to take it easy and just do her work.

The recruitment agency record of comments notes that on 23rd December Mrs French had made up her mind to resign (Exhibit 5). Although Mrs French acknowledged that she contemplated this course she had decided to give it another go. The Christmas break gave her an opportunity to relax and start afresh. Mrs French returned to work on 4th January. There was no mention of the expiry of her probation and the relationship with Mr Martin didn't improve. They rarely spoke to each other.

On 9th January Mrs French saw a notice in the newspaper advertising a vacancy for an "office allrounder" in Malaga. It was in terms almost identical to the notice which she had responded to when she applied for the position some three months before. Although she was on sick leave on 11th January she phoned Mr Naumovski. He knew nothing about this advertisement. Mrs French had tried to contact Mr Meyers but he was not available.

On 14th January Mrs French initiated a meeting with Mr Meyers. It is her evidence that she told him that things were not working out and that she felt that she was not getting any support (except from Mr Naumovski). She wanted things to improve as she enjoyed the work and didn't particularly wish to resign or leave the company. Mrs French wanted the opportunity to present her side of things that she believed Mr Martin had been raising. Mr Meyers advised her that a "round table" conference would be organised for 1.30 pm that afternoon to resolve the issues. According to Mrs French it was her understanding that she was to attend the meeting with Mr Martin, Mr Meyers and Mr Naumovski.

The meeting took place in Mr Martin's office. However Mrs French was not invited to attend. It is her evidence that when Mr Meyers came out of the meeting he asked Mrs French to prepare a job description for her position and complete a performance review form which she was to obtain from J Corp. They were to be e-mailed to him by the following Monday. Mrs French claims that she was also told that Mr Martin would be undertaking the task of preparing a job description for her position and that a comparison would be undertaken. She claims that in giving these directions to her in the office Mr Meyers also said that if it was decided that she was to make Mr Martin's coffee then she would *** well make it!

Mrs French completed the documentation and forwarded it to Mr Meyers (Exhibit 6). On 20th January she met with Mr Meyers. It is her evidence that she was told she no longer had a job with NES. She claims that in response to her request for reasons she was told that it was either Mr Martin or her that had to go and that she was expendable. However she claims Mr Meyers expressed satisfaction with the quality of her work and stated that he didn't want to lose her as an employee. Mrs French was offered a temporary position for 12 weeks with another company in the J Corp group, Nu-tech.

It is Mrs French's evidence that at no time in December 1998 did Mr Martin discuss concerns about her performance. Furthermore Mrs French states that she never received any guidance on her performance. However she was informed by Mr Meyers on 14th January that Mr Martin had spoken to him about the conflict between them. At the meeting on 20th January Mrs French states that Mr Meyers did not raise any

concerns about her performance nor did he discuss her ability to work effectively in a small team environment. While she acknowledges that "conflict problems" were raised these were not outlined to her despite Mrs French's request to explain the problems.

Mrs French subsequently received a letter from Mr Meyers dated 25th Jnaruary (Exhibit 7). The correspondence states that—

> "It is obvious following our 12 week review that the situation with Brian (Martin) is untenable. He is unhappy with your performance and communication is less than desirable.
>
> Accordingly, it is inappropriate to maintain your position with National Electrical Services. You have gained the respect of Steve (Naumovski) and the quality of work for which I have witnessed is of a good standard. It would seem a waste of your efforts and talents to leave the services of J Corp." (Exhibit 7)

The letter goes on to offer an appointment with Nu-Tech for a minimum of 12 weeks with time also being spent in the accounts department. The hope was expressed that a permanent position could be offered during that time. Mr Meyers also expresses his apology for having offended Mrs French. This she understood to refer to Mr Meyers' comment about getting Mr Martin's coffee made to her on 14th January. This matter had also been taken up with the company secretary by Mrs French on 21st January. At that time Mrs French raised her concerns about Mr Martin and the lack of opportunity for her to refute his assertions.

As far as Mrs French is concerned, the meeting on 20th January with Mr Meyers was not as "frank and honest" as he asserts. Her impression of it is that he was telling her that she no longer had a position.

Mrs French responded to Mr Meyers' letter of the 25th January pointing out her difficulty with additional travel between Malaga and Osborne Park and proposing addition recompense to accommodate the additional demand. The letter also acknowledges the discussion that had taken place with Mr Meyers about Mr Martin's statement that he was not happy with her performance (Exhibit 8).

Mr Meyers responded to Mrs French's proposal by e-mail dated 27th January. He stated his regret at not being able to accommodate her requirements on the terms of the proposed placement with Nu-Tech. Finally he invited Mrs French to contact him so that they could "amicably discuss the logical termination date." Although Mrs French wanted payment for four weeks in lieu of notice, settlement was reached on the basis of two weeks payment in lieu of notice.

Among the reasons cited by the applicant's agent as being the basis for the claim that there was an unfair dismissal are the following—

> "(i) There was no valid work-related reason
>
> (ii) There was no previous verbal or written warning about any work-performance related matter. The employer never during the employment discussed with the Applicant so called "concerns" as outlined the Notice of Answer and Counter Proposal.
>
> (iii) Her position was advertised on the 9th of January 1999, without any consultation with the applicant.
>
> (iv) There was no opportunity was given to Applicant to defend herself against any allegations or complaints made by Mr Martin about (sic) Applicant, nor any proper opportunity given to remedy alleged problems.
>
> (v) Her letter of termination was facsimiled to her home whilst the Applicant was on one day's annual leave."
>
> (Agent's outline of submissions)

Further to this general overview it was submitted that in not identifying any of her perceived shortcomings to Mrs French she was denied the opportunity to improve. There had not been a proper investigation carried out under the requirement to review her performance at the end of the probationary period.

Much of the evidence presented for the respondent directly conflicts with that presented by the applicant. Mr Martin states that at the recruitment interview conducted with Mr Naumovski Mrs French was told that he would be her supervisor. In the course of her employment he made it clear that he was her supervisor on a number of occasions.

Mr Martin recognised that Mrs French possessed good computer skills and was content with her performance up until December 1998. The relationship broke down over the photocopying incidence. Mr Martin states that he was aware of Mrs French's workload at the time. He would have done the photocopying himself if she was too busy. When she refused his request, Mr Martin states that he invited her to come into his office to discuss the matter. She refused. This incident followed on from problems he believes Mrs French had caused in NES' dealings with Homestart. There had been customer complaints when power had not been put through to new homes. In Mr Martin's opinion, these had been caused by Mrs French's inability to follow instructions to comply with Homestart's requirements. Mr Martin states that he discussed these issues with her and what he wanted her to do. He feels that these directions were ignored. The situation deteriorated to the point that Homestart would go directly to him bypassing Mrs French.

Mr Martin admits that he never warned Mrs French that her position was in jeopardy or that he issued her with formal warnings. He claims that her responsibilities to him as manager, her need to improve her communications and her approach to clients had to be addressed. When she refused to discuss the matter on 21st December with him he reported to Mr Meyers. It was at that discussion that Mr Martin recommended the termination of Mrs French's employment. The working relationship with her remained "very frosty" following the Christmas shut-down. Mr Martin was directed by Mr Meyers to secure a replacement through the employment agency. He did not discuss this with the applicant as he understood Mr Meyers now had carriage of the matter.

Mr Naumovski confirms that at the initial interview it was made clear to Mrs French that on a day-to-day basis she would receive instructions from Mr Martin. In fact as a "sounding board" for both Mrs French and Mr Martin it was Mr Naumovski's evidence that he had told her on two or three occasions in December that Mr Martin was her direct manager and that she should be taking instructions from him. This advice had come in the context of her complaints to him that Mr Martin was impolite and that she didn't see him as being her manager. Mr Naumovski's evidence is that he reaffirmed the need for her to recognise her responsibilities to Mr Martin as manager and to work with him as part of a team.

Mr Naumovski states that he alerted Mr Meyers to the situation between the applicant and Mr Martin. He attests to her competency in bookkeeping duties. With respect to those duties prior to Christmas he does not think that there was a deadline imposed on Mrs French for the accounts but acknowledges that they needed to be done. Mr Naumovski confirms that he attended the meeting with Mr Meyers and Mr Martin on 14th January and had expected Mrs French to be in attendance. He doesn't recall hearing any swearing associated with his presence at that meeting. After that Mr Naumovski had little involvement in matters relating to Mrs French's employment.

The carriage of matters relating to Mrs French's employment was taken up by Mr Meyers from 21st December. His involvement had come about as a result of Mr Martin's complaint to him on that date and the comments made by Mr Naumovski around that time. In addition he had been aware of NES' inability to provide reports. Mr Meyers confirmed that it was his decision to initiate a replacement for Mrs French on 21st December but qualified that to the extent that his objective had been to re-establish the working relationship between the applicant and Mr Martin. If this could have been done the new appointee would be deployed in another of the J Corp group of companies.

Mr Meyers' meeting with Mr Martin on 14th January confirmed the intractability of the breakdown in the relationship with Mrs French. It was because of this that Mr Meyers decided not to invite Mrs French to attend with Mr Martin and Mr Naumovski. Mr Meyers assessed the possibility of re-establishing a team environment at NES as being remote. It was on this premise that he considered the possibility of a "divisional split" of the areas of responsibility between Mr Martin

and Mrs French. To this end he required her to prepare a job description.

The meeting arranged for 20th January was in Mr Meyers' opinion a review. He presented Mrs French with the opportunity to present her side of the story. Indeed he feels that she did. The discussion even went as far as assessing character flaws. It was in the context of this discussion that Mr Meyers had recourse to use an expletive. This was not directed at Mrs French but used in the course of emphasising the necessity of performing distasteful tasks if that is part of the duties.

Mr Meyers' recollection is that options were considered and that there had been a mutual recognition that the relationship between Mrs French and Mr Martin had broken down. It was on this premise that other employment within the J Corp group had been discussed. To Mr Meyers there was not a termination of her employment although he considers that was a course open to him given Mrs French's refusal to work with Mr Martin and her weakness in representing the company to clients. However he concedes that there was no job available for Mrs French at NES because of the breakdown in the relationship with Mr Martin. She had raised her grievances about what she saw as Mr Martin's rudeness, the failure on the part of NES to recognise her contribution and that Mr Martin never advised her of his whereabouts. Against this Mr Meyers had made his own assessment of Mr Martin's attitude and the perceptions of clients and other personnel within J Corp that Mrs French was rude and abrupt in her dealings with them. Mr Meyers considered that he faced an ultimatum. Mrs French had stated that she would not work with Mr Martin. The inference Mr Meyers drew was that she wanted him to terminate Mr Martin's employment. Mr Meyers refutes any assertion that he said that as Mrs French was a clerical employee she was expendable. In the course of the discussion he also raised with her the issue of stock control and the ability of NES to cope with an extra workload.

The overriding conclusion as far as Mr Meyers was concerned was that Mrs French had agreed that she could no longer work with Mr Martin. That conditioned the course of action in attempting to secure a transfer within the J Corp group of companies.

In considering whether or not Mrs French was given a "fair go all round" in the circumstances of the termination of her employment there are issues which give rise to some concern. First the contract of employment that identifies Mr Meyers as the applicant's supervisor. That can only be notionally correct as he is ultimately responsible for all of the J Corp group of companies including NES. All lines of responsibility lead to him. However in the face of evidence which I accept the applicant cannot take refuge behind that document.

Next is the matter of the companies expeditious recruitment of Mrs French's replacement before the circumstances of her employment had been investigated. No doubt NES acted to secure its contractual entitlement under the guarantee provided by the employment agency. However it failed to accord Mrs French the same diligence with respect to the obligation to provide her with a review on the expiry of the probationary period. No doubt the Christmas shut-down contributed to this.

However Mrs French's credibility is taxed to a significant extent by her repeated assertions that she was never told that Mr Martin was her supervisor and that she was responsible to him. I accept the evidence of Mr Martin and Mr Naumovski in this regard. Mrs French chose to ignore the realities of her situation. Mr Naumovski whom she respected was emphatic that he counselled her about her responsibilities to Mr Martin as her manager. I reject the inference of the applicant's evidence that she worked in a void without direction and that the necessity to cooperate with Mr Martin was not based on any formal line of responsibility.

Furthermore I reject her evidence that she was never told of any shortcomings and not given the opportunity to explain issues affecting her working relationship with Mr Martin. The evidence of Mr Martin and Mr Meyers, which I accept, makes it clear that the performance of her duties with respect to Homestart personnel, Western Power connections and customer enquiries were the subject of criticism. Importantly I accept the evidence for the respondent that these matters were brought to the applicant's attention.

I find that although Mr Meyers in his dealings was mindful of Mr Martin's belief that the working relationship with Mrs French had completely broken down but that he gave her a fair hearing on issues which were deeply held grievances. It is incorrect to say that the discussion was not frank when on Mr Meyers' evidence the character flaws of personnel were discussed. I note that it was at this discussion that reference was made to the necessity for Mrs French to serve coffee if that was part of her duties and not on 14th January as the applicant asserts. The imputation that this incident occurred in an office where other people could have overheard is rejected. Mrs French's concerns were registered with the company secretary the next day not seven days after. While there is no excusing Mr Meyer's recourse to the use of an offensive word to add emphasis to a point I accept that it was not intended to demean or embarrass Mrs French. The correspondence that subsequently flowed between them indicates a degree of mutual respect and courtesy that appears to have been achieved at the time of Mrs French's departure from the respondent company.

Crucial to the working relationship at NES was the ability of the manager and the applicant to work together. On 21st December that broke down completely. I accept that Mr Martin attempted to discuss the matter with Mrs French and that she refused to speak with him. I consider that the applicant's attitude to Mr Martin based on her rejection of his role as manager and her supervisor conditioned the attitudes and performance she exhibited during December and January.

In the light of all the circumstances I do not accept that the applicant was unfairly dismissed. The application does not succeed.

2000 WAIRC 00614

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	FELICITY FIONA FRENCH V NATIONAL ELECTRICAL SERVICES PTY LTD
CORAM	CHIEF COMMISSIONER W S COLEMAN
DELIVERED	THURSDAY, 14 SEPTEMBER 2000
FILE NO.	APPL 144/1999

Result	Dismissed
Representation	
APPLICANT	MR T CROSSLEY
RESPONDENT	MR F KROON

Order.

HAVING heard Mr T Crossley on behalf of the Applicant and Mr F Kroon on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

1. THAT the application be, and is hereby, dismissed.

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

2000 WAIRC 00723

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	SINTI TALA GRAY APPLICANT *v.* VALHALLA DEVELOPMENTS PTY LTD AS TRUSTEE FOR THE DHAT TRUST RESPONDENT
CORAM	CHIEF COMMISSIONER W S COLEMAN
DELIVERED	TUESDAY, 26 SEPTEMBER 2000
FILE NO/S	APPLICATION 1091 OF 2000
CITATION NO.	2000 WAIRC 00723

Result	Order issued
Representation	
Applicant	Mrs ST Gray
Respondent	Mr DHA Thorp

Order.

The Commission with the consent of the parties hereby orders—

THAT in full and final settlement of the claim it is agreed that Mrs Sinti Tala Gray will accept payment of ten thousand dollars ($10,000) from Valhalla Developments Pty Ltd as trustee for the Dhat Trust.

THAT in full and final settlement under this arrangement Mrs Sinti Tala Gray has no further claims arising from her employment with the respondent, its assignee, successor or transmittee.

THAT in accordance with the terms of settlement agreed to by the parties, the respondent will pay the applicant the amount of $10,000 in twenty five (25) weekly installments of $400.00. These payments will commence with the first installment being deposited in the account established by Mrs Sinti Tala Gray for the purpose of receiving these payments on Thursday 28th September 2000.

Weekly installments will be deposited in that account on Thursday of succeeding weeks until the amount of $10,000 has been paid. The account established for the purpose of receiving these payments is that held by Mrs Sinti Tala Gray with a financial institution, the details of which have been provided to the respondent.

In accordance with the terms upon which this arrangement has been reached neither party will use or seek to use the fact of a settlement to the other's detriment.

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

2000 WAIRC 00631

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	MALCOLM JAMES HAMILTON *v.* GOLDFIELDS COMMERCIAL SECURITY PTY LTD
CORAM	SENIOR COMMISSIONER G L FIELDING
DELIVERED	FRIDAY, 15 SEPTEMBER 2000
FILE NO/S	APPL 1178/2000

Result	Application for alleged unfair dismissal dismissed; By consent, Respondent ordered to pay contractual entitlements
Representation	
Applicant	Unrepresented
Respondent	Mrs J and Mr E J Myers

Reasons for Decision.

(Given extemporaneously at the conclusion of the submissions taken from the transcript as edited by the Senior Commissioner)

1. This is an application brought by the Applicant who was formerly employed by the Respondent as a customer service officer. It appears that the Applicant was employed under the terms of a workplace agreement until it expired on 14 October 1999 or thereabouts. The Applicant alleges that thereafter there was an agreement between him and an official of the Respondent that he would continue to be employed under the same terms and conditions as those contained in the expired workplace agreement. One of the terms of that document was that the Applicant would be entitled to two weeks paid sick leave each year and that, if the leave was not taken, it was to be paid out in full on the appropriate anniversary date.
2. The Applicant alleges that he was dismissed on 14 June, a fact which is not in dispute between the parties. Some time later he discovered that his job had been given to someone else, so he says, despite having been told that he had been dismissed for reasons of redundancy. Consequently, he lodged the present application, alleging that he had been unfairly dismissed and seeking reinstatement. He also seeks to recover denied contractual benefits in the form of payment for untaken sick leave.
3. The Respondent has filed an Answer denying that the Commission has jurisdiction to entertain the claim. In respect of the claim for relief in respect of alleged unfair dismissal it asserts that the application was lodged out of time; that is to say, later than 28 days. The claim for contractual entitlements is said to be outside the jurisdiction of the Commission because the relevant workplace agreement had expired and, thus, any benefit which the Applicant had for sick leave fell to be determined under the Minimum Conditions of Employment Act 1993 and the Security Officers Award.
4. There can be no doubt that, insofar as the claim for unfair dismissal is concerned, the application should be dismissed for want of jurisdiction. The application was not lodged until 16 August this year. The Applicant, by his own admission, was dismissed as long ago as 14 June. Thus the application, as he admitted, is well outside the 28-day limit. By operation of s 29(2) of the Act, the Commission "cannot" hear the matter, it being commenced more than 28 days after the date on which the Applicant was dismissed from his employment.
5. Insofar as the claim for denied contractual benefits is concerned, there is no such time limit. It is true, as the Respondent asserts, that s 19(4) of the Workplace Agreements Act 1993 provides that after a workplace agreement has expired, in effect it no longer has any force. The parties thereafter become governed by the relevant award or other statutory provisions. However, that is not to say that the parties cannot subsequently reach agreement—in effect, a common law agreement—to vary

the contract of employment, so long as it does not contradict the terms of a relevant award or statute.

6. With that in mind, the parties have sensibly come to an agreement, which I think can be said to be a "commercial" agreement, that the Respondent pay the Applicant $700, which sum the Respondent has agreed to accept.

7. It remains, therefore, for me to order, which I now do, that the application, insofar as it relates to unfair dismissal, be and is hereby dismissed, and that in respect of the application for contractual benefits, by consent, the Respondent is to pay to the Applicant the sum of $700.

2000 WAIRC 00619

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	MALCOLM JAMES HAMILTON *v.* GOLDFIELDS COMMERCIAL SECURITY PTY LTD
CORAM	SENIOR COMMISSIONER G L FIELDING
DELIVERED	FRIDAY, 15 SEPTEMBER 2000
FILE NO/S	APPL 1178/2000

Result	
Representation	
Applicant	Unrepresented
Respondent	Mrs J and Mr E J Myers

Order.

HAVING heard the Applicant in person and Mrs J and Mr E J Myers (as directors) on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

(1) That the claim under s 29(1)(b)(i) of the Act be and is hereby dismissed for want of jurisdiction; and

(2) That by consent the Respondent pay to the Applicant the sum of $700 as and by way of satisfaction of the claim made under s 29(1)(b)(ii) of the Act.

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

2000 WAIRC 00538

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	VERITY MARTHA HO, APPLICANT *v.* INTERNATIONAL LEARNING FOUNDATION INC, RESPONDENT
CORAM	COMMISSIONER A R BEECH
DELIVERED	WEDNESDAY, 6 SEPTEMBER 2000
FILE NO	APPLICATION 297 OF 2000

Result	Application for costs dismissed
Representation	
Applicant	Ms V.M. Ho on her own behalf as the applicant
Respondent	Mr B. Walker (as agent) on behalf of the respondent

Reasons For Decision—Costs.

1 In the order in this matter which issued on 10 August 2000 which allowed Ms Ho to withdraw her application, liberty was reserved to the respondent to apply for an order for costs. The respondent has exercised that liberty and the Commission has now received the written submissions from both parties, and a Reply from the respondent. Both sides agree that this matter may be determined on the basis of the written submissions.

2 The circumstances of this application are that Ms Ho decided on 9 August 2000 not to proceed with her application, but did not notify the Commission or the respondent of that decision. The immediate consequence was that the respondent, in good faith, attended the Commission on 10 August 2000 for a conference. Ms Ho did not attend. The respondent states that it has incurred costs of $270.00 to be awarded against Ms Ho.

3 It is settled that the Commission does not ordinarily award costs. Although it has the power to do so under the *Industrial Relations Act 1979*, it will do so only in extreme circumstances. I have considered Ms Ho's explanation. She states that the decision was made by her on the night before the conference. It was only that night that her family had forwarded to her the notification of the conference. She states that the re-visiting of the stress which she felt surrounding the incident which occurred and which led to the making of this application meant that she could not proceed with the application. She has stated that it has taken her "a long time to put this incident behind me and I do not wish to re-visit this particular situation or deal with the emotional trauma endured as a result of it".

4 I have not detected in any of the explanations from Ms Ho anything which would allow the Commission to conclude that she has proceeded with her application in a frivolous or vexatious manner, or that she did not notify the Commission, or the respondent, of her change of mind in order to cause detriment to the respondent. I take into account Ms Ho's circumstances as outlined in her correspondence and I am unable to reach the conclusion that her failure to attend the conference in the way that I have described is, in these circumstances, "extreme".

5 While I appreciate that the respondent has been put to cost and inconvenience, not just in its attendance at the Commission to no avail, but also in the steps it has taken to prepare itself to answer the claim lodged against it, I am not satisfied that the particular circumstances warrant an order for costs. Accordingly, an Order now issues which dismisses the respondent's application for costs.

2000 WAIRC 00281

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	VERITY MARTHA HO V INTERNATIONAL LEARNING FOUNDATION INC
CORAM	COMMISSIONER A R BEECH
DELIVERED	THURSDAY, 10 AUGUST 2000
FILE NO	APPLICATION 297 OF 2000

Result	Application alleging unfair dismissal withdrawn by leave

Order.

WHEREAS an application was lodged in the Commission pursuant to section 29 of the Industrial Relations Act;

AND WHEREAS a conference between the parties was convened and the applicant did not attend the conference;

AND WHEREAS the Commission contacted the applicant at the commencement of the conference to ascertain whether she intended to attend the conference;

AND WHEREAS the applicant advised the Commission that she did not intend to attend the conference and that she wished to withdraw her application;

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

1. THAT the application be withdrawn by leave.
2. THAT there be liberty to the respondent to apply within 7 days of the date of this Order for an Order for costs.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

2000 WAIRC 00539

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	VERITY MARTHA HO, APPLICANT *v.* INTERNATIONAL LEARNING FOUNDATION INC, RESPONDENT
CORAM	COMMISSIONER A R BEECH
DELIVERED	WEDNESDAY, 6 SEPTEMBER 2000
FILE NO	APPLICATION 297 OF 2000

Result	Application for costs dismissed
Representation	
Applicant	Ms V.M. Ho on her own behalf as the applicant
Respondent	Mr B. Walker (as agent) on behalf of the respondent

Order.

HAVING HEARD Ms V.M. Ho on her own behalf as the applicant (by way of written submissions) and Mr B. Walker (as agent) 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 by International Learning Foundation Inc for an order for costs be dismissed.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

2000 WAIRC 00548

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	AGNES IMRE, APPLICANT *v.* MONIKA KOVESDI T/A FLORAL OBSESSIONS, RESPONDENT
CORAM	COMMISSIONER A R BEECH
DELIVERED	THURSDAY, 7 SEPTEMBER 2000
FILE NO	APPLICATION 102 OF 2000

Result	Application alleging unfair dismissal granted and denied contractual entitlements dismissed
Representation	
Applicant	Ms V. Reynolds (of counsel) appeared on behalf of the applicant.
Respondent	Mr J. Beedham (as agent) appeared on behalf of the respondent.

Reasons for Decision.

1 At all material times the respondent in this matter ran a florist shop in Morley. On 19 July 1999 she employed Agnes Imre to work part-time in the shop. Between October 1999 and 17 December 1999 Ms Kovesdi returned home to Europe for family reasons and Ms Imre was in charge of the shop. Ms Kovesdi and Ms Imre agree that Ms Imre's employment had ended at least by 4 January 2000. However, they are unable to agree on the manner in which the employment relationship ended. In her Notice of Application Ms Imre claims that she was dismissed on 28 December 1999.

2 The respondent however disagrees. In the Notice of Answer and Counter Proposal filed on her behalf by a firm of solicitors on 28 February 2000, Ms Kovesdi states—

> "The applicant was given formal written notice by telephone on or about 10 December 1999 that her services would no longer be required upon the respondent's return from Europe."

3 On 15 May 2000 the Commission was advised by a firm called Workplace Relations & Management Consultants that it now acted on behalf of Ms Kovesdi. A revised Notice of Answer and Counter Proposal was then filed which states, where relevant—

> "12. On return to Australia the respondent requested that the respondent and the applicant sit down to discuss the "paper work" of the business.
>
> 13. The applicant refused to cooperate left the business that day being the 20th December and did not turn up to the business until January 2000 demanding to be paid extra money.
>
> …
>
> 16. The respondent contends that the applicant abandoned her employment when the respondent asked her to work through the books on her return.
>
> …
>
> 21. Finally the respondent says the applicant abandoned her employment by walking out and not assisting the owner in respect of the nine (9) weeks she was away."

4 The significant difference between the two Notices of Answer are apparent: the first Answer states that Ms Imre was given notice of termination while the second Answer states that Ms Imre abandoned her employment.

5 The revised Notice of Answer and Counter Proposal prompted Ms Imre to file a Reply. That reply stated in part—

> "4. The Applicant states that the manner of her dismissal on or about 31 December 1999 was harsh, unfair and/or oppressive."

6 In Ms Imre's Reply, she changes the date she claims to have been dismissed from 28 December to "on or about 31 December".

7 It is apparent to the Commission from merely those extracts from the Notice of Application, the Notice of Answer and Counter Proposal, the amended Notice of Answer and Counter Proposal and the Reply that not only is there little if any agreement on even the basic facts of what occurred, but also both Ms Imre and Ms Kovesdi seem to be uncertain themselves as to what occurred and when things occurred.

8 This uncertainty was borne out in the evidence presented to the Commission. The evidence covered a number of areas. The Commission's task of unravelling the evidence has not been straightforward. It is necessary to establish first whether or not Ms Imre was dismissed. If she was not dismissed, her claim necessarily fails. If Ms Imre was dismissed it will then be necessary for the Commission to consider the evidence to see whether or not she has made out her claim that the dismissal was unfair.

Was there a dismissal?

9 Ms Imre's evidence is that following Ms Kovesdi's return on 17 December 1999 she worked each day up to and including 24 December 1999, Christmas Eve. She thinks that she next worked on 28 December 1999. On that day she worked for four hours. She says that she then worked for two hours on 29 December 1999. She remembers that

day because on that day she attended a finance company to ask for a loan.

10 Her evidence is that on 30 December 1999 she called Ms Kovesdi just after midday because she had been asked by her to check what time she had to go to work. Her evidence is that Ms Kovesdi replied she did not have to come to work on that day. She then called on 31 December 1999 and Ms Kovesdi again told her she did not have to attend work. Ms Imre's evidence is that she nevertheless went into the shop because she wanted to ask Ms Kovesdi why she wasn't being required to attend work. Her evidence is that when she attended on 31 December, Ms Kovesdi told her that she no longer needed her. She says that Ms Kovesdi gave her a letter on the business letterhead as follows—

> "Dear Sir/Madam!
>
> I'm Monika Kovesdi the owner of Floral Obsessions Flower Shop 25/238 Walter Road, Morley confirming that Ms Agnes Imre not working in my shop since 28 Dec 1999 and she had received her last pay on the 24.12.1999.
>
> Yours Sincerely"
>
> (exhibit C)

11 Ms Imre says that she returned to the shop on 3 January 2000 not to ask for her job back, but to ask Ms Kovesdi "about still what's going on" (transcript page 14).

12 Ms Imre was cross-examined on her evidence. Under cross-examination her evidence was that 30 December 1999 was the last day she worked in the shop as a shop assistant. She rejected any suggestion that her last day of work was 24 December 2000. Ms Imre also said she was sure that she went to the shop also on 3 January 2000. In re-examination she confirmed that the last day she reported for work was 31 December 1999 and the last day she reported for work and completed her usual duties was 28 December 1999.

13 Ms Imre called evidence from Ms Viola. Ms Viola is a friend who has known Ms Imre for approximately eight years. Her evidence is that Ms Imre had called her, upset, after Christmas "sometime" and told Ms Viola that she had "got fired". Ms Viola is unable to recall when this conversation occurred. She recalls it being after Christmas. She also believes that Ms Imre had been invited to a New Years Eve party on 31 December 1999 but that Ms Imre had told her that she, Ms Imre, had to work on 31 December 1999.

14 The only other oral evidence before the Commission is from Ms Kovesdi herself. Her evidence on the issue of whether Ms Imre was dismissed was related to the letter which became exhibit C. Ms Kovesdi's evidence is that she wrote that letter on 4 January 2000 because on that day Ms Imre came into the shop to ask if she was still employed. Ms Kovesdi's evidence was—

> "… I just simply told her I can't really give her any hours for this week but she can go and get the benefit, and she requested the piece of paper from me … to lodge the paper for Centrelink for getting benefit for the week she didn't work …"
>
> (transcript page 38)

15 Ms Kovesdi's later evidence was that "basically, the 24th was the last day when she worked". Her evidence was that the shop was not open on 3 January 2000. Her evidence is that Ms Imre did not work in the shop between 24 December 1999 and 4 January 2000. Ms Kovesdi's evidence is that she had attempted to telephone Ms Imre and left messages on her answering machine. When Ms Imre came into the shop on 4 January 2000, Ms Imre told her that she had not felt that she had to work on the days between 25 December 1999 to 4 January 2000.

16 Under cross-examination, Ms Kovesdi was asked to explain why her letter indicated that Ms Imre had not worked in the shop since 28 December 1999 if her evidence in the Commission was that she had last worked in the shop on 24 December 1999. Her explanation was that Ms Imre's employment had not finished at that time and Ms Kovesdi did not know whether Ms Imre was going to work in the shop any longer. Her further evidence, when re-examined, is that she believed the shop was open from 27 December 1999 onwards.

17 That is the oral evidence before the Commission on the ending of Ms Imre's employment. The essential evidence of Ms Imre is that she did work on 28 December 1999 but that on 31 December Ms Kovesdi indicated that she should not attend the shop and she was no longer needed. The essential evidence of Ms Kovesdi is that Ms Imre did not work after 24 December 1999 and she did not see her again until 4 January 2000. On a consideration of all of the evidence, both documentary and oral, I prefer the evidence of Ms Imre over the evidence of Ms Kovesdi. I do so for the following reasons—

(1) The reference in exhibit C by Ms Kovesdi to Ms Imre "not working in my shop since 28 December 1999" only makes sense if Ms Imre had worked on 28 December 1999. I regard Ms Kovesdi's attempted explanation of the wording of that letter as implausible. I have no doubt that if at the time Ms Kovesdi wrote the note that she believed that Ms Imre had not worked since 24 December 1999 and effectively had abandoned her employment, she would not have made reference to 28 December 1999 in her letter.

(2) Ms Imre's evidence that on 29 December 1999 she attended a finance company in order to secure a loan is supported by the letter from the finance company which became exhibit B. That letter confirms that she applied for finance on 29 December 2000 and it also confirms that the finance company spoke with Ms Kovesdi. Ms Kovesdi admits she spoke to the finance company on 29 December and indicated to the finance company that Ms Imre was an employee of the business.

(3) It is worth noting that Ms Kovesdi's evidence before the Commission that she lied to the finance company (transcript page 52) reflects poorly on Ms Kovesdi. If I accept that she did lie, it indicates at least that Ms Kovesdi is prepared not to tell the truth if she thinks the circumstances warrant. That is obviously not helpful to Ms Kovesdi when she is asking the Commission to prefer her evidence to the evidence of Ms Imre.

It is significant, nevertheless, that on 29 December 1999, Ms Kovesdi does not give any indication to the finance company that Ms Imre is no longer her employee. I find that it is difficult for Ms Kovesdi to now depart from that position.

(4) The fact that Ms Imre had sought a loan from a finance company on 29 December 1999 is a persuasive reason against finding that she had abandoned her employment on or about 24 December. Given her later evidence of the difficulty she has had in finding work, the fact that she applied for a loan at that time is an indication of her intention of remaining in employment with the respondent to service the loan.

(5) The evidence of Ms Imre that she was dismissed is at least corroborated by the evidence of Ms Viola. While Ms Viola's evidence is not accurate as to the date upon which Ms Imre told her she had been fired, Ms Viola's evidence is nevertheless that that is what Ms Imre had told her. It is not proof that Ms Imre was dismissed, but I accept that Ms Imre told Ms Viola that she had been dismissed. Ms Viola's evidence on that particular point was not broken down in cross-examination and I accept it.

(6) Finally, Ms Kovesdi's own evidence in the Commission is that she had "simply told [Ms Imre] I can't really give her any hours for this week, but she can go and get the benefit …". That evidence, together with the conclusions set out above, makes it more likely that the reason why Ms Imre ceased working at the shop is because Ms Kovesdi did not give her any hours than that Ms Imre

abandoned her employment. That is, that she was dismissed.

18 In concluding that I prefer the evidence of Ms Imre, I take into account that Ms Imre's evidence that she went to the shop on 3 January 2000 is incorrect. I am satisfied that 3 January 2000 was the day observed as a public holiday following New Year's Day and that Ms Kovesdi is correct when she says that the shop was closed on that day. Ms Imre's error regarding this date is not enough on the evidence in this matter to taint all of her evidence.

Conclusion

19 For all of those reasons the evidence is that Ms Imre was dismissed. I add that although the evidence is not entirely clear on the point, it is more likely than not that Ms Imre was dismissed on 30 December 1999. That is the date which, according to Ms Imre's evidence, is the date at which she was first advised not to attend work.

Was the dismissal unfair?

20 Ms Imre bears the onus of proving that her dismissal was unfair. Her evidence is that Ms Kovesdi told her that she no longer needed Ms Imre. No reason was given to her by Ms Kovesdi. To dismiss an employee for no reason would be unfair towards that employee

21 The evidence of Ms Kovesdi, and the submissions made on her behalf, went principally to the evidence of a traineeship which came into existence between Ms Imre and Ms Kovesdi on 6 August 1999. The traineeship agreement was signed by each of them on 19 July 1999. It was cancelled effective from 20 December 1999 (exhibit 1) although the act of cancellation does not seem to have occurred until 27 January 2000 (exhibit 2). It appears that the reason for the cancellation of the traineeship was Ms Imre's failure to attend off-the-job training. However, as the traineeship agreement itself acknowledges, any issue regarding the training agreement, or the cancellation of it, does not determine the industrial issue now before the Commission.

22 It is also noteworthy that Ms Kovesdi does not state in her evidence that the reason why Ms Imre is no longer working for her is because of the cancellation of the training agreement. Accordingly, and after much consideration given the reliance placed upon the training agreement by Mr Beedham, I conclude that it is simply irrelevant to the issue of the dismissal and whether it was unfair.

23 Ms Kovesdi's evidence is that she was not able to give Ms Imre "enough hours". However, there was simply no evidence brought to the Commission to support that statement. There was no evidence, for example, that the business was suffering financially such that Ms Kovesdi had to reduce her costs. It was not relied upon on Ms Kovesdi's behalf in the Commission as the reason for the dismissal. It was not put to Ms Imre that the financial state of the business was such that it could no longer afford to employ her. Accordingly, there is no evidence before the Commission which could permit the conclusion that Ms Imre was dismissed because the business could no longer afford to keep her in employment.

24 Further, it is also noteworthy that the submissions made on behalf of Ms Kovesdi do not allege misconduct on the part of Ms Imre. Ms Kovesdi's own evidence does not allege misconduct on the part of Ms Imre.

25 It is noteworthy because it is in striking contrast to allegations against Ms Imre in the Notice of Answer and Counter Proposal filed on behalf of Ms Kovesdi by her then legal representatives. Paragraph 6 of the Notice of Answer and Counter Proposal alleges that Ms Imre has been guilty of serious and wilful misconduct in the course of her employment justifying summary dismissal. It lists 10 specific allegations. Not only does Ms Kovesdi herself in evidence not refer to any allegation of serious and wilful misconduct on the part of Ms Imre, but also none of those allegations were put to Ms Imre in cross-examination. Even if one of the allegations is that Ms Imre failed to pay the rent, electricity costs and other outgoings of the shop during the period of the respondent's absence (Notice of Answer paragraph (6)(j)), that allegation was never put to Ms Imre. In her own evidence Ms Imre said she always put aside rent money. In cross-examination she was merely asked how many times she did pay the rent and the electricity bill. Her answers were that the bills were paid or, money was put aside for the bills due immediately upon Ms Kovesdi's return. She was not challenged on that evidence. She was merely asked what she did with the cash received each day and her answers that she put money aside for rent, bought flowers and put money aside for the second rent bill, were not challenged. She acknowledges she was given $1,600.00 in return for the credit card purchases and states that she wrote in the book for accounting purposes. This too was not challenged and I therefore accept it.

26 The 10 specific allegations of misconduct were not referred to in the amended Notice of Answer and Counter Proposal. Nevertheless, the amended Notice of Answer and Counter Proposal still makes some allegations. For example, it states that Ms Imre did not bank takings into the business account or save credit card purchases which were returned to her in cash through an intermediary. These issues, and the fact that they were not put to Ms Imre as an allegation against her, have been dealt with in the previous paragraph. It asks why a courier company was changed and no record of payment made and why in-house records of courier payments made in the working book and total accruals do not match. It hardly needs repeating that these questions were not put to Ms Imre at all. Neither are they allegations which are made by Ms Kovesdi in her evidence.

27 The most that can be said of Ms Kovesdi's evidence in this regard is that she did request Ms Imre to sit down with her to go through the books of account for the period when Ms Kovesdi was out of the country. Ms Kovesdi indicated that she had "found a couple of things she didn't quite understand". In the Commission, Ms Kovesdi did not go into any detail at all regarding what those "couple of things" were. The books of account were not produced in the Commission and there is no evidence at all of any irregularities in the books of account.

28 Ms Imre admits that she was asked to sit down and go through the books of account with Ms Kovesdi but, as I understand her evidence, it is that she was never instructed to do so as a direct order, and that the shop was quite busy and did not provide an opportunity for her and Ms Kovesdi to sit down. The most that can be said of this issue is that Ms Kovesdi has not established that Ms Imre refused an instruction from her employer to sit down and go through the books with her. Even had she been able to show that such an instruction was refused, I find it difficult to believe that that would establish grounds justifying Ms Imre's dismissal in the absence of any evidence at all which shows that there was anything wrong in the books of account that can be attributed to Ms Imre. In any event, it is not alleged by Ms Kovesdi that a reason for Ms Imre's dismissal was a refusal on Ms Imre's part to sit down and go through the books.

29 In conclusion therefore, there is no allegation of misconduct on the part of Ms Imre in the evidence of Ms Kovesdi, nor in the submissions put on Ms Kovesdi's behalf.

30 It must be acknowledged of course that the Commission is not a court of pleadings such that Ms Kovesdi is bound by her Notice of Answer and is unable to depart from it. That does not mean, however, that Ms Kovesdi's Notice of Answer, and the amended Notice of Answer, are documents which are merely to be ignored as if they had never been filed in the first place. The fact of their existence, and that Ms Kovesdi now does not pursue the allegations contained in them, is at least an issue worthy of some explanation. No explanation was offered.

31 Neither is there any evidence of any poor work performance on behalf of Ms Imre which would justify her dismissal. Ms Imre gave evidence of the work she was to do, including the work whilst Ms Kovesdi was overseas. Ms Imre was shown how to work the till and the credit card machine. Ms Imre was to pay the rent, electricity and phone bills, and keep $10.00 per hour for

herself as wages. Her evidence is that there were money difficulties because she did not have access to the shop account and the cash income was insufficient to cover everything. However, she always put aside the rent money, paid bills and bought flowers for the shop. It was not put to her in cross-examination that she performed her work poorly. In any event, there is certainly no suggestion at all that Ms Imre was ever given a warning which simple fairness towards her required to have been given if Ms Kovesdi believed that Ms Imre's work was not up to an acceptable standard. In the absence of any warning being given, it is likely that if Ms Imre had been dismissed for poor work performance, her dismissal would have been unfair.

32 The Commission can only decide this matter on the evidence before it. In the result, there is no evidence whatsoever before the Commission which could allow a conclusion that Ms Imre's dismissal was justified. I cannot accept the hint that arises from the Notice of Answer, the amended Notice of Answer, and the vague statement from Ms Kovesdi that there were "a couple of things" in the books that she didn't quite understand, as some kind of justification for the dismissal of Ms Imre. On the evidence, or lack of it, therefore, there is no reason established why Ms Imre was dismissed. It can lead only to the conclusion that her dismissal was unfair.

33 Further, Ms Imre was not given any notice or payment in lieu thereof. Given that Ms Imre's employment was not casual, but permanent, and that her hours had included full-time hours during the time Ms Kovesdi was absent, Ms Imre would, in fairness, have been entitled at least to one week's notice of termination. The failure to give any notice of termination is an additional reason in this case why Ms Imre's dismissal was unfair.

34 The Commission therefore concludes that Ms Imre's dismissal was unfair.

Remedy

35 It is quite clear that reinstatement is impracticable. Reinstatement is not sought and Ms Kovesdi's evidence that the relationship between Ms Imre and herself had changed following her return from overseas leads inevitably to that conclusion.

36 The Commission turns to the issue of compensation. Two issues here fall for determination. It is clear that the Commission is to compensate Ms Imre for the loss occasioned by the dismissal which occurred. I am satisfied from the evidence that Ms Imre was approximately 16 weeks out of work. She then returned to her previous employment as a cleaner. She gave evidence that she attempted to find work, although it was difficult for a woman of her age. A suggestion was made on Ms Kovesdi's behalf that Ms Imre should have taken any cleaning job at all, rather than look only for the commercial cleaning in which she had previously been employed.

37 What is required is that Ms Imre diligently seek alternative employment. The onus of proving that she failed to mitigate her loss is on Ms Kovesdi. Ms Imre's evidence is that she sought to return to commercial cleaning at which she had previously been employed. I find that to be reasonable. Mitigation of a person's loss does not require a person to accept employment which would otherwise be unreasonable or unsuitable. I find no reason why Ms Imre should not attempt to return to that type of cleaning in which she had experience. Her evidence is that she did apply to her old company for her job back and she called many companies from the Saturday newspapers. While it is true that she did not have a list of these employers brought to the court, the evidence does not establish that Ms Imre did not attempt to find work as soon as she was able to do so.

38 I note that there is no evidence, nor even any suggestion, that the cancellation of the traineeship agreement would mean that Ms Koveski could no longer afford to employ Ms Imre and that, therefore, Ms Imre would not have remained in employment for another 16 weeks anyway. I therefore find that Ms Imre's loss is the 16 weeks between her dismissal and commencing her new job.

39 The second issue is the issue of the rate at which compensation is to be paid. On behalf of Ms Imre, it was submitted that she ought to be paid the rate under an award for a shop assistant. I reject that submission for the simple reason that any entitlement Ms Imre has, or may have had, to payment under an award arises from the award itself and not from the contract of employment. Any right that Ms Imre has to payment under the award is a matter for an Industrial Magistrate and not the Commission. Ms Imre's loss is the wage she would have continued to be paid had the dismissal not occurred.

40 On behalf of Ms Kovesdi, much was made of the traineeship agreement referred to earlier. Some effort was made to say that Ms Imre should be regarded as a trainee and any compensation should be calculated on the basis of a trainee's wage. That, too, is rejected. The evidence that the traineeship agreement was cancelled effective from 20 December 1999, at the instigation of Ms Kovesdi herself means that it has just no relevance to any loss incurred by Ms Kovesdi after 31 December 1999. The traineeship was cancelled because of Ms Imre's failure to attend off the job training. There is no evidence that following Ms Kovesdi's return from overseas Ms Imre attended off-the-job training. Therefore, if the dismissal had not occurred, and Ms Imre continued to be employed at the shop, the reason for the cancellation of the traineeship would still stand. If that conclusion is correct, then if the dismissal had not occurred, Ms Imre would have remained in employment at the shop, but the traineeship agreement would have necessarily been cancelled in any event due to Ms Imre not attending off-the-job training. Indeed, if I may be permitted an observation, the attention given to the traineeship agreement has been an issue which caused substantial confusion in the Commission being able to identify the simple issues involved in this matter.

41 Rather, the rate at which compensation is to be calculated for the 16 weeks is the rate at which Ms Imre would have been paid had the dismissal not occurred. That is the rate that is due to her under her contract of employment. It will not be the rate under the traineeship agreement. It was not the rate under an award. The evidence before the Commission does not permit the Commission to state with any certainty what that rate was. Accordingly, a liberty is reserved to the parties to return to the Commission if they are unable to agree on that rate.

42 The final matter for determination is the suggestion that a further payment ought be made to Ms Imre as compensation for the injury arising from the dismissal. As to that, the only evidence before the Commission is the evidence of Ms Viola. That evidence, together with the evidence of the suddenness of the dismissal, that is, the absence of any notice of termination, or payment in lieu of notice, prompts the Commission to award a payment equivalent to one week's wages by way of compensation for the injury which occurred.

43 Ms Imre's application claims denied contractual benefits. However, this claim was not actively pursued and is dismissed.

44 A Minute of a Proposed Order now issues which declares that Ms Imre was unfairly dismissed, that reinstatement is impracticable and orders Ms Kovesdi to pay to Ms Imre an amount representing the 16 weeks' wages that she would have earned as compensation for her loss, and a further payment equivalent to one week's wages by way of compensation for the injury which occurred. A liberty is reserved to the parties to apply to the Commission within 21 days of the issuance of the Order if the parties are unable to agree on the amount of money which is required to be paid in accordance with this Decision.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	AGNES IMRE, APPLICANT
	v.
	MONIKA KOVESDI T/A FLORAL OBSESSIONS, RESPONDENT
CORAM	COMMISSIONER A R BEECH
DELIVERED	TUESDAY, 12 SEPTEMBER 2000
FILE NO	APPLICATION 102 OF 2000

Result	Application alleging unfair dismissal granted and denied contractual entitlements dismissed
Representation	
Applicant	Ms V. Reynolds (as agent) appeared on behalf of the applicant.
Respondent	Mr J. Beedham (as agent) appeared on behalf of the respondent.

Order.

HAVING HEARD Ms V. Reynolds (as agent) on behalf of the applicant and Mr J. Beedham (as agent) on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby—

1. DECLARES that Agnes Imre was unfairly dismissed by Monika Kovesdi t/a Floral Obsessions;
2. DECLARES that reinstatement is impracticable;
3. ORDERS that Monika Kovesdi t/a Floral Obsessions forthwith pay Agnes Imre a sum equal to 16 weeks' wages as compensation for the dismissal that occurred;
4. ORDERS that Monika Koveski t/a Floral Obsessions forthwith pay Agnes Imre a sum equal to one weeks' wages as compensation for the injury arising from the dismissal; and
5. ORDERS that liberty be reserved to the parties for 21 days from the date of this order to apply to the Commission if they are unable to agree upon the sums in Orders 3 and 4 hereof.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

2000 WAIRC 00532

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	NATALIE LOUISE MEEHAN, APPLICANT
	v.
	VOLONA NOMINEES PTY LTD, RESPONDENT
CORAM	COMMISSIONER A R BEECH
DELIVERED	Tuesday, 5 september 2000
FILE NO	APPLICATION 1224 OF 1999

Result	Application alleging unfair dismissal dismissed
Representation	
Applicant	Mrs D. Meehan appeared as agent on behalf of the applicant
Respondent	Mr T.C. Crossley appeared as agent on behalf of the respondent

Reasons for Decision.

1 The respondent in this matter runs a hairdressing salon called Pricewave. It employed Natalie Meehan for the purpose of assessing whether or not Ms Meehan would be offered an apprenticeship. She was employed initially for a two-week trial period and upon her successfully completing that period she was offered, and accepted, employment for a further 10 weeks as a probationary apprentice. The agreement between Ms Meehan and the respondent is in writing and was signed by Ms Meehan on 28 May 1999. The completion of her 12-week probationary period was therefore 28 August 1999. The agreement states, relevantly, as follows—

> "If you successfully complete the two week trial period you then sign Probationary Papers to commence your three month probation period (back dated to your initial starting date). Any time within this three months either yourself or Volona may decide not to commence with the apprenticeship agreement."

2 The respondent decided on 23 July 1999 that it would not continue the probationary period and not enter into an apprenticeship contract. It advised Ms Meehan of that in writing. Ms Meehan complains that her dismissal was unfair.

3 It is as well to note firstly that the agreement Ms Meehan signed expressly allowed either party, in this case Volona Nominees, to decide not to commence with the apprenticeship agreement at any time within the three-month period. Volona Nominees therefore had the right to do what it did. That is not the end of the matter of course, because Ms Meehan's complaint is not that Volona Nominees did not have the right to do what it did, but rather that it was unfair of Volona Nominees to have done what it did.

4 In that regard, Ms Meehan gave evidence herself. Ms Meehan also called as witnesses Helen Gray, who runs a business which amongst other things sells hairdressing equipment, Ruth Kneale, the trainer of Ms Meehan's training course and Debbie Vernon the manager of the salon where Ms Meehan had worked. The respondent's evidence came from Darlene Underwood the salon co-ordinator of the respondent, Helen Brown a director of the respondent and from Kerryann Carter a co-director and human resource officer of the respondent.

5 From the evidence, the Commission finds that Ms Meehan performed her in-salon hairdressing work well. That work consisted of applying colours, neutralising and rinsing perms and cleaning. There is nothing in Ms Meehan's in-salon work which would justify the termination of her employment. Nor did her in-salon work form any part of the respondent's decision not enter into an apprenticeship with Ms Meehan and not to continue with her probationary employment.

6 The respondent's decision was based upon Ms Meehan's attendance at the training course. Ms Meehan was required to attend a training course on a weekly basis and I am quite satisfied from the evidence of Ms Vernon, Ms Kneale and Ms Brown that it is necessary for both in-salon work and the work performed at the training course to be satisfactory for Ms Meehan to be considered suitable for an apprenticeship.

7 The decision made by the respondent that an apprenticeship would not be offered to Ms Meehan was based upon Ms Meehan's attendance record at the training course. The evidence that is before the Commission shows that there was indeed a problem with Ms Meehan's attendance at the training course. The evidence of Ms Kneale is that after the first two weeks Ms Meehan had been sick at the course and on one occasion she had fallen asleep during the course or been absent due to illness. Ms Kneale's evidence is that on each occasion she received an explanation from Ms Meehan. The explanations included that she had been visiting a friend in hospital all night on one occasion and hence she fell asleep the following day during training and that she had a number of different illnesses. Ms Kneale recounted five different reasons given to her. In Ms Kneale's opinion the accumulation of the times Ms Meehan was absent or unable to work affected the time that Ms Meehan was in the training school. The absences worried Ms Kneale because although it was not disruptive to the class in the training school, it was of itself a disruption to Ms

Meehan's training. On one occasion Ms Kneale had to take over the work being done by Ms Meehan on a model because Ms Meehan could not continue with the work. Indeed, Ms Kneale thinks she had to do so perhaps three or four times although Ms Meehan disagrees with Ms Kneale on this point. Nevertheless, I find that Ms Kneale was interrupted in her own work and that it prevented Ms Meehan from improving with practice.

8 Although Ms Meehan, through her mother who represented her during the course of the hearing, complained that it was not fair for the respondent to refer to Ms Meehan's illnesses, I am quite satisfied that the only reason the respondent has done so is because they were the reasons given by Ms Meehan to Ms Kneale, and to Ms Vernon, at the time. All that Ms Kneale and Ms Vernon have done is repeat the explanations that they were told at the time. There is nothing improper or unfair in them doing so.

9 I accept Ms Kneale's evidence that she did raise her concerns with Ms Meehan. I also accept Ms Kneale's evidence that she raised the matter with Ms Brown because Ms Kneale was, ultimately, quite dissatisfied with Ms Meehan's progress in the training course.

10 I am also quite satisfied with Ms Brown's evidence that she merely responded to the concerns raised by Ms Kneale. The respondent is an accredited trainer for the purpose of apprenticeships and it is important that a certain standard be maintained. Ms Kneale spoke to Ms Brown on approximately 8 July 1999 and Ms Brown spontaneously asked Ms Meehan to meet with her that same day. Ms Underwood, who happened to be in the salon at that time was asked by Ms Brown to be present at the meeting as a witness. Ms Meehan's evidence of what occurred at the meeting is not as detailed as the evidence of Ms Brown and the evidence of Ms Underwood. I tend to prefer the evidence of Ms Kneale. Her evidence was given clearly and is quite credible. In contrast, at times Ms Meehan was not able to recollect whether matters had occurred or not. This is not a reflection on Ms Meehan. It is merely that I think the evidence of Ms Kneale is more accurate given the passage of time. I similarly prefer the evidence of Ms Brown to that of Ms Meehan.

11 I find that Ms Brown discussed with Ms Meehan her attendance and her illnesses at the training course. I do so because of the knowledge Ms Brown had of Ms Meehan's suggestion of taking tablets in the evening rather than in the morning to reduce Ms Meehan feelings of nausea in the morning. I also accept that Ms Brown indicated that the respondent would not be going ahead with the apprenticeship at that time because of Ms Meehan's unreliable attendance. I find that Ms Meehan indicated that she would do her best and that Ms Brown stated that she should "get back out there and prove to me that she wants it" or words to that effect. It is significant that both Ms Meehan and Ms Brown agree that during this meeting Ms Brown spoke in a normal tone of voice.

12 I make these findings in part because of evidence called by Ms Meehan herself. I note, as I noted to Mrs Meehan in the course of the proceedings before the Commission, that it is up to Ms Meehan to prove her claim and if, in doing so, she calls as a witness someone who in fact gives evidence that is unhelpful to her case, Ms Meehan is still bound by that evidence. Ms Vernon was called by Ms Meehan and, as I find, gave her evidence quite frankly and truthfully to the effect that Ms Meehan had come to her after the 8 July meeting quite distressed because she had been told that the respondent would not be pursuing the apprenticeship because of her conduct at TAFE. Therefore, I accept Ms Vernon's evidence in preference to Ms Meehan's regarding the content of the conversation. Further, Ms Vernon's own reservations regarding Ms Meehan's suitability for an apprenticeship are given greater weight by the Commission given that it was Ms Meehan herself that presented Ms Vernon's evidence to the Commission.

13 The immediate significance of the 8 July meeting is that I have no doubt that Ms Meehan should have understood that unless there was an improvement in her performance at the training college, she would not be offered an apprenticeship. Therefore, to the extent that Ms Meehan complains that her subsequent dismissal was unfair because, in part, she did not receive any warning, I find that she did indeed receive a warning.

14 The next event of significance is that Ms Meehan was due to attend the training centre on 22 July 1999. This was the next time after the 8 July meeting that Ms Meehan was to attend the training centre. On that day, as it happened, Ms Kneale was ill and Ms Brown was to train the students. On the morning of that day, Ms Meehan first went to the salon where Ms Vernon assisted her with her hair and makeup. Ms Meehan then left the salon with the stated intention of going to the training centre. In fact, she did not go to the training centre. On her evidence, she had found that the conversation she had with Ms Brown on 8 July 1999 had been building up pressure inside her. Ms Meehan particularly took to heart comments apparently made by Ms Brown that Ms Meehan should improve her hairstyle to conform with the employer's requirement that her hair be in a "saleable style" and that her makeup be of a certain standard. I accept that Ms Brown did make comments of that nature because during the course of the hearing before the Commission it became apparent that this was an issue with Ms Meehan. Furthermore, it is entirely consistent with those words having being said to Ms Meehan that Ms Meehan first attended the salon on 22 July 1999 to have Ms Vernon assist her with her hair and makeup.

15 Ms Meehan's evidence is that these comments had been building up pressure within her and she found as she drove to the training centre that she could not go there. She therefore drove elsewhere. While it is not clear to the Commission precisely where Ms Meehan drove, it is important to note that Ms Meehan did not at any stage advise her employer or her parents that she was not attending the training centre. Thus, when Ms Brown noticed that Ms Meehan was not present she rang Ms Vernon to enquire whether Ms Meehan had booked off sick on that day. Ms Vernon advised Ms Brown that, to the contrary, Ms Meehan had been at the salon early in the morning and left with the stated intention of going to the training centre. Ms Brown, quite properly in my respectful opinion, then became concerned as to Ms Meehan's whereabouts and rang Ms Meehan's mother. Ms Meehan's mother immediately became concerned and left her own employment in order to look for her daughter. Ms Vernon also had become concerned at Ms Brown's telephone call and she herself left the salon to look for Ms Meehan. It is sufficient to note that at some time, possibly close to 5.00pm, Ms Meehan returned to her parents' house. At some time subsequently Mrs Meehan advised Ms Brown that Ms Meehan was safe. It is clear on the evidence that Ms Meehan's disappearance for the day and without trace, caused not only her employer, but also her mother, significant disruption and distress.

16 I therefore accept that it was this absence, and the manner of it, occurring within 14 days after the discussion which had occurred between Ms Brown and Ms Meehan where Ms Meehan had been effectively warned that she needed to demonstrate an improvement in her performance, which led to the decision by Ms Brown not to offer an apprenticeship and effectively to bring the employment to an end. On the evidence, it was quite reasonable for the respondent to have reached that conclusion. While I accept that Ms Meehan performed well in those in-salon tasks which she was to do during her first three months and that from Ms Meehan's point of view it was the job that she had always wanted, the Commission is not to look at the fairness of her dismissal only from Ms Meehan's point of view. I am satisfied that the respondent, which is an accredited trainer with some 65 apprentices and 10 trainees in its employ in five businesses, and which has been trading for approximately 10 years, is required to make a professional assessment over whether a trainee is going to be able to satisfactorily complete a four year apprenticeship. That is an assessment for the respondent, and not the Commission, and the evidence before the

Commission shows that the decision reached by Ms Brown was one that was reasonably open to her on the evidence.

17 I accept that Ms Meehan stated that she had become upset as a result of the meeting of 8 July 1999. However, on the evidence as it came out before the Commission, there was nothing in the meeting of 8 July 1999 which would justify Ms Meehan becoming so distressed. The meeting had not been held in an aggressive manner. The meeting had been held some two weeks earlier and Ms Meehan had not given any indication at all during that time that the meeting had caused her such distress. Ms Meehan speaks well of Ms Vernon, the manager of the salon and I have the impression that Ms Vernon is a person with whom Ms Meehan would have discussed these issues. After all, it was to Ms Vernon that Ms Meehan turned in order to get assistance regarding her own hairstyle and her makeup. However, Ms Meehan did not tell Ms Vernon of any concerns that she had building up from the meeting. The Commission is left with no other conclusion other than Ms Meehan's absence on 22 July was unpredictable, and effectively inexplicable, and provided ample reason for the conclusion reached by Ms Brown that it was not appropriate for the respondent to offer her a four year apprenticeship.

18 I find also that Ms Meehan knew how potentially serious her absence was because she asked Ms Vernon whether she was likely to lose her job.

19 I note that Ms Brown reached the decision she did without giving Ms Meehan an opportunity to explain why she was absent for that day. However, I find from the evidence that the telephone calls made by Mrs Meehan to Ms Brown and to Ms Carter after her daughter had returned home were so aggressive towards them that it would not have been possible for there to have been a constructive meeting at which Ms Meehan could have persuaded Ms Brown not to terminate the employment relationship. Even though Ms Meehan, who was present when her mother made the telephone calls, states that her mother was not aggressive, I unhesitatingly accept that during the telephone calls, and also when Mrs Meehan visited the salon on 23 July 1999, her manner was so aggressive that she so upset Ms Vernon and Ms Brown that Ms Carter was obliged to handle the matter on Ms Brown's behalf and to issue instructions that Mrs Meehan was to leave the premises or the police would be called. Further, after Mrs Meehan had left the salon, the door was locked to prevent her return. This would not have occurred if Mrs Meehan had not been aggressive.

20 I also accept the evidence of Ms Carter that, to the extent that it was proposed that there be a meeting between Mrs Meehan, Ms Meehan and Ms Brown, Ms Carter was afraid of attending that meeting because of Mrs Meehan's aggressive attitude. I therefore find that although Ms Meehan ought to have been given an opportunity to explain her behaviour on 22 July 1999, it was not possible to hold a meeting due to the strength of Mrs Meehan's reaction on her daughter's behalf and further that, even if such a meeting had occurred, it could not possibly have produced a different result.

21 For all of those reasons I am unable to find on the evidence before the Commission that Ms Meehan's dismissal was unfair.

22 It is to be noted that Ms Meehan was on probation. During a period of probation an employee knows that he or she is on trial and that he or she must establish his or her suitability for the post. Ms Meehan was not able to do that. For the respondent's part, an employer must give the probationary employee a proper opportunity to prove him or herself. That was done. Further, Ms Meehan was warned during the period of her probation of the need to improve. That too is a requirement of fairness and that too was done. It is quite clear that probation is an extension of the selection process, a period of learning and a time for attention, assessment and adjustment to standards of performance and conduct. Accordingly, it cannot be said that Ms Meehan's dismissal was unfair.

23 One further matter has been argued before the Commission and to which I now turn. The issue is that the respondent argues that it reached a private agreement with Mrs Meehan on Ms Meehan's behalf to fully and finally settle this matter upon the payment of $675.00. This payment was made by cheque by the respondent's agent and the payment was received and cashed. However, Ms Meehan did not file a Notice of Discontinuance and wished to have her application arbitrated. The Commission convened a further conference of the parties in order to explore whether a settlement had been reached and whether, in the circumstances, the application should be discontinued as no longer being in the public interest. However, Mrs Meehan denied that an agreement in the terms described had indeed been reached and stated that the payment of the money was only to reimburse for the books and materials purchased by Ms Meehan in anticipation of her apprenticeship. In the circumstances, there was little alternative other than to list the matter for hearing.

24 The issue to be determined is whether there was an agreement. Where an agreement is reached in proceedings before the Commission, the Commission has direct knowledge of that agreement and the terms of the agreement. It is therefore in a position to make an assessment of the situation if it is alleged by one party or the other that its terms have not been implemented. That was the case in *Bradbury v Jos van Baren & ors* (1995) 75 WAIG 2927.

25 There is no reason why parties to an industrial matter before the Commission cannot meet privately and reach a private agreement between them. Indeed, many such agreements are reached. Where that agreement is reflected in writing by both parties then the Commission is able to make an evaluation of the situation and decide whether in fairness the parties should be held to their agreement. The difficulty in this case is in showing that there was an agreement.

26 The evidence of Mrs Crossley is that she believes the agreement was that the payment of the sum of $675.00 was in full and final settlement of all matters, including the claim of unfair dismissal. I accept that she believed that, and that she also believes that those terms were accepted by Mrs Meehan on her daughter's behalf. The terms of the correspondence sent by her to Mrs Meehan reflect that understanding.

27 Mrs Meehan does not agree that they were the terms of the settlement. Although Mrs Meehan did not give evidence, her submissions make it plain that she regarded the $675.00 as payment for the books and materials purchased by Ms Meehan. Her submission is borne out by the letter from Mrs Meehan on the Commission's record which was received 15 November. It states—

> The $675.00 is only the money my husband and I paid for Natalie's equipment. The cheque was made out to my husband and I not Natalie. We were told by Mr Crossley that nothing was final until Natalie signed the Notice of Discontinuance.

28 I accept that the respondent acted in good faith and that it paid money to purchase the hairdressing kit which it was not obliged to pay in the belief that the payment was in full and final settlement of the matter. However, I am not satisfied that Mrs Meehan accepted the payment on that basis. I am not satisfied that Ms Meehan had agreed that the money to be paid was to settle both the claim of unfair dismissal and the claim of reimbursement for the books and materials purchased by Ms Meehan.

29 The circumstances of this case are more aligned with the circumstances confronting the Commission in Wade v Kyle's Café (1999) 79 WAIG 874 where Kenner C concluded—

> It is a fundamental principle of contract law, that for an agreement to be concluded, the parties must be truly ad idem as to the terms of the bargain. Furthermore, the terms of the agreement must be sufficiently certain and complete to enable the agreement so reached, to be enforced at law: Contract Law in Australia Lindgren et al at para 258.

In this matter the issue is whether there was an agreement. In the absence of clear evidence from which it can be held that such was the case, then it is not open in my opinion, to conclude that there was the necessary consensus ad idem to bind the respondent in this case. It is clear on the evidence, that at least as far as the applicant was concerned, a proposal was put and was taken by the respondent, to be fair for the purposes of settling the applicant's claim. However, the circumstances surrounding Ms Greatrex's acceptance or otherwise of the proposal, are far from certain or conclusive.

30 If nothing else can be said, it was certainly not prudent to pay money in the absence of something in writing from both parties which confirmed the basis for which the money was being paid and in particular that it was in full and final settlement of both the unfair dismissal application and the contractual benefit application.

31 I have no hesitation in agreeing with the submission made by Mr Crossley that the Commission expects parties to abide by the terms of their agreement whether or not the agreements are reached inside the Commission. Where, as here, it is not clear to the Commission that there was an agreement in the way that the respondent's agent states, then there is little that the Commission is able to do. Therefore, to the extent that Mr Crossley has foreshadowed that he wishes to pursue an Order for costs against Ms Meehan, the circumstances are not such which would show that the circumstances would warrant it.

32 An Order now issues which dismisses Ms Meehan's application.

2000 WAIRC 00531

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	NATALIE LOUISE MEEHAN, APPLICANT *-v-* VOLONA NOMINEES PTY LTD, RESPONDENT
CORAM	COMMISSIONER A R BEECH
DELIVERED	TUESDAY, 5 SEPTEMBER 2000
FILE NO	APPLICATION 1224 OF 1999

Result	Application alleging unfair dismissal dismissed
Representation	
Applicant	Mrs D. Meehan as agent on behalf of the applicant
Respondent	Mr T.C. Crossley as agent on behalf of the respondent

Order.

HAVING HEARD Mrs D. Meehan (as agent) on behalf of the applicant and Mr T.C. Crossley (as agent) 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.

2000 WAIRC 00662

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	KELLYMARIE MUNDY, APPLICANT *v.* WESTCO JEANS PTY LTD, RESPONDENT
CORAM	COMMISSIONER A R BEECH
DELIVERED	TUESDAY, 19 SEPTEMBER 2000
FILE NO	APPLICATION 1104 OF 2000

Result	Application alleging unfair dismissal granted
Representation	
Applicant	Ms K. Mundy appeared on behalf of herself as the applicant.
Respondent	There was no appearance on behalf of the respondent.

Reasons for Decision.
(Extemporaneous)

1 My reasons in this matter are as follows. I find from the evidence that Ms Mundy commenced employment with the respondent on the 15th of April 2000 in the respondent's Geraldton store. She was employed as a retail sales person. The respondent operates a clothing store and Ms Mundy was responsible for serving customers and stocking shelves.

2 On the 2nd of June she was told by Samantha Short, the State Manager, that she would become the manager of the store. In practice, this meant that Ms Mundy would have the keys to the store and become responsible for opening and closing the store, serving customers, balancing the tills, banking and the employment and rostering of staff. Her wage rate throughout her employment remained at $11.71 per hour.

3 Her hours of work, which prior to her becoming manager were 10.00am till 3.00pm with a half hour break, Monday, Tuesday, Wednesday and Friday, were extended when she became manager. At the time that Ms Mundy became manager there were three other staff employed in the store. The names of these persons are Clare, Rebecca and Celeste. However, Ms Mundy was only manager for 1 week. On the 10th of June, Ms Short rang Ms Mundy and informed her that Ms Short had spoken to Clare's mother; that Clare would be leaving school; that Clare had been there longer than Ms Mundy and that Clare would become manager and that Ms Mundy was to step down. Ms Mundy agreed with this and did so.

4 It is significant that Ms Short did not tell Ms Mundy what Ms Mundy would then be doing and neither did she say what hours Ms Mundy would be working in the following week. However, Ms Mundy had already drawn up the roster for the following week and she had done so prior to the 10th of June. The roster had all four employees working and according to that roster Ms Mundy would next be working on Monday the 12th of June. Indeed when Ms Mundy left the store on the 10th of June she did say to the other employees: "See you Monday".

5 However, it was not to be. On Monday the 12th of June Ms Mundy rang the store at approximately 10.30am to be told by Clare that Ms Mundy did not need to bother coming in and, in fact, Ms Mundy never returned to the store to work. Ms Mundy did call into the shop on the Thursday of that week and did look at the roster. She found that she was not on the roster any more and that it was a different roster than the one she had drawn up for that week, one week previously. In fact, Ms Mundy was never put back on the roster and on 7th of July Clare rang Ms Mundy and told her she no longer worked there. When Ms Mundy asked why, Clare replied that she did not have to give her a reason and no reason was given.

6 In these proceedings in the Commission, Ms Mundy gave evidence herself. Due to the absence of the respondent,

Ms Mundy's evidence was not subject to cross-examination however she impressed me as an honest person and I accept her evidence on these points.

7 I therefore find a number of matters from that evidence as follows:

8 I turn first to consider the nature of Ms Mundy's employment. Ms Mundy's employment was not subject to any written terms. On Ms Mundy's evidence, she was not specifically told the nature of the employment relationship when she was hired. I note that Ms Mundy indicated when she first started that she would regularly check the roster. If that was all of Ms Mundy's evidence then it might lead to the conclusion that Ms Mundy was a casual employee and as a casual it may have been possible for her to merely be removed from the roster without being dismissed.

9 However, Ms Mundy's evidence is that from the commencement of her employment until she was made the manager of the store she was regularly rostered the same time each week. Her employment was not in any sense intermittent or irregular and there was no time from the 15th of April to the 2nd of June when she was not working in accordance with the routine that had been established over that period of time. I therefore find that on the evidence before me, Ms Mundy was not a casual employee in the true sense of that word. She may have been paid a casual rate but on the basis of her employment I find that she is more likely to be a part time employee regularly employed than an itinerant casual employee.

10 I note also the evidence given by Ms Mundy that the previous person who apparently was the manager did give notice to leave her employment. The giving of notice is an indication of a more permanent working relationship than of a casual working relationship. Although that evidence is not strictly applicable to Ms Mundy's employment, the fact that another member of the staff who was of a similar status to Ms Mundy gave notice in order to leave employment strengthens my view that Ms Mundy was not a casual employee in the accepted sense.

11 I also find that the date of Ms Mundy's dismissal was the 7th of July. Although the 8th of June was the last day that Ms Mundy actually worked in the store, and that is because the next day as I understand it was a rostered day off that she was taking, the decision that Ms Mundy no longer worked at the store was not communicated to her by Celeste until the 7th of July. It is quite clear that if an employer decides that an employee is no longer to work for them, that decision is not effective until it is communicated to the employee and that communication did not take place until the 7th of July. I note also the comment that Celeste made to Ms Mundy that she was no longer employed in the store is in marked contrast to the comment made earlier by Celeste on the 12th of June that Ms Mundy would be called when the shop had hours for her. I therefore find that Ms Mundy was not dismissed until the 7th of July.

12 I also find that Ms Mundy was not given any reason for her dismissal. I have already referred to the evidence of Ms Mundy that when Celeste rang Ms Mundy to say that Ms Mundy was no longer working in the store that she indicated to Ms Mundy that she did not believe she had to give a reason for dismissal and she did not do so.

13 It should be fairly apparent that to dismiss an employee for no reason at all, unless the reason so palpably apparent and obvious to all concerned, and without giving a reason is on the face of it an unfair dismissal. An employee is entitled to know the reason why her or his services are being dispensed with. Therefore the fact that Westco Jeans Pty Ltd did not give any reason for the dismissal of Ms Mundy points very strongly to Ms Mundy's dismissal being unfair.

14 Ms Mundy has been frank enough in her evidence to indicate that Celeste did say to Ms Mundy on the 19th of June that she was putting the other staff on the roster and not Ms Mundy because "the others have better working ethics". There are two issues that arise from that comment, if that comment is to be taken as an implied reason for the dismissal. The first is that there is no evidence before the Commission of any poor work ethics on the part of Ms Mundy. She regularly worked the hours that she worked and I accept her evidence that she had a good sales record and always made her budget. Furthermore, the fact that Westco Jeans Pty Ltd promoted her to manager can only be an indication that not only was Ms Mundy's work ethic positive but also that she was held in high regard by the company.

15 There is no suggestion that Ms Mundy did not perform well in her position as manager even though it lasted for only a week. The stated reason for Ms Mundy no longer being manager, that is that Clare was leaving school and had been there for a longer period than Ms Mundy, is, as a reason, more to do with Clare than it is with Ms Mundy. Accordingly, on the evidence, I reject any suggestion that Ms Mundy has less worth ethics in the sense that Celeste was referring to.

16 The second issue that arises regarding the issue of poor work ethics is that if an employee is not working satisfactorily and her or his dismissal is contemplated as a result of it, simple fairness to the employee requires that the employee be given a warning of that and an opportunity to improve. In this case, no warning whatever was given to Ms Mundy and in that event the respondent would not be able to rely upon poor work ethics as a reason for the dismissal of Ms Mundy even if it was able to show poor work ethics on the part of Ms Mundy. As I find on the evidence, it would be unable to do so.

17 The final issue in this part of the reasons for decision is that even though Ms Mundy agreed that she would no longer be the manager of the store, her previous history and the numbers of employees at the store indicates that Ms Mundy would merely revert to her previous occupation as retail sales person. There was no suggestion to the contrary from Ms Short in the evidence of the conversation that she had with Ms Mundy. Therefore, even though Ms Mundy agreed that she would no longer be the manager of the store, that is not seen by the Commission as being a dismissal from her employment effected by mutual agreement between Ms Mundy and the respondent. I unhesitatingly accept the evidence of Ms Mundy that the acceptance by her of Ms Short's decision that she would no longer be manager was an understanding that she would merely revert to her previous position as retail sales person.

18 I also note that Ms Mundy was not given any notice of the termination of her employment. Given that as I find she was not a true casual employee but rather she was a part-time employee, she was entitled to be given notice of the termination of her employment. The fact that it was not given is an added reason why, as I now find, Ms Mundy's dismissal was unfair.

19 I do so because Ms Mundy has presented to this court as an enthusiastic, bright and hard worker. She has done nothing wrong. Her employment has all of the hallmarks of being appreciated by the respondent and hence the promotion that was offered to her and accepted by her. It was therefore completely unreasonable and unfair for her to be removed from the roster and eventually dismissed.

20 I note with dismay that the respondent, Westco Jeans Pty Ltd, apparently appoints young persons as managers without training or support in that position. The fact, as I find, that the new manager Celeste believed that she did not have to give a reason for termination points to the problem that arises for the respondent if it appoints people to the position of manager without training them adequately in the position. Indeed, Westco Jeans Pty Ltd can hardly be heard to complain if one of its managers dismisses an employee unfairly if it itself has not trained the managers accordingly. Therefore Westco Jeans Pty Ltd should look to its own organisational structure as a result of this hearing. To treat an enthusiastic employee who is good at her job and who obviously likes it in this manner reflects poorly upon the respondent.

21 Having found that Ms Mundy's dismissal was unfair I therefore turn to consider what is to be done about it. The primary remedy for this Commission under section 23A of the *Industrial Relations Act 1979* is reinstatement.

However, reinstatement is not claimed by Ms Mundy and she has explained that she believes that the events are such that she could no longer comfortably work with the very people who dismissed her. Furthermore, the complete lack of interest in this matter from the respondent, putting to one side the discourtesy it represents to this Commission, does not fill me with any confidence that if I was to order reinstatement that it would be in any sense a practicable proposition and I therefore find that reinstatement is impracticable.

22 The Commission therefore moves to consider what compensation is to be ordered. I note that Ms Mundy claims in her application that she wishes to be back-paid from her last working date, the 8th of June, to when she was told she was no longer employed on the 7th of July. She also believes she should be entitled to 2 weeks' notice and compensation for "the time it took me to find another job".

23 In order for the Commission to order the respondent to pay compensation it is necessary for the Commission to find what Ms Mundy has lost as a result of the dismissal and on the evidence before me I find that Ms Mundy's loss is represented by the wages that she would have earned between the 8th of June and when she found further employment, that being the 1st of August. The wages Ms Mundy would have earned would not be at the wage rate or the hours applicable to Ms Mundy as a manager, but rather the wage rate and hours that Ms Mundy would have worked as a retail sales person. By my calculations that is a wage rate of $11.71 per hour and Ms Mundy appears to have worked for 22 hours each week.

24 I also find that Ms Mundy should have been entitled to 1 week's notice of termination. Although Ms Mundy claims 2 weeks' notice of termination the evidence that the previous person who was the manager gave 1 week's notice of termination seems to indicate that 1 week is the more usual for that particular establishment.

25 Ms Mundy was obliged to mitigate her loss by seeking alternative employment. She has informed the Commission that for the period between the 8th of June and the dismissal on the 7th of July, she merely held herself in readiness for employment and that she did not actively seek alternative employment. I find that Ms Mundy's action was quite reasonable in the circumstances. She had not at that stage been dismissed. She liked her job and I accept her evidence that she was really looking forward to the store ringing and putting her back onto the roster. I therefore find that Ms Mundy's actions up to the 7th of July are entirely reasonable and acceptable.

26 Further, from the 7th of July, I am also satisfied that she actively sought work and that she found work commencing on the 1st of August. I therefore find that Ms Mundy has taken the appropriate steps to mitigate her loss.

27 I therefore find that an order should issue which requires that Westco Jeans Pty Ltd pay Ms Mundy as compensation for the unfairness of her dismissal an amount of money which would be the wages she would have earned at the rate of $11.71 per hour for 22 hours per week for the period between the 12th June to the 28th of July, that date, the 28th of July being the Friday before the 1st of August. I also find that an order should issue that Westco Jeans Pty Ltd pay Ms Mundy a further 1 week's wages as an entitlement due to her, being the notice period which ought to have been given to her for the termination of her employment.

28 An order will therefore issue that Westco Jeans Pty Ltd forthwith pay Kellymarie Mundy the sum of $1,803.34 by way of the wages which would have earned between the 12th of June to the 28th of July and secondly, that Westco Jeans Pty Ltd forthwith pay Kellymarie Mundy a further sum of $257.62, that being payment in lieu of 1 week's notice as an entitlement due to her.

2000 WAIRC 00641

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	KELLYMARIE MUNDY, APPLICANT
	v.
	WESTCO JEANS PTY LTD, RESPONDENT
CORAM	COMMISSIONER A R BEECH
DELIVERED	WEDNESDAY, 20 SEPTEMBER 2000
FILE NO	APPLICATION 1104 OF 2000

Result	Application alleging unfair dismissal granted
Representation	
Applicant	Ms K. Mundy appeared on her own behalf as the applicant
Respondent	There was no appearance on behalf of the respondent

Order.

HAVING HEARD Ms K. Mundy on behalf of herself as the applicant and there being no appearance on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act, 1979*, hereby—

(A) DECLARES THAT—

1. Kellymarie Mundy was unfairly dismissed by Westco Jeans Pty Ltd;
2. Reinstatement is impracticable;

(B) ORDERS THAT—

1. Westco Jeans Pty Ltd forthwith pay Kellymarie Mundy the sum of $1,803.34 as compensation for the dismissal that occurred;
2. Westco Jeans Pty Ltd forthwith pay Kellymarie Mundy a further sum of $257.62 in lieu of 1 week's notice as an entitlement due to her.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

2000 WAIRC 00739

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	GEOFFREY WALTER PARKS, APPLICANT
	v.
	NEENING PARK CONTRACTORS & OTHER, RESPONDENT
CORAM	SENIOR COMMISSIONER G L FIELDING
DELIVERED	TUESDAY, 26 SEPTEMBER 2000
FILE NO/S	APPLICATION 934 OF 2000
CITATION NO.	2000 WAIRC 00739

Result	Claim upheld in part.
Representation	
Applicant	In person
First-named Respondent	Mr K Fitzgerald
Second-named Respondent	No appearance

Order.

HAVING heard the Applicant in person and Mr K Fitzgerald on behalf of the first-named Respondent, the Commission,

pursuant to the powers conferred on it under the Industrial Relations Act 1979, by consent, hereby orders—

1. THAT the first-named Respondent, Neening Park Contractors, pay to the Applicant the sum of $778.60 as and by way of contractual benefits denied to the Applicant under his contract of employment, and to be paid within 14 days.
2. THAT the claim against the second-named Respondent be and is hereby dismissed.

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

2000 WAIRC 00746

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	AMANDA BETH PURNELL APPLICANT *v.* ARORA PTY LTD ACN: 008 947 957 TRADING AS ARB 4X4 ACCESSORIES RESPONDENT
CORAM	COMMISSIONER S WOOD
DELIVERED	THURSDAY, 28 SEPTEMBER 2000
FILE NO/S	APPLICATION 1522 OF 1999
CITATION NO.	2000 WAIRC 00746

Result	Applicant was dismissed unfairly and denied a contractual benefit
Representation	
Applicant	Mr T Lyons of counsel and with him Ms B Russell
Respondent	Mr B Walker as agent

Reasons for Decision

1 This is an application made pursuant to section 29(1)(b)(i) and (ii) of the *Industrial Relations Act,1979* (the Act) by Ms Amanda Beth Purnell (the applicant). The applicant was employed by ARB 4x4 Accessories (the respondent) as the Sales Manager, Commercial Division. She commenced employment on 17 May 1999 and her duties were to compile a report on the administration of the company, in particular, computing and finances, and to set up and run a sales division for commercial and corporate sales. The respondent's business sells and services four wheel drive products.

2 The applicant claims that she was harshly and unfairly dismissed on 10 September 1999, with effect from 17 September 1999, in that she was not given any prior counselling or warning in relation to her performance or dismissal. She does not claim reinstatement and was granted leave to amend her claim for compensation and denied contractual benefits for a total of $16,002.44, or in the alternative $20,175.39, depending on findings concerning a claim for denied salary increase after 3 months.

3 The respondent says that the applicant started work on 17 May 1999 on 3 months probation which was later extended by a further month due to conflicts with other staff. They say that the applicant was dismissed whilst on probation for the following reasons—

a) without authority the applicant downloaded and removed confidential computer information;
b) gave under-priced quotations without authority or reference to management;
c) failed to follow up on customer queries and complaints;
d) behaved inappropriately toward disgruntled customers and staff;
e) ignored warnings from superiors;
f) often left early without permission or explanation, &
g) failed to obey numerous lawful instructions.

4 It is common ground that the applicant approached one of the owners of the business, Mr Smallwood seeking to be employed as manager of what she thought would be a new outlet in Midland. Both the applicant and Mr Smallwood knew each other from previous discussions at trade fairs.

5 The applicant says that when Mr Brian Smallwood employed her she commenced on a salary of $32,500 with full use of a four wheel drive vehicle and payment of her mobile telephone. This is uncontested. She says that she was promised at that stage a review of her salary after she assumed the duties of the commercial sales manager. Her business card [Exhibit A1], which she says was authorised by Brian Smallwood, stated 'Sales Manager, Commercial Division". These duties were not commenced immediately as the applicant was at first engaged in a review of the administrative and computing operations. She also implemented a revised newsletter for marketing purposes [Exhibit A2].

6 The applicant says that she asked Brian Smallwood on many occasions for a pay rise as she was feeling the financial pinch and each time he said he would review her salary, but never got back to her.

7 On 10 September 1999 she says that Lionel McPherson came into her office and told her that she had two weeks to go and then she wouldn't have a job. She says that she wasn't particularly concerned at first and she approached him later in the day and asked for clarification. At that stage she says that Mr McPherson told her that she had been given notice and that was it.

8 This conversation was later followed up with a meeting in the applicant's office attended by Mr James Boek, who took notes, Mr McPherson, Mr Russell Booth and the applicant. At that meeting she says that she questioned their authority to fire her as she had been advised that only Brian Smallwood had that authority. Exhibit A4 is a signed record of that discussion by all who were present. She says that Mr McPherson and Mr Booth indicated that they had spoken to Mr Smallwood and that he had agreed or decided that she should be terminated.

9 The applicant says that she was handed a letter after the meeting by Mr McPherson [Exhibit A5] and she challenges statements in that letter that she was ever on probation, or that probation was extended at a meeting involving Messrs Smallwood, McPherson and Booth, or that she was ever put on notice about her performance.

10 The applicant also denied under cross-examination challenges to her performance in relation to errors in a newsletter, late attendance at the Dowerin field day, upsetting a business associate over an evening for the Variety Club, damaging a vehicle and mishandling an export order. She also denies being counselled about her performance or being advised that her job was in jeopardy.

11 Mr Brian Smallwood says that the applicant was employed on a 3 month probationary period, this being the normal policy and practice of the company. At that time he agreed to a higher salary than he envisaged of $32,500 per annum, at the applicant's request.

12 In relation to the applicant's performance Mr Smallwood complained about incorrect pricing of quotations, poor manner of dealing with customers and staff, late attendance at the Dowerin field day, errors in the newsletter, and her poor dealing with a business associate over a promotions evening. He says that at the time she was highly stressed and had financial difficulties outside of work. He says that these problems would spill over into work. The pay rise that she asked for he did not consider to be appropriate.

13 He says that at a meeting with the applicant on 20 August 1999 he warned the applicant that her job was in jeopardy. This followed on from a discussion which he says took place on 6 August with the applicant which he refers to as a tough discussion about her performance. He backs

up these statements with diary entries which he says he made of the events.

14 The discussion on 20 August he says reduced the applicant to tears, she composed herself, and they then had a meeting which included Mr Booth and Mr McPherson. He says that he advised everyone that he had put the applicant on notice, that she was to report directly to Mr Booth and Mr McPherson as he was about to go on holiday, and that they then stayed and had a drink and discussion for twenty minutes. He says the applicant had four weeks in which to improve her performance and that the applicant didn't question him about this.

15 Evidence was provided by Mr Russell Booth, the Operations Manager for the respondent, who is responsible for supervising and running the workshop and general sales team. He says the applicant was brought into the business to get the office sorted out and to encourage outside sales. He says that the applicant reported to Mr Smallwood. He says that he had a problem dealing with the applicant in that she had a problem accepting criticism and blamed others for her errors.

16 He says that Mr Smallwood had decided to dismiss the applicant due to adverse reports about her from Mr Booth, Mr McPherson and other staff. He says Mr Smallwood asked him to take his telephone calls on the afternoon of 20 August 2000 so that Mr Smallwood could meet with Ms Purnell and tell her that the 3 month probationary period was over and that he was dismissing her. He says the meeting took about an hour and that Mr McPherson and he waited to learn the outcome. They were then invited to the upstairs office to have a drink with Mr Smallwood and Ms Purnell and be informed of their discussion.

17 Mr Booth says that Mr McPherson and he were told that Mr Smallwood had extended Ms Purnell's probation and that as he was to be away for the next four weeks she was to report to both of them. He says they all had a drink in what was a strange atmosphere.

18 He says that the next week she didn't arrive on time to set up for the Dowerin show as required which annoyed Mr Smallwood greatly. According to Mr Booth, Mr Smallwood telephoned him whilst on holidays and Mr Booth advised that Ms Purnell's performance had not improved and that another staff member had threatened to resign because of her. Mr Booth says that Mr Smallwood said he would ring Mr McPherson and have him terminate Ms Purnell.

19 The termination occurred the next day. Ms Purnell did not accept Mr McPherson terminating her and Mr Booth confirmed for Ms Purnell that Mr Smallwood had requested it. The discussion was recorded in [Exhibit A4].

20 Under cross-examination Mr Booth said that Ms Purnell was brought in to shake some people out of their comfort zones. He says that the senior salesman who threatened to resign was talked out of it as he was told that Ms Purnell was to get the sack at the end of her 3 month probation. This on Mr Booth's evidence occurred at a time prior to 20 August 2000.

21 Evidence was given also by Mr McPherson who is Mr Smallwood's partner in the business. Mr McPherson gave evidence that he dismissed Ms Purnell because the situation hadn't improved in the extended trial period which he says the applicant was put on notice about by Mr Smallwood. He says that he discussed this with Mr Smallwood and that it was left to him to decide on the dismissal and carry it through due to Mr Smallwood's absence on leave. He says he did not discuss with the applicant the reasons for her termination, or why he had terminated her earlier than the extended trial period. He didn't consider this necessary. He says that he had two employees threaten to resign because of her and so he acted to dismiss her giving her one week's pay in lieu of notice.

22 Mr McPherson says that Mr Smallwood told him at the time that Ms Purnell was employed, and in her presence, that she was being employed on probation for a period of 3 or 4 months.

23 I have no difficulty accepting the evidence of Ms Purnell. She had a very clear recollection of events and admitted matters in cross-examination quite freely. In contrast, the evidence of the witnesses for the respondent created an impression of being tailored to suit the case they were presenting. Put simply, they each stressed the supposed probationary nature of the employment and to varying degrees the general complaints of the applicant's performance. The respondent's position is that employees were always put on probation and backs this up with the evidence of Mr Booth that he was put on probation. Specifically in relation to Ms Purnell both Mr Booth and Mr McPherson, who had no role in her recruiting, but were informed of the intention to employ her, say that they didn't know how much she was to be paid, but were told that she was on probation.

24 In addition, the evidence of Mr Booth and Mr McPherson lacks any real consistency on crucial issues. However, they are both clear on the point that Ms Purnell was put on notice that she was on trial for a month and that she would report to both of them, and separately that she did not initially accept her dismissal by Mr McPherson. What precisely was said at the meeting on 20 August 1999 when they were all present, what the meeting before was about, what Ms Purnell said to them at the meeting of 10 September 1999, who was responsible for the statements in the notice of answer and counter proposal all seem less certain in their evidence than passing comments made by Mr Smallwood to each of them separately some months earlier, ie that Ms Purnell was definitely to be employed on probation. I do not find their evidence to be credible.

25 Where the evidence of the applicant conflicts with that of the witnesses for the respondent I would prefer the applicant's evidence.

26 The respondent contends that the applicant was on probation at the time of dismissal. The applicant denies this and says that her engagement did not include a period of probation. The evidence of the respondent seems to go more to the view that they always employed staff on an initial 3 month probationary period, rather than reference to anything more specific to Ms Purnell. I find that the employment contract did not include a probationary period. The applicant also argues that the respondent had built an office for her and advertised her appointment. Neither of these points are conclusive in forming a view that the applicant was not on probation, but they do add some weight to that view. Ms Purnell also challenged the view that she was on probation at the time of her dismissal. This appears essentially unchallenged in the signed record of the discussion of 10 September 1999.

27 Regardless of this it is clear, even if the contract had included a probationary period, and even if that period was extended by one month as the respondent claims, then the probationary period would have lapsed prior to the date of the alleged extension. Either way Ms Purnell was not on probation at the time of dismissal.

28 The respondent on the evidence makes a number of claims about the applicant's performance, none of which have any merit beyond general complaints which were not backed up in any substantive way. These complaints also sit slightly at odds with the notice of answer and counter proposal. They complain that the applicant caused them embarrassment due to errors in a marketing newsletter. The evidence of Mr Smallwood is that he read and approved the newsletter before it was printed and distributed. It is then hardly the fault of the applicant if errors in the newsletter caused problems for the company.

29 I do not need to deal with each of the complaints about the applicant's performance. I accept the evidence of the applicant which in effect is that where these complaints were raised they were addressed or alternatively the problems were not her sole responsibility. It would appear that the real fracture, which occurred in the employment relationship, stemmed from the initial task that the applicant was employed to undertake. That is a review of the administrative operations. It is clear that the respondent did not think much of the views expressed in the report compiled by the applicant, did not discuss it with her and simply put the report away.

30 The weight of evidence would suggest that the applicant was not liked by others in the business and that Mr Smallwood and Mr Booth did not like the manner in which Ms Purnell conducted herself in relation to staff and customers. The particular concern appears to be that she didn't listen to other staff. The key issue, excepting the matter of probationary employment, with which I have already dealt, is whether Ms Purnell was counselled about these performance concerns. For this matter I need to consider the contrasting evidence of Mr Smallwood and Ms Purnell. Mr Smallwood's evidence, including that in relation to his diary entries, was not convincing. I doubt that these notes were made around the time of the alleged discussions. I prefer the evidence of Ms Purnell.

31 I find that the applicant was dismissed harshly and unfairly. If the principles as enunciated in (*Miles and Others trading as The Undercliffe Nursing Home v The Federated Miscellaneous Workers' Union of Australia, Hospital, Service and Miscellaneous , W.A. Branch 65 WAIG 385)* are applied, which are adhered to in this jurisdiction, Ms Purnell received substantially less than a fair go all round. I find that she was not properly warned or counselled about her performance. Ms Purnell was clearly not on probation at the time of her dismissal and this argument or approach was, I consider, simply seen as an easy way of dispensing with her services. In addition, even if I were to accept the evidence of the witnesses for the respondent concerning the extended trial period, and I do not, there is no evidence on behalf of the respondent that Ms Purnell was counselled or given a fair hearing during that period. She was terminated without reason.

32 In relation to the contractual benefits claimed I find that the applicant has not made out her claim for what she says was an agreed increase in her salary. There is nothing in the evidence to suggest that this was agreed between the parties other than the applicant's claim that she wasn't happy with the level of initial salary and that this was to come under review after 3 months. I attach no significance to this 3 month review period in terms of the suggestion by the respondent of a probation period. I consider on the evidence that they are separate issues. Nevertheless the salary increase if there was to be one was not automatic and has not in my view been proved sufficiently by the applicant.

33 I am convinced on the evidence of the respondent and the applicant that the employment relationship has broken down irretrievably and that it would be impracticable for Ms Purnell to again work for the respondent.

34 The applicant gave evidence that she obtained full-time, continuing work on 16 February 2000. Prior to that date and following her dismissal she received limited employment which paid her a total of $2,959.50 [Exhibits A6 and A7]. Given my finding on salary increase, the applicant's claims which relate to an enhanced salary package fall away, and so the applicant's claim is for twenty-two weeks pay, less the amount earned, and an additional $135 for a mobile telephone account over which there is some doubt as to whether it has already been paid. This claim of compensation is largely unchallenged by the respondent.

35 Applying the principles enunciated in (*Ramsay Bogunovich—v- Bayside Western Australia Pty Ltd 79 WAIG 8, Jacob Gilmore—v- Cecil Bros, FDR Pty Ltd & Cecil Bros Pty Ltd 76 WAIG 4434* and *James A Capewell—v- Cadbury Schweppes Australia Ltd 78 WAIG 299*) I find that the loss by Ms Purnell is as claimed. Her loss is the twenty-two week period from 17 September 1999 to 16 February 2000 less the income earned. The claim includes a remuneration figure of $32,500 for salary and $12,000 for vehicle. The figure for the vehicle, from the evidence, was not specified in the contract at commencement of employment. It was simply the use of a fully maintained four wheel drive. However, the amount claimed would not appear to be excessive on the evidence of Mr Booth who under cross-examination attached a figure of $10,000 to a vehicle and maybe more depending on the vehicle. Therefore I find the loss is $18,826.94 less $2,959.50 leaving a total of $15,867.44. I would award this amount in compensation and I would award an amount of $135 for the mobile telephone account as claimed.

2000 WAIRC 00819

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	AMANDA BETH PURNELL APPLICANT *v.* ARORA PTY LTD ACN: 008 947 957 TRADING AS ARB 4X4 ACCESSORIES RESPONDENT
CORAM	COMMISSIONER S WOOD
DELIVERED	TUESDAY, 10 OCTOBER 2000
FILE NO	APPLICATION 1522 OF 1999
CITATION NO.	2000 WAIRC 00819

Representation	
Applicant	Mr T Lyons (of counsel) and with him Ms B Russell
Respondent	Mr B Walker as agent

Order.

HAVING heard Mr T Lyons of counsel on behalf of the applicant and Mr B Walker as agent for the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby—

(1) DECLARES that the applicant Amanda Beth Purnell, was harshly, oppressively or unfairly dismissed by the above named respondent on the 10th day of September 1999; and

(2) ORDERS that the respondent do hereby pay within seven days of the date of this order, as and by way of compensation, the amount of $15,867.44 to the applicant, less any taxation payable to the Commissioner of Taxation.

(3) ORDERS that the respondent do hereby pay within seven days of the date of this order, as and by way of a denied contractual entitlement, being a mobile telephone account, the amount of $135.00 to the applicant.

(Sgd.) S. WOOD,
[L.S.] Commissioner.

2000 WAIRC 00851

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	VICTOR CHARLES ROBINSON APPLICANT *v.* FORTCROSS PTY LTD T/AS GOLDEN VALLEY BOARDING HOUSE RESPONDENT
CORAM	COMMISSIONER J F GREGOR
DELIVERED	THURSDAY, 7 SEPTEMBER 2000
FILE NO	APPLICATION 1123 OF 1999
CITATION NO.	2000 WAIRC 00851

Result	Claim upheld, applicant awarded compensation of $11,000.
Representation	
Applicant	Mr B Stokes appeared on behalf of the applicant.
Respondent	Ms S Laferla appeared on behalf of the respondent.

Reasons for Decision.

1 On 20 July 1999, Victor Charles Robinson (the Applicant) applied to the Commission for orders pursuant to Section 23A of the Act arising from what he said was an unfair dismissal of him by Fortcross Pty Ltd t/as Golden Valley Boarding House (the Respondent) on or about the 28 June 1999.

2 The applicant has had a lifetime employment in catering. He served for a number of years in the Royal Australian Air Force attaining the rank of Warrant Officer caterer. After his discharge he has worked as a baker, a chef and head chef in various remote area catering positions. Prior to June 1998 he was working in the Palace Hotel in Southern Cross. Later in that year he was offered a position as a chef by the respondent at the Golden Valley Boarding House. According to his evidence this offer was made on 10 December 1998. The applicant knew the manager of the Golden Valley Boarding House, Mrs Brennan. He had worked with her in Mt Magnet. He claimed that Mrs Brennan knew that he could perform the work but more particularly that he was diabetic having been diagnosed as a Type One insulin dependant in 1967. In December 1998 there was an incident where the applicant became unconscious, apparently as a result of his illness, and was admitted to Southern Cross Hospital. He recovered and was back at work by 28 December 1998. In March 1999 while on rest and recreation leave he had answered a call from the respondent to return to Southern Cross because of a bereavement suffered by an other employee of the respondent. He responded willingly to that call for assistance. In May 1999 he had conversations with Mr Molyneux, a principal of the respondent but they were not of any great length, nor did he understand that the respondents business may be contracting for any reason. He also admitted that there was an incident involving a fire in a fish fryer, the implement had caught alight but he had extinguished the blaze.

3 On 13 June 1999 he felt unwell, but did not know why, he went to his room and was ill. Later he was again admitted to Southern Cross hospital. As a result of that admission he was flown by the Royal Flying Doctor to Kalgoorlie for treatment for haemorrhaging ulcers. He returned to the respondent's premises on 16 June 1999, he says he was told by Maxine Brennan, that a Doctor Ward had put him on two weeks sick leave and he was, in addition, entitled to a week of rest and recreation leave. When he returned to Perth he went to see a general practitioner, Doctor Christensen, who referred him to a specialist. He claims Dr Christensen told him he was incapable of working. He received no medical certificate at the time but did obtain one in the following December *[Exhibit S2]*. In June the applicant received a telephone call from John Molyneux who told him that he had discussed the applicant's illness with Maxine Brennan who recommended he be dismissed. Mr Molyneux agreed and told the applicant he was dismissed.

4 The applicant objected on the basis that neither Ms Brennan nor Mr Molyneux were medically competent to come to such a conclusion. The applicant remembered Mr Molyneux saying something about the camp getting smaller but there was no elaboration. He was going to ask more questions but Mr Molyneux brought the conversation to a close.

5 On 28 June 1999 the applicant went back to Southern Cross to collect his gear. During the visit Ms Brennan denied that she was the instigator of his dismissal. There was another cook employed on a temporary basis doing the work previously done by the applicant.

6 Since the employment terminated the applicant has been able to secure employment. He started working with Serco-Gardner Merchant, a catering company at the RAAF Base Pearce, around 10th—20th December 1999. He remains employed, cooking for between 80 and 120 people.

7 The applicant was subject to detailed cross-examination by Ms Laferla who appeared for the respondent. There is no need to summarise the cross-examination in detail in view of the conclusions I subsequently reach, nor is there any need to canvass by recitation the evidence received from Paul Michael Cumbo or the applicant's wife Janet Sydney Robinson other than to record that Mrs Robinson's evidence related mainly to her recollections of hearing her husband having a conversation on the telephone with John Molyneux.

8 The applicant contends that his dismissal was unfair on a number of grounds. It is claimed that the dismissal raises issues concerning the termination while on sick leave. It is contended that was the position he was in when Mr Molyneux telephoned and dismissed him on 28 June 1999. Although there was no medical certificate he claims he was on sick leave because Doctor Ward had said on the 13 June 1999 that he would be unfit for two weeks. For these contentions the applicant's advocate relies upon the evidence of Maxine Brennan. He argued that the applicant had been put off sick for two weeks to recuperate from his haemorrhaging ulcers and he was still off sick when he was dismissed by Mr Molyneux. It is contended on behalf of the applicant that he was not dismissed for shortage of work and in any event his services were terminated summarily by Mr Molyneux. There is no evidence of conduct which would justify such a dismissal and even if there was any, in any event the respondent is in breach of rule that is established in *Undercliff Nursing Home v FMWU* (1995) 65 WAIG 385 which requires that an applicant be given a fair go.

9 The respondent also questions that there was a bona fide redundancy. It is not a situation where the job was no longer required to be done by any person, there was still work for cooks at the respondent's premises. If the position of evening cook, which had been occupied by the applicant, was not abolished, then the position was not redundant and a question of a downturn in number of clients is irrelevant.

10 Even if there was a redundancy it was not implemented fairly. The proposed restructure was never discussed with the applicant. His services were terminated without warning, notice or consultation of any intended redundancy. There was no evidence that Mr Molyneux had discussed the redundancy with the applicant prior to his dismissal. It was immaterial that he may have had other discussions with him relating to his performance. Even Ms Brennan was surprised with the timing of Mr Molyneux's decision to terminate the services of the applicant. No one else amongst the staff had been told that there was a contemplation of terminations, nor was there any documents which corroborate such an intention. It was suggested that the defence of redundancy was offered post termination to justify what was an indefensible act of terminating the applicant's services while he was on sick leave. If there were a set of criteria created by Mr Molyneux and Ms Brennan to judge

redundancies, there was certainly no discussions with other staff. The selection process of which Mr Molyneux speaks in his witness statement was not subject to examination or debate by the applicant or anyone else, this meant he was not given the opportunity to debate the reason why he should be kept on instead of others.

11 Above is a sufficient scan of the applicant's case in this matter. The respondent says the applicant was employed as a chef at it's Golden Valley Boarding House in Southern Cross, this establishment provides accommodation and meals for employees engaged on nearby mine sites. The clientele of the respondent varies in number according to the demand for workers of those mine sites.

12 Mr John Molyneux the Managing Director of the respondent, said that he had visited Southern Cross between 20th and 24th March 1999, he became aware of the applicant's performance and was concerned by it, particularly his smoking habits. On 23 March Mr Molyneux swears that he spoke to the applicant for approximately one hour and during that conversation canvassed issues relating to his performance and the need for him to improve. A series of incidents where there had been serious compromise of safety as a consequence of the applicant's forgetfulness was brought to his attention. This included leaving gas jets on in the kitchen at night. Failure to turn on air-conditioning units. Forgetfulness which lead to damage to equipment in the kitchen through a fire. During the conversation Mr Molyneux says he told the applicant that it was unacceptable for him to leave the kitchen and go outside to smoke during meal times. Mr Molyneux issued instructions to Ms Brennan to ensure that the applicant complied. She was asked to ensure the applicant was not left by himself in the kitchen, did not smoke during the dinner hours or in particular in his bedroom. Mr Molyneux says that he was concerned about fire safety issues and his liability as a Director, bearing in mind the premises consisted of old buildings.

13 In June Mr Molyneux was told by Maxine Brennan that the numbers of clients in the camp would be dropping substantially as one of the mine sites was closing. The respondent produced monthly billings from the 30 July to 30 June 2000, these are a detailed analysis of the numbers of occupants and the income derived at various occupation levels. *[Exhibit L4]*

14 It was decided that it would be necessary to rearrange the staff given the decrease in work load and income. Mr Molyneux instructed a new budget to be prepared. This showed it was necessary to reduce the staff by one kitchen hand and one chef, this would leave the boarding house with only one chef and no kitchen hand during the dinner period. As far as Mr Molyneux was concerned, this meant that the applicant would be entirely unsuitable because if he were to collapse there would be no-one present who would be able to assist him. The potential for this to happen was real. Mr Molyneux decided to ring the applicant and tell him that his services would be terminated. It was Mr Molyneux's understanding that the applicant was on rest and recreation leave at the time. During the conversation the applicant was told that the amount of clients was down dramatically and the respondent had to take some action as a result. Mr Molyneux said he tried to be sympathetic with the applicant. He had empathy with him because they were of a similar age. There was no response from the applicant along the lines that either Mr Molyneux or Ms Brennan had made a medical decision relating to his condition. It was not the medical condition that concerned Mr Molyneux, he claims it was the fact that something could happen when the applicant was working alone. If the applicant had forgotten to take his medication, and this had happened on a couple of times, an intolerable situation was created for Mr Molyneux as a Director and Owner responsible for a Boarding House, kitchen and dining room which could burn to the ground very quickly because they were old structures. In those circumstances, safety was paramount. Safety was the reason for the dismissal and no other.

15 I need to make findings concerning witness credibility. I heard evidence from the applicant. Early in his evidence he submitted a resume which showed a different age to the age he had given the Commission in his evidence. When questioned he said that he had understated his age in order to help him get a job. The Commission questioned him about his understanding of his obligation to tell the truth. This incident by itself is not enough to draw the conclusion that the evidence of the applicant should be mistrusted, however, if there were to be other instances during the examination and cross-examination which showed the applicant had a propensity to be prepared to mislead, then that would give grounds for concern.

16 There were such instances, the applicant recanted his evidence in chief during cross-examination on a number occasions, in fact, he changed his mind while under cross-examination. Whether the applicant was forgetful or whether the actions were deliberate I have no need to consider, however, what I must turn my mind to is whether, given these lapses, that the applicant's evidence should be accepted without question. I cannot bring myself to do so. I have doubts about the quality of his evidence. I am not prepared to make a finding that he tried to deceive the Commission about his age; he did not. However, that he did offer a different age cannot be explained away in the way his advocate suggests, does give grounds for the Commission to be careful when assessing the balance of his evidence. On careful assessment the evidence must be found to be wanting. I conlude that I should not rely on the evidence advanced by the applicant unless there is corroboration. The evidence of Mr Cumbo in itself does not provide corroboration of incidents where there are differences between the applicant and the respondent. While I accept the evidence of Mr Cumbo as being truthful it does not assist the applicant to any great extent.

17 The evidence of Mr John Molyneux and Ms Maxine Brennan and Heather Sawmiller does not suffer from the same deficiencies. Their evidence appears to me to be a sourced in an honestly held view of what happened and I have no reason to disregard or de-weight it. For those reasons where there is difference between the evidence of the applicant and that of the respondent I favour that of the respondent.

18 The issues in this case raise questions of the principles to be applied in relation to unfair dismissal arising from a situation of a redundancy. These principles are well established. It is encumberant upon an applicant to establish on balance if challenging their selection for redundancy that an employee other than them should have been made redundant; *AMSWU and Another v Australian Shipbuilding Industries WA Pty Ltd* (1987) 67 733; *Gromark Packaging v FMWU* (1992) 46 IR 98. However, this is not an exclusive or sole criteria as considerations as to any unfairness in the process in affecting redundancy can also be taken in account; *MEWU v Newcrest Mining Limited* (1993) 73 WAIG 969; *FPFAIU v Jason Industries Limited* (1994) 74 WAIG 32, that is, it is open to the Commission to consider all of the circumstances surrounding the termination of the employment having regard to Section 26 of the Act.

19 I think on the balance of probabilities, the course of events in this case is that the applicant was employed in June 1998 and there were various incidents relating to sickness during and up until May 1999. During May and in particular on 23rd Mr Molyneux, having visited the site, decided that he would raise with the applicant the need for him to change his habits, particularly as they related to smoking on the job and where his forgetfulness had caused compromises in safety. I find that the applicant was made fully aware of Mr Molyneux's position. He admits he had a conversation with Mr Molyneux, but he was not able to recall in full what that conversation was about. I find that lapse of memory is convenient to him. He was told by the employer of dissatisfaction with his work. I accept the evidence of Mr Molyneux that he had left instructions with Ms Brennan that she was to monitor the applicant's performance and they were given because of concerns about liability if there were accidents arising from the applicant's inattention to his work.

20 I find as a matter of fact there was a downturn in the business of the respondent and that the respondent was entitled to make such adjustments to its staff as it believed appropriate, at the time, to do so was its prerogative. See *AMWSU and Another v Australian Shipbuilding Industry (ibid)*. The respondent therefore decided, as it was entitled to do, that it would reduce its workforce by doing away with a kitchen hand position and one chef cook. Mr Molyneux made that decision and without discussing the timing of redundancies with Ms Brennan. Mr Molyneux had decided that the applicant was unsuitable to continue as a chef when there would be no-one to safety monitor him, this would occur if the kitchen hand position was taken away during evening cooking. It is for this reason that Mr Molyneux decided that the applicant had to go. The applicant was given no chance to discuss this decision, he was merely told that his contract of employment was finished. The question is; was the respondent on the law to be applied entitled to do this? There was no consultation with the applicant once a definite decision had been made by the respondent to make him redundant. There was no compliance by the respondent with the terms of Part 5 of the *Minimum Conditions of Employment Act* 1993 (MCE Act) to the extent that those provisions are implied into the contract of employment. The respondent has lawful obligation to discuss with effected employees the matters which are set out in the Act.

21 Those obligations to discuss carry with them more than just an obligation to advise of a decision, which is what occurred when Mr Molyneux rang the applicant. The purpose of the obligations is to enable adequate warning of impending redundancies to be given to enable employees to collect information relevant to the redundancy and have some input into the selection process to enable them to canvas alternatives to the redundancy if there are any and to consider means 'that may mitigate against the adverse affects of redundancy'. The MCE Act contemplates these steps should be regarded as a natural incident of a harmonious working relationship. There was no response to the statutory obligation to consult with this applicant as part of the redundancy process; *Newcrest (supra) per Rowland AP at 317*.

22 There is also no indication that the comparative test in the *Australian Shipbuilding Industries (ibid)* was applied, except to the extent that some of the other employees perhaps would be more suitable because they did not suffer the same medical condition of the applicant. However, there is no substantial evidence to allow the Commission to make a positive finding about that although there are reasons for some disquiet about what sort of comparative test was used. I am unable to reach a conclusion that objectively viewed, the dismissal of the application was erroneous or unfair in a comparative sense through lack of evidence. However, the failure to consult is clear as I have discussed above.

23 If I am wrong about these conclusions, on the face of it, the applicant was dismissed summarily for in effect being unable to perform the work because of so called safety reasons. It is understood that an employer has obligations concerning safety performance of its business and that there are risks to Directors but the risk which was faced in this case could have been overcome by other methods. The respondent decided that the reason the applicant had to go is that he would have worked alone in the evenings. There was no effort, on the evidence, made to explore whether he might be able to work at other meal times when he would not be alone.

24 I have previously found that I was concerned about the quality of the applicant's evidence. I still remain concerned. I believe that the respondent was acting responsibly when it tried to deal with the situation created by the way this applicant went about his duties and I am most reluctant to find against them because of his conduct. However, there was a clear statutory duty breach by the respondent arising from how they handled the redundancy. The Commission is to take all of the factors into consideration and that failure weighs very heavily in the balance, so much so, that it overcomes the reluctance I would have otherwise, because of the applicant's conduct, to find against the respondent. The dismissal was unfair on two counts: failure to consult about the redundancy, and the summary nature of the dismissal. Those two issues are important and even though they might said to be procedural faults and the Industrial Appeal Court and *Shire of Esperance v Moritz* (1991) 71 WAIG 891 is said procedure is only one of the issues to be considered, in this case they must be given considerable weight and I have no alternative in applying that weight but, to find that the applicant has been unfairly dismissed.

25 The applicant left the position almost a year ago and he now works fulltime at RAAF Pearce. It is inappropriate to order reinstatement. I decline to do so. I will address the question of compensation. The respondent says applicant is required to mitigate his loss. It was common ground that Ms Brennan had offered the applicant part-time work almost immediately. This would have resulted him working one week in four during the period he was unemployed. It was not unreasonable, according to the respondent, to expect him to accept that work. The respondent argues it is not the first time the applicant has been laid off. He had worked in similar circumstances and had no difficulty in coming back to work for a second time.

26 It is submitted on his behalf that there was no evidence that if the applicant had not been dismissed on 9 June 1999, that he would have been terminated shortly thereafter. The offer of one weeks work in four was vague and in any event did not provide a proper recompense in the circumstances. The Commission is required to fix compensation in this case. I have decided that reinstatement would be unavailing and in that case the applicant has a legal entitlement to loss or injury caused by his dismissal pursuant to Section 23A(2)(b)(a) of the Act.

27 As described in the Full Bench in *Boganovich v Bayside Western Australia Pty Ltd* (1999) 79 WAIG 8, "*loss or injury may include hurt and stress*". In *Bayside (ibid)* His Honour the President expressed the principles to apply, these include inter alia that the Commission—

- Make a finding as to the loss or injury which the person has suffered by reason of dismissal.
- The employee is required to establish the loss or injury on the balance of probabilities.
- The Commission is then required to compensate to the fullest extent of the loss or injury up to an including the statutory limit as specified in Section 23A(4) of the Act.
- Compensation is not compensation as defined, if it does not, as much as possible put the person who has suffered the injury or loss or damage back into the position which, but for the loss or damage or injury the person would have been.
- If the Commission does not do so, then there will be error and the Commission will act in conflict of equity, good conscious and the substantial merits of the case.

28 From the evidence before the Commission, it appears that the applicant did try to mitigate his loss. He managed to do so when he obtained employment with Serco Gardner Merchant Pty Ltd on the 9 November 1999. It appears that he was out of work for the period between the 28 June 1999 and the 9 November 1999. This is a total period of 20 weeks. According to the information before the Commission the applicant received $550 per week, making a total loss of $11,000. There were no submissions before the Commission as to injury, it must be assumed that the total loss or injury was $11,000, this amount will be awarded as compensation.

29 Orders will issue that the applicant was unfairly dismissed that reinstatement is unavailing and that he be paid a total of $11,000 in compensation.

2000 WAIRC 00842

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	VICTOR CHARLES ROBINSON APPLICANT *v.* FORTCROSS PTY LTD T/AS GOLDEN VALLEY BOARDING HOUSE RESPONDENT
CORAM	COMMISSIONER J F GREGOR
DELIVERED	MONDAY, 9 OCTOBER 2000
FILE NO/S	APPLICATION 1123 OF 1999
CITATION NO.	2000 WAIRC 00842

Result	Claim upheld, applicant awarded compensation of $14,580.
Representation	
Applicant	Mr B. Stokes appeared on behalf of the applicant
Respondent	Ms S. Laferla and Mr J.H. Brits appeared on behalf of the respondent.

Order.

HAVING heard Mr B Stokes on behalf of the applicant and Ms S Laferla and Mr J.H. Brits on behalf of the respondent, the Commission pursuant to the powers conferred on it under the *Industrial Relations Act, 1979*, hereby orders—

THAT—

1. Victor Charles Robinson was unfairly dismissed by Fortcross Pty Ltd t/as Golden Valley Boarding House.
2. Reinstatement would be unavailing.
3. Fortcross Pty Ltd t/as Golden Valley Boarding House pay Victor Charles Robinson the sum of $14,580 in compensation, to be payable in three equal payments. The first payment to be forthwith followed by two payments in each succeeding month.

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

2000 WAIRC 00401

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	BRYAN FRANCIS STOKES V THE TYPING CENTRE OF PERTH PTY LTD T/A AUSTRALIAN INTERNATIONAL COLLEGE OF COMMERCE
CORAM	COMMISSIONER A R BEECH
DELIVERED	THURSDAY, 24 AUGUST 2000
FILE NO	APPLICATION 779 OF 1999

Result	Application alleging unfair dismissal dismissed for want of jurisdiction
Representation	
Applicant	Mr B.F. Stokes
Respondent	Mr C. Toohey (of counsel)

Reasons for Decision.

1 Following the determination by the Commission of the preliminary issue of whether Mr Stokes was a casual employee, the Commission has now heard the submissions of the parties regarding whether Mr Stokes was dismissed and if he was whether the dismissal was unfair.

2 The background facts of Mr Stokes' employment are set out in detail in the earlier Reasons. It is sufficient for this decision to note that Mr Stokes had been teaching one of the modules in the Certificate in Para-Legal Studies course. He taught on the five days of the week. On Thursday, 3 June 1999, approximately three weeks prior to the end of the module, Mr Stokes was called to a meeting with Ms Julia Jenkins who is the respondent's manager. Ms Jenkins is based in the Eastern States. She had not met Mr Stokes before and commenced the discussion by asking his views on the viability of introducing a night course. He gave a positive response and she then informed him that it was the respondent's intention to appoint a back-up trainer to teach the second module in such a way that the new trainer and Mr Stokes could teach day and night classes between them. She informed Mr Stokes that she was not exactly sure how it would affect him but as she intended to trial the new trainer in the next module, Mr Stokes would not be required for the 10 weeks duration of the new module which would give him time to "organise his other work".

3 I am satisfied that Mr Stokes became quite angry and upset at this news. Mr Stokes informed Ms Jenkins that he had been employed to teach the course, that he knew the law, that the College could not do that to him, that it amounted to constructive dismissal and that he would commence an action to sue them accordingly. He then left the meeting.

4 I am also quite satisfied that Ms Jenkins was stunned at his reaction. I accept Ms Jenkins' evidence that his reaction was unnecessary and was seen by her as "over the top". Her evidence is supported by Mr MacDonald, who was also present at that conversation. His evidence is that he was taken aback by Mr Stokes' reaction. In the result, Ms Jenkins did not know if Mr Stokes had left the respondent's employ or if he would return on the Friday to continue teaching. She therefore cancelled Mr Stokes' Friday class out of concern for the students and collected all his notes and text books from his desk and put them in Mr MacDonald's office.

5 Mr Stokes' evidence is that that evening he prepared his notes for the Friday's class. On Friday he attended the College prior to the 9.00am start. He says he even prepared some photocopies for distribution to the class and he gave these to Mr MacDonald. Mr Stokes discovered that his books had been removed from his desk. He spoke to Mr MacDonald who invited him to come in and meet again with Ms Jenkins.

6 Ms Jenkins said that she wanted to discuss the problem. Mr Stokes said he was ready to work and asked if he was teaching that day. Ms Jenkins informed him that his class had been cancelled. He asked if he was being dismissed and he was told that he wasn't being dismissed. Ms Jenkins told him that she was trialling a new trainer and that Mr Stokes was casual and paid by the hour on an as-needed basis. Mr Stokes replied that that was "rubbish" and an insult to his intelligence. He said that he was here to work and if his employer was not offering him work then his employer was dismissing him and he would have an application claiming unfair dismissal on their desk by close of business that same day. I am satisfied also that at this meeting Mr Stokes became loud and aggressive and his manner suggested a rudeness which Ms Jenkins found unacceptable. I reach that conclusion because Ms Jenkins said she had no intention of arguing with him, that if he did not want to discuss the matter then he should leave and the College would be in touch with him. She informed him that his books were collected on a particular table and he was requested to collect them himself and leave.

7 Mr Stokes did leave. He thanked Mr MacDonald for being "a good boss", shook his hand and departed. He forthwith lodged this claim in the Commission claiming unfair dismissal and served it upon Mr MacDonald later that same day. In it, Mr Stokes claims that he was dismissed on that day, 4 June 1999. Mr Stokes relies primarily on the fact that he reported for work in the ordinary course

of events and was prepared to teach on that day. He found his class had been cancelled and he was told by Ms Jenkins to leave.

8 However, the evidence of Ms Jenkins, supported by Mr MacDonald, is that the Friday class was only cancelled by them because they feared from the strength of his reaction in their discussion the previous day that he would not be working on the Friday. Rather than have students attend the class in the absence of the trainer, Ms Jenkins decided that they would cancel the class. They made the decision to remove his books in case Mr Stokes had made a decision not to continue. It was seen by them as a precaution. I find that Mr Stokes' aggressive response and perceived rudeness towards them precipitated that reaction.

9 It was also his aggressive response and perceived rudeness on that day that caused Ms Jenkins to ask him to leave the premises. On the evidence, Mr Stokes was asked to collect his books and leave because his attitude prevented Ms Jenkins from being able to discuss the matter rationally with him. In the notes Ms Jenkins made after that meeting she wrote that she requested Mr Stokes to collect his belongings and leave. In her evidence in the Commission she states that she did so because—

> "… we weren't getting anywhere. He was aggressive. He was loud. He was very upset. He wasn't willing to discuss anything in a rational manner and I wasn't prepared to stand in our front office and argue with him."
>
> (transcript page 147)

10 Therefore, the reason why Ms Jenkins requested Mr Stokes to leave was his aggressive and uncompromising stance and not any intention on the part of the College that his employment would be terminated at that point. I accept unhesitatingly the evidence of Ms Jenkins that she did not intend to dismiss him and was not in fact dismissing him. In that context, it is relevant that there was three weeks' training remaining in the module and there is nothing whatever in the evidence to suggest any intention at that time on the part of the respondent that Mr Stokes would not continue training to the end of that module. I am inevitably led to the conclusion that had Mr Stokes' reaction not been as it was, he would have continued teaching for the balance of that module.

11 I therefore reach the conclusion that Mr Stokes was not dismissed by the respondent on 4 June 1999.

12 It was the lodging of this application, on the evidence of Mr MacDonald, that prevented any further discussion between Mr MacDonald and Mr Stokes, and prevented Ms Jenkins from getting in touch with Mr Stokes. As she stated, she would have been in touch with Mr Stokes, but he got in touch first when he lodged the application (transcript p.137 and see also pp 130 and 140) and "it is quite difficult to work anything out with anybody who is trying to sue you" within 5 hours (transcript p.140). This conclusion is quite consistent with the firm and unshaken evidence of Ms Jenkins that at no time had she dismissed Mr Stokes. Mr Stokes' agrees that Ms Jenkins did tell him at the time that she was not dismissing him. The action of Mr Stokes in lodging this claim in this Commission on 4 June 1999 does not convert the respondent's action into an act of dismissal when it was not otherwise an act of dismissal.

13 Mr Stokes argues that the situation is properly to be characterised as a constructive dismissal. He submits that he was placed in the situation where Ms Jenkins made it quite plain that either he accepts the new arrangement whereby a new trainer would be engaged and he would not be employed for the second module, or he was to leave. Mr Stokes said that he chose to leave. However, that was not the choice at all. I do not understand Ms Jenkins' evidence to have put that to him as an ultimatum. To the contrary, her evidence makes it quite plain that her direction to him to leave, with his books, was a direct response to Mr Stokes being aggressive, loud, upset and not willing to discuss anything in a rational manner. However, at the time he left the premises it was the intention of Ms Jenkins to discuss further the issue, that is, the issue of the respondent's intention to appoint a back-up trainer and not offer work to Mr Stokes for 10 weeks, with Mr Stokes when it was possible to do so in a calm and rational manner. It is a fact that this did not occur because her intention was overtaken by his serving on the College within a few hours the claim alleging unfair dismissal. Given Mr Stokes' reaction and his manner, Ms Jenkins was entirely reasonable in requesting that Mr Stokes leave.

14 There is no definitive definition in this jurisdiction of what will constitute a constructive dismissal for the purposes of s.29(1)(b)(i) of the Act. Each case is to be looked at on its own facts (*Attorney General v WA Prison Officers Union* (1995) 75 WAIG 3166 at 3169; 62 IR 225). It can include a case where an employer gives an employee an option of resigning or being dismissed or where an employer has followed a course of conduct with the deliberate and dominant purpose of coercing an employee to resign. Neither of those two cases applies to the facts of this matter. Can it be said on the facts in this matter that in substance the respondent dismissed Mr Stokes? What is important in a constructive dismissal is that the termination of the contract occurs as a result of the actions of the employer, not the employee. I am unable to conclude that Mr Stokes was constructively dismissed. The request from Ms Jenkins for Mr Stokes to leave was a direct consequence of Mr Stokes' behaviour, not the respondent's behaviour. There was on 4 June no conduct on the part of the employer which was "plainly inimical" to a continuation of the contract of employment (*Blaikie v SA Superannuation Board* (1995) 64 IR 145 at 163; 65 SASR 85 at 102) for at least the next three weeks. Ms Jenkins' intention was not to dismiss Mr Stokes nor to put him in a situation where he would resign. It cannot be said that on 4 June Mr Stokes had no effective or real choice but to resign: *A.S. Doumit v ABB Engineering Construction Pty Limited* AIRC FB, 9/12/96 Print N6999 at p13.

15 Mr Stokes argues in the alternative that he was dismissed because the respondent was substantially changing the contract by withdrawing work from him. He argues the respondent did not have the right to do so and it was unfair to him for the respondent to do so. In fact, Ms Jenkins was giving notice to Mr Stokes that in 3 weeks' time the respondent would not need him for the 10 week period during which a new trainer would be employed. By implication, Mr Stokes would continue working for the three remaining weeks of the module, be "stood down" without pay for the next 10 week period and then be given work, and paid for it, after that 10 week period.

16 At common law an employer has no right to stand down an employee during a period when he or she cannot be usefully employed: *Re Building Workers Industrial Union of Australia* (1979) 41 FLR 192 at 194. Such a right might be granted by the contract of employment between the employee and the employer if it had been agreed when the contract was made. No such right existed in the contract of employment between Mr Stokes and the respondent. Mr Stokes was employed to teach the modules set out in the curriculum subject to everything going well and the respondent being satisfied with his work. The respondent could not unilaterally take work away from him if everything was going well and the respondent was satisfied with Mr Stokes' work. On the evidence, everything was going well. Ms Jenkins' own evidence is that to the extent that there was to be any discussion between the respondent and Mr Stokes regarding the quality of his training thus far, there had been nothing serious which could not have been sorted out. As noted, Ms Jenkins was under the impression that Mr Stokes had been employed, and had signed, the respondent's usual contract of employment which, apparently, confers the right to stand down a trainer. Therefore, if Mr Stokes had in fact been "stood down" for that 10 week period it would have been in breach of his contract of employment and that is likely to have constituted a sufficient breach to allow Mr Stokes to terminate the contract. In that case, I would hold that in substance the respondent dismissed Mr Stokes because effectively standing him down for 10

weeks would be conduct on the part of the employer which was "plainly inimical" to a continuation of the contract of employment. He would have been entitled to treat the contract as at an end.

17 Therefore, if the respondent's stated intention had occurred, the respondent would in effect have dismissed him in breach of its contract of employment and Mr Stokes would be correct to claim that he had been dismissed and that it was unfair.

18 However, Mr Stokes' argument has two significant hurdles to overcome. Firstly, it is trite to observe that the respondent's stated intention did not come to pass. Mr Stokes' contract of employment did not come to an end at the end of that 3-week period. The respondent's stated intention was overtaken by the cessation of the contract of employment on 4 June brought about by Mr Stokes' own precipitate action.

19 It is at least possible that if the environment had been such to allow a reasonable discussion to occur about the respondent's stated intention within the 3 week period it is possible that Ms Jenkins may have not proceeded with her intention once the nature of Mr Stokes' contract of employment was correctly understood by the respondent. Ms Jenkins' evidence before the Commission described the meeting of 3 June as "an announced intention in a friendly discussion" (transcript page 129) that at the end of the three weeks which remained in that module, the respondent would put in a new trainer for the next module and Mr Stokes could teach the module after that. After all, Mr Stokes and Ms Jenkins both had different understandings of Mr Stokes' contract of employment. Mr Stokes understood that he was not a "casual" employee in fact, and put this in the bluntest possible way to Ms Jenkins. Ms Jenkins assumed that Mr Stokes had been employed in accordance with the respondent's usual written contract and was unaware that he had not been so employed. Accordingly, and in good faith, Ms Jenkins was of the view that the respondent was well within its rights to introduce another trainer for the second module and not employ Mr Stokes for that module. If Ms Jenkins was properly advised that her understanding was wrong then it is at least possible that Ms Jenkins may have not proceeded with her intention.

20 I accept that Mr Stokes believes that Ms Jenkins had made up her mind. I also note the fact that the respondent had advertised for a new trainer and that the respondent's practice in other units both in this State and in the Eastern States is to have two trainers for each subject. However, whether the stated intention would have become reality, or whether a compromise would have been found, will never be known because the strength of Mr Stokes' reaction to Ms Jenkins overtook the situation.

21 The second hurdle is the respondent's submission that it is able to rely upon its discovery that Mr Stokes has been disbarred from practising as a solicitor, a fact not known to it at the time, to justify any dismissal which the Commission finds to have occurred.

22 It is now quite settled that facts which existed at the time of a dismissal, but which came to light only subsequently, might justify the dismissal when otherwise it would be harsh, unjust or unreasonable: *Byrne v. Australian Airlines Ltd* (1995) 185 CLR 410 at 430. That is the case here. Ms Jenkins indicated that subsequent to the departure of Mr Stokes, she contacted the legal trainer at the Adelaide College and asked him to assist her in discovering whether the information she had been given regarding Mr Stokes' disbarment was in fact true. The information was confirmed.

23 I therefore find that the respondent is indeed able to rely upon the knowledge it now has that Mr Stokes has been disbarred. Mr Stokes submits that the fact of his disbarment is effectively irrelevant. He did not need to be a practising solicitor in order to be a trainer in the Para-Legal Studies course with the respondent. Neither did the respondent require him to be a practising solicitor when it employed him. He was never asked at the interview whether he was a practising solicitor or whether he had been disbarred. He was not obliged to volunteer the information that he was disbarred at the interview, neither did he mislead the respondent.

24 In my view, and with respect to Mr Stokes, those submissions are beside the point. While Mr Stokes may be of the view that his disbarment is effectively irrelevant to his ability to train in the Para-Legal Studies course, that is not an assessment he is entitled to make on behalf of the respondent. The respondent may, if it wishes, also come to that view but it would only have been able to do so if it had full knowledge of the fact of his disbarment. The evidence shows that the respondent would not have come to that view. On the evidence, if the respondent had that knowledge prior to employing Mr Stokes, it would not have offered him the position. Indeed, Mr Stokes acknowledges as much and that is why he did not volunteer the information at the time of his interview. He was asked—

> Q: The fact that you have been found guilty of offences relating to these areas, is it fair to assume that this would be of concern to a prospective employer, if you were going to be teaching these things, and—whether in practice it had any effect whatsoever, but I'm not asking that question, but is it fair to assume that an employer would be concerned?
>
> A: Yeah, I think generally employers are concerned at people's criminal record, and, yes, yes, I think that would be the case.
>
> (transcript p.109)

25 As Mr Stokes subsequently said, he did not volunteer the information because he needed the job very badly. Nevertheless, Mr Stokes can hardly be heard to complain if the employer who would not have employed him if the fact of his disbarment had been known to it subsequently discovers the fact and thereupon dismisses him due to him being unsuitable for the position.

26 The evidence of Ms Jenkins is that the respondent's reputation in the education field is of significant importance. Her evidence is that the College has to uphold its reputation and has to stand up in front of students and say that the students are getting the best qualified trainers the College can get, and that would not be the case with Mr Stokes. I accept her evidence and find that the reputation of the College will hinge in large part on the reputation of its staff.

27 On the evidence before the Commission, the fact of Mr Stokes' disbarment does make him unsuitable for the position. It is not just an issue of whether he has the knowledge to teach the Para-Legal Studies course. The respondent's advertisement for the position (exhibits B and 14) required a person who was a solicitor, that is, a person who practiced or applied the law, as distinct from, for example, a person with a law degree. That is apparent from the respondent's requirement that the person be a solicitor with 5 years' experience practising the law (and compare the draft advertisements in exhibit A). I am led to the conclusion that the status of a solicitor was a significant factor from the respondent's viewpoint. Indeed, Ms Jenkins' evidence is that this is a minimum requirement for the respondent's accreditation to train the course. Mr Stokes made much of the fact that the advertisement did not specify that the person had to be a currently practising solicitor and that he has more than 5 years' experience as a solicitor, thus more than fulfilling the requirement in the advertisement. Furthermore, there was no suggestion at the interview that he had to be a currently practising solicitor.

28 However, as Ms Jenkins alluded under cross-examination, there is a significant difference between Mr Stokes not being a currently practising solicitor and Mr Stokes not being allowed to be a practising solicitor because he has been struck off the Roll after being found guilty of illegal conduct. Mr Stokes admits that he was disbarred on 6 August 1992. He admits that he was guilty of illegal conduct. While there is no question that Mr Stokes has the knowledge to train in the Para-Legal Studies course, the fact that one of the respondent's staff has been disbarred, and has been fined for the offence that Mr Stokes described, can only have an adverse impact on

the reputation of the College. It is not without significance that one element of the course concerns professional ethics, even if that element is not a significant part of the course.

29 I therefore find on the evidence that Mr Stokes' employment would not have survived the discovery of the fact of his disbarment. He would have been dismissed and that dismissal would have been for a justifiable reason. While the precise date that Ms Jenkins confirmed the fact of Mr Stokes' disbarment is not clear from the transcript, the fact is that on about 2 June Ms Jenkins had been told that Mr Stokes had been disbarred from practising as a solicitor, she subsequently confirmed the fact and I find it unlikely that Mr Stokes' employment would have continued past the three weeks that Ms Jenkins intended him to continue training. Therefore, even if Mr Stokes had been dismissed because the respondent had substantially changed the contract by withdrawing work from him, the respondent is able to rely upon the fact of Mr Stokes' disbarment to justify the dismissal when otherwise it would be harsh, unjust or unreasonable: *Byrne v. Australian Airlines Ltd* op. cit.

30 I am therefore not of the view that Mr Stokes' application can be dealt with on the basis of the respondent's stated intention to effectively stand him down in 3 weeks' time. Further, as already found, Mr Stokes was not dismissed on 4 June and his claim therefore that he was unfairly dismissed will be dismissed for want of jurisdiction.

2000 WAIRC 00400

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	BRYAN FRANCIS STOKES V THE TYPING CENTRE OF PERTH PTY LTD T/A AUSTRALIAN INTERNATIONAL COLLEGE OF COMMERCE
CORAM	COMMISSIONER A R BEECH
DELIVERED	THURSDAY, 24 AUGUST 2000
FILE NO	APPLICATION 779 OF 1999

Result	Application alleging unfair dismissal dismissed for want of jurisdiction
Representation	
Applicant	Mr B.F. Stokes
Respondent	Mr C. Toohey (of counsel)

Order.

HAVING HEARD Mr B.F. Stokes on behalf of himself as the applicant and Mr C. Toohey (of counsel) on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT the application be dismissed for want of jurisdiction.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

2000 WAIRC 00766

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	TERRANCE WESTMANCOTT APPLICANT *v.* DELSANA HOLDINGS PTY LTD T/AS VILLA DELLA LUNA RESTAURANT RESPONDENT
CORAM	CHIEF COMMISSIONER W S COLEMAN
DELIVERED	FRIDAY, 29 SEPTEMBER 2000
FILE NO/S	APPLICATION 201 OF 2000
CITATION NO.	2000 WAIRC 00766

Result	Application upheld
Representation	
Applicant	Mr T Westmancott
Respondent	no appearance

Reasons for Decision.

1 This application pursuant to section 29(1)(b)(i) of the Act was lodged at the Commission on 14th February 2000. The Declaration of Service notes that this was discharged by the applicant by "person to person" at 112-115 Oxford Street Leederville on 18th February 2000.

2 The Commission's file records that telephone contact was made with the respondent by an officer of the Commission on or about 14th March 2000. In response to the request for another copy of the application because that which had been served had been misplaced, a facsimile copy was transmitted to the respondent.

3 Pursuant to a direction from the Commission to the Deputy Registrar to investigate and report on the application under section 93(8) of the Act, arrangements were made for the parties to discuss the matter on 4th April 2000 and 5th April. Notifications of these arrangements were sent to the parties by express post. The respondent's notice was sent to Mr Tony D'Angelo, 112-115 Oxford Street Leederville W.A. 6007. Another request was forwarded in the same manner for discussions on 19th April. No correspondence was returned "unclaimed". The Deputy Registrar also advised the Commission that she had attended the respondent's address but had not been able to make contact.

4 On 4th September 2000 notices for a conference to be held at 9.30 am on Thursday 28th September were sent to the parties. On the same day notices of hearing were also mailed to the parties. This documentation indicated that if the matter was not settled in conference the matter would proceed to hearing at 10.30 am 28th September. None of this correspondence was returned "unclaimed". The respondent did not attend for the conference.

5 At 10:40 am the Commission proceeded to hear the matter. This followed several attempts by Chambers staff to contact the respondent by telephone earlier in the morning. There was no appearance for the respondent.

6 The applicant Mr Westmancott was employed in a pizzeria close to his home. In November 1999 he was approached by a friend with whom he had previously worked who enquired as to whether Mr Westmancott was interested in a position of another pizzeria and restaurant where the friend was the chef.

7 Mr Westmancott expressed interest and was interviewed for the position by the manageress Catherine. It is Mr Westmancott's evidence that the attraction of the new position was that he could work with his friend the chef and learn more about food preparation and cooking from him. However to make it worth his while, it had to be a full time position and the hourly rate above that which he was being paid under the workplace agreement covering his employment at the pizzeria close to his home, that is

$12 per hour. The expense of travelling from Gosnells to Leederville needed to be taken into account.

8 Mr Westmancott submitted that he proposed an hourly rate of $14.00. The rate agreed upon was $13.00 per hour. It was his understanding that the position was a full time appointment. Indeed the arrangement was that he worked six days a week with Tuesdays off. His evidence is that he worked approximately 50 hours per week. A copy of pay advice slips for cheques dated 1st December, 8th December, 22nd December and 29th December respectively shows hours totalling 44, 44.25, 50.25 and 36.25 for each period. (see Exhibit 1). Mr Westmancott indicated that public holidays around Christmas reduced the time he worked.

9 Mr Westmancott noted that during the time of his employment the proprietor of the pizzeria and restaurant told him that his employment had been changed from full time to casual. Mr Westmancott stated that he accepted this advice. However it did not affect the hours he worked.

10 Although his working relationship with the manageress was at times stressful there was on Mr Westmancott's evidence nothing to suggest that his continued employment was under threat. However, according to Mr Westmancott when the manageress returned from her holidays and her brother commenced work the situation changed. Despite reassurances from the proprietor that the brother was only an "all-rounder" learning the work and that Mr Westmancott's position was secure, his services were terminated just after the manageress' brother commenced work.

11 Mr Westmancott reiterated what he had set out in his application, that is

> "I believe I was unfairly dismissed because I was told by the manager Catherine that her brother Matt (who started that day) was being trained at half my wage and therefore I was no longer required. In a conversation with the owner Tony I was told that Matt was an "all-rounder" not a pizza chef. However I was employed as a pizza chef and was dismissed as Matt could have my job."

12 Mr Westmancott is not seeking reinstatement having secured other employment. However he also believes that the respondent has sold the pizzeria and restaurant business. In the absence of any evidence from the respondent and on the basis of my assessment that I believe Mr Westmancott to be an honest person, I have formed the view that the termination was harsh and unfair. I accept that Mr Westmancott was employed by the respondent on the basis that the position was full time employment. While he accepted the unilateral change in his status it would seem that he had little option. Anyway no matter what the respondent chose to call it the applicant's employment continued on a regular, full time arrangement with one day off in seven.

13 But it is not that incident which gave rise to the claim. It was that which occurred 19th January 2000 when the manageress' brother commenced employment. It is unfair that the applicant's services should have been summarily terminated to make way for someone whose wage was considerably less. In the circumstances put my Mr Westmancott, which stand unrefuted, it can hardly be said that he was given a "fair go all round."

14 Mr Westmancott identified his loss as being equivalent to the amount he claims he should have received if he had been given notice and the loss of income in the period between the termination and when he was able to secure other employment. I accept Mr Westmancott's evidence that he used his best endeavours to mitigate the loss in applying for other positions.

15 I consider that in compensating Mr Westmancott to the full extent of his loss that payment should be calculated on the basis of an amount equivalent to four weeks pay at the hourly rate of $13.00 for 49.5 hours per week. In awarding compensation I accept that reinstatement or re-employment is impractical given the circumstances which the applicant believes exist with respect to the business, which I accept and the unlikelihood of the relationship with the manager being re-established. The minutes of the proposed Order giving effect to this decision now issue.

2000 WAIRC 00782

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	TERRANCE WESTMANCOTT APPLICANT *v.* DELSANA HOLDINGS PTY LTD T/AS VILLA DELLA LUNA RESTAURANT RESPONDENT
CORAM	CHIEF COMMISSIONER W S COLEMAN
DELIVERED	TUESDAY, 3 OCTOBER 2000
FILE NO/S	APPLICATION 201 OF 2000
CITATION NO.	2000 WAIRC 00782

Result	Order issued
Representation	
Applicant	Mr T Westmancott
Respondent	no appearance

Order.

HAVING heard Mr Westmancott and there being no appearance by the respondent; and

HAVING assured itself that all notices had been forwarded to the Respondent; and

HAVING found that the applicant Mr Terrance Westmancott to have been unfairly dismissed;

NOW therefore the Commission pursuant to the authority under the Act hereby orders that—

(a) the respondent pay to the applicant Mr Terrance Westmancott the sum of $2574.00, and that

(b) the amount of $2574.00 be paid to Mr Terrance Westmancott within 14 days of the date of this Order.

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

SECTION 29 (1)(b)—Notation of—

Applicant	Respondent	Number	Commissioner	Result
Adams W	CY O'Connor College of TAFE	411/2000	Beech C	Discontinued
Ahern K	University of WA	1086/2000	Kenner C	Discontinued
Ahmed M	Go-Medical Industrial Pty Ltd	1238/1999	Beech C	Discontinued
Anderson R	Brenline Pty Limited (trading as) Kontrail	1223/2000	Kenner C	Discontinued
Anderson TMA	Batavia Coast Removals & Auctioneers	622/2000	Beech C	Withdrawn by leave
Andrew B	Hiltone Body Works Pty Ltd	1061/2000	Beech C	Discontinued
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Anodisers WA & Others	1232/1997	Kenner C	Discontinued
Barbuzza D	WA Terrazzo Tile Manufacturers	349/2000	Beech C	Discontinued
Bawden IC	Beltreco Ltd	1078/2000	Kenner C	Discontinued
Beard GW	P & O Ports Limited T//as Fremantle Haulage Containers	1930/1999	Beech C	Discontinued
Bellotti AJ	Hon Minister for Police (WA)	PSAB 09/1999	Kenner C	Discontinued
Bentley C	Plant Bird and Fish Nursery	1046/2000	Kenner C	Discontinued
Blackford T	Abacus (WA) Pty Ltd	1606/1998	Kenner C	Discontinued by leave
Blair MD	Dalemoss Pty Ltd T/A Ray White Valuers (WA)	997/2000	Beech C	Withdrawn by leave
Blenkinsop SF	Sanford Securities Ltd	1141/1999	Beech C	Discontinued
Bolton SM	Kailis Consolidated Pty Ltd	897/2000	Scott C	Withdrawn by leave
Bottrell KL	Volona Nominees Pty Ltd	1231/2000	Beech C	Discontinued
Brink KJ	My Place (WA) Pty Ltd	793/2000	Kenner C	Dismissed for want of prosecution
Brock VE	SSL Nationwide Facilities Management/Spotless Services Australia Limited	418/2000	Beech C	Discontinued
Brooks RD	Jonstyle Furniture Manufacturer Pty Ltd	468/2000	Beech C	Discontinued
Broun JA	Australian Health Pty Ltd T/A Risk Management Technologies	1236/2000	Beech C	Discontinued
Browne J	Brian Wong Murdoch Dental Centre	592/2000	Wood C	Discontinued
Builders' Labourers, Painters & Plasterers Union	Contract and Management Services	PSAC12/2000	Fielding SC	Withdrawn
Campbell FG	Straits Resources Limited	1922/1999	Beech C	Discontinued
Carlucci L	United Constructions	1152/2000	Beech C	Withdrawn by leave
Carrigg WMJ	Nationwide Environmental Management Pty Ltd	1007/2000	Scott C	Dismissed
Casserly DR	Cook's Construction Pty Ltd	1355/1999	Beech C	Dismissed
Civil Service Association	Chief Executive Officer, Aboriginal Affairs Department	PSAB 5/2000	Fielding SC	Discontinued
Civil Service Association	Chief Executive Officer, Department of Productivity and Labour Relations	PSAB 5/2000	Fielding SC	Discontinued
Coatalen JM	Skilled Engineering Limited	758/2000	Beech C	Discontinued
Collis GJ	P & O Ports Limited T//as Fremantle Haulage Containers	1931/1999	Beech C	Discontinued
Crosby DJ	Greenwest Products Pty Ltd	1239/2000	Scott C	Withdrawn by leave
Crossing JW	Ladang Jalong Australia Pty Ltd and Malaysian Australian Business Trade Development Pty Ltd	1877/1999	Scott C	Dismissed
Crossing RW	Ladang Jalong Australia Pty Ltd and Malaysian Australian Business Trade Development Pty Ltd	1878/1999	Scott C	Dismissed
Dawes NC	Guardsafe Australia Pty Ltd	1045/2000	Beech C	Discontinued
Desmond JL	Mercure Inn Motel	404/2000	Beech C	Discontinued
Dezotti F	Lucon (Australia) Pty Ltd	1649/1999	Beech C	Discontinued
Donnachie JA	Joburne Pty Ltd T/A Blackburn Real Estate	884/2000	Gregor C	Discontinued
Durbridge A	Linda Mead C/- The Fish House	191/2000	Wood C	Dismissed for want of prosecution
Dykes A	Progressive Audio	343/2000	Wood C	Dismissed for want of prosecution
Erhard JM	Assure Call Pty Ltd	917/2000	Fielding SC	Discontinued
Field MJ	Berachah Pty Ltd T/A Pizza Hut	1069/2000	Beech C	Discontinued
Foley M	NSK-RHP Australia P/L	1932/1999	Scott C	Dismissed
Gander RA	Baytara Pty Ltd Incorporated Trading As O'Grady Homes	1038/2000	Scott C	Dismissed
Gannon S	Yorke Financial Management Pty Ltd	1150/2000	Scott C	Dismissed
Grainger K	Receivable Management Ltd	1331/2000	Beech C	Withdrawn by leave
Harmon K	Cybonet Ltd Formerly Probe Resources NL	650/2000	Fielding SC	Discontinued
Harris T	Thiess Contractors	1238/2000	Beech C	Discontinued
Harvey MM	Tasman Oil Tools Pty Ltd	441/2000	Beech C	Discontinued

Applicant	Respondent	Number	Commissioner	Result
Hassenbein H	The Association of Care & Rehabilitation of Alcoholics, Drug Addicts & Homeless Persons Inc	22/2000	Fielding SC	Discontinued by leave
Headley T	Zenith International Pty Ltd T/A Toddlertown	1148/2000	Beech C	Discontinued
Henderson WJ	J-Corp P/L (Perception Homes)	974/2000	Kenner C	Discontinued
Hepburn IM	Rimtec Pty Ltd	63/2000	Beech C	Discontinued
Hill C	Asteranch Pty Ltd T/A Clean Sweep	1194/2000	Beech C	Discontinued
Hill LJ	Gosnells Armadale Community Living Ass	591/2000	Fielding SC	Dismissed for want of prosecution
Hill M	The Lake Jasper Project	1525/1999	Scott C	Dismissed
Hodge PA	Coffex Coffee Pty Ltd ACN 074 539 423	914/2000	Gregor C	Discontinued
Holmes MR	Bruceiver Pty Ltd T/As Sun City Newsagency	624/2000	Kenner C	Dismissed for want of prosecution
Ioppolo J	Morgan-Jones Pty Ltd	364/2000	Beech C	Discontinued
Jackson DJ	Kiwirrkurra Council Aboriginal	416/2000	Fielding SC	Discontinued
Jackson LM	Kiwirrkurra Council Aboriginal	417/2000	Fielding SC	Discontinued
James V	Zinta P/L ACN 009 375 768 t/a X-on Electronic Services	1036/2000	Kenner C	Discontinued
Jones LA	Anovoy Pty Ltd T/A Apex Rentals	567/2000	Wood C	Discontinued
Kalalo JE	Aceton Holdings Pty Ltd Trading As King River Tavern	1268/2000	Beech C	Discontinued
King J	Asteranch Pty Ltd T/A Clean Sweep	1195/2000	Beech C	Discontinued
La Guidara A	Antonino Tripolitano	171/2000	Beech C	Discontinued
Langrish WJA	Channel 31 Access Television Western Australia	816/2000	Beech C	Discontinued
Larine V	Chris Tobias of Australian Peak Constructions	1166/2000	Kenner C	Discontinued
Larkman MJ	Norwest Pet Meats & Kanga Pet Meats	1824/1999	Beech C	Discontinued
Lasmana DS	Nishi Japanese Restaurant and Sushi Bar	1072/2000	Kenner C	Discontinued
Leggo RA	Geraldton City Resort	1380/2000	Scott C	Withdrawn by leave
Lewis MS	Carousel Glass P/L ACN 050 158 097 t/a Modern Glass	1086/2000	Kenner C	Discontinued
Lewis VA	Rangers Inn James Nearle	1123/2000	Kenner C	Discontinued
Lobban CD	Natura Australia Pty Ltd ACN 084 082 824	982/2000	Gregor C	Dismissed
Lockhart CME	Jetstyle Pty Ltd as Trustee for the Peters Family Trust T/As Oakford Traders	1146/2000	Fielding SC	Dismissed
Loo CC	Portline Enterprises Pty Ltd	533/2000	Beech C	Discontinued
Malec KA	Mr John Mackay Trolley Carte Control Systems WA	1435/2000	Beech C	Withdrawn by leave
Mangion EG	Bob Jane T-Marts	879/2000	Fielding SC	Dismissed for want of prosecution
Mansfield A	Wesley CD Megastore	556/2000	Beech C	Discontinued
Matesich MM	A Stark	1107/2000	Beech C	Withdrawn by leave
Mattner PL	D B Cunningham P/L t/a Advanteering Civil Engineering	985/2000	Kenner C	Discontinued
McBain N	Wells Diary Supplies	765/2000	Scott C	Dismissed
McDonald LM	P.A.T.H. Transit Pty Ltd	56/2000	Beech C	Discontinued
McGill J	Brian Dinan and Ashley Ainslee Broad Arrow Tavern	1112/2000	Fielding SC	Discontinued
McPherson LM	Katanning Wool Harvesting Services	1149/2000	Kenner C	Discontinued
Mecceriello J	Tony Maddox t/a Ray White Avon Valley	513/2000	Kenner C	Discontinued
Mehan RJ	Perth RJV Pty Ltd T/A Centre Ford	1062/2000	Beech C	Discontinued
Mehrtens CJ	Ampol Overlander Roadhouse	777/2000	Wood C	Dismissed for want of prosecution
Menchetti SC	Link Telecom	1298/2000	Kenner C	Discontinued
Merendino P	Roche Bros Pty Ltd T/As Roche Mining	361/2000	Beech C	Discontinued
Miller KL	Carlisle Bakehouse	1076/2000	Wood C	Discontinued
Miller L	Ozzie Guard Pty Ltd Trading as Ozzie Guard Shades and Shutters	470/2000	Scott C	Dismissed
Murphy SL	Le Quang Vinh—Director Girrawheen Multicultural Child Care	941/2000	Wood C	Discontinued
New M	Morley Rolerdrome	1084/2000	Wood C	Discontinued
O'Donoghue JO	Jazzfield Pty Ltd T/A Sullivan's West	520/2000	Scott C	Dismissed
O'Meara J	Highclere Pty Limited & Maximan Pty Limited (Villa Bianchi)	1306/2000	Kenner C	Discontinued
Oommen TP	Upurl Upurlila Ngurratja Inc	2/2000	Beech C	Discontinued
Peacock E	John Davis Advertising Pty Ltd	10/2000	Smith C	Discontinued by leave
Peisley K	Domenic Casella T/A Aussiee Arotica Live	1035/2000	Beech C	Struck out for want of prosecution
Petricevic J	Comunica Pty Ltd and Comunica Online Pty Ltd t/a Comunica Online	310/2000	Beech C	Discontinued
Poulter AW	Poulter Holdings t/a Poulter Installations	973/2000	Kenner C	Discontinued
Prochilo V	The McMahon Real Estate Company	1242/2000	Beech C	Withdrawn by leave
Rees D	Emerald Park Pty Ltd T/A Grannys Pies and Cakes	184/2000	Beech C	Discontinued

Applicant	Respondent	Number	Commissioner	Result
Sappho DG	Owners of Riverview (Kalbarri Beach Resort)	596/2000	Beech C	Discontinued
Saxon MJ	The Manager Auslec	10/2000	Smith C	Dismissed
Scholz AJ	Expectation Pty Ltd	1166/1999	Beech C	Discontinued
Scott JR	Miami Holdings Pty Ltd Trading As Just Hire & Sales	1162/2000	Scott C	Withdrawn by leave
Scott SJ	Plunketts for Babies Pty Ltd	1011/2000	Beech C	Discontinued
Smith P	Glev Pty Ltd T/A Pizza Haven	1147/2000	Beech C	Discontinued
Spadaccini S	Spadaccini Bros Northam	235/2000	Beech C	Discontinued
Stapleton B	COC Pty Limited	921/2000	Scott C	Dismissed
Stocks C	Stanwyck & Associates	428/2000	Beech C	Discontinued
Stojanovski B	Vardar Brick Paving	507/2000	Beech C	Discontinued
Street A	Vanstar Holdings Pty Ltd Trading As "Joes Fish Shack"	353/2000	Kenner C	Dismissed for want of prosecution
Swarbrick CA	Fig Tree Lane Pharmacy—Wallner Family Trust	1048/2000	Scott C	Withdrawn by leave
Taylor JP	Diamond Offshore General Company	865/2000	Fielding SC	Discontinued by leave
Terrington B	Jade Base Holdings Pty Ltd T/A Timbertop Nurseries and Blue Tide Holdings Pty Ltd	371/2000	Beech C	Discontinued
Thaller C	Adultshop.com Ltd	985/2000	Kenner C	Discontinued
Tongue GN	Wandalup Farms	153/2000	Scott C	Dismissed
Townley KL	Labour Ready Pty Ltd	1249/1999	Beech C	Discontinued
Turner SB	Industrial Galvanizers Corp Pty Ltd T/As Riverton Engineering Co	1409/1999	Beech C	Discontinued
Van Vliet TV	B+B Timber Trusses	1053/2000	Scott C	Dismissed
Vaughan MR	WA Fork Truck Distributors Pty Ltd	1393/1999	Beech C	Discontinued
Vergunst D	Mini Dredge Pty Ltd and Projade Holdings Pty Ltd	1263/2000	Beech C	Withdrawn by leave
Vojvodich R	Supre Pty Ltd	72/2000	Beech C	Discontinued
Wade C	Rolf & Anneze Camelleri Pty Ltd	1215/2000	Beech C	Struck out for want of prosecution
Wallace M	BGC Transport	965/2000	Gregor C	Discontinued
Walsh KR	Action Motors	1158/2000	Kenner C	Discontinued
Walton WL	Foster Plastics Industries (WA) Pty Ltd	538/2000	Scott C	Dismissed
Ward MA	Geraldine Transport	1087/2000	Scott C	Dismissed
Williams HSL	Centro Properties Limited	434/2000	Beech C	Discontinued
Yakovina JE	Ocean Beach Hotel	1129/2000	Beech C	Discontinued

CONFERENCES—
Matters arising out of—

2000 WAIRC 00719

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	BELTRECO LIMITED, APPLICANT *v.* THE AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION OF WORKERS — WESTERN AUSTRALIAN BRANCH, RESPONDENT
CORAM	CHIEF COMMISSIONER W S COLEMAN
DELIVERED	MONDAY, 25 SEPTEMBER 2000
FILE NO/S	C 253 OF 2000
CITATION NO.	2000 WAIRC 00719
Result	Order issued
Representation	
Applicant	Mr M Borlase
Respondent	Mr B Davies and Mr G Sturman

Order.

WHEREAS an application for a conference pursuant to section 44 of the Act was lodged in the late afternoon of Friday 22nd September and the applicant was contacted by the Commission; and

WHEREAS the Applicant company expected the industrial action which gave rise to the application for the conference to abate on Monday morning; and

WHEREAS the industrial action continued on Monday 25th September with members of the Respondent Union failing to return to work at 6.30 am, normal start time; and

WHEREAS a conference was convened on Monday 25th September at which the Applicant requested a return to work in order that discussions on a break down in negotiations for an enterprise agreement to replace the Beltreco Limited (North West) Enterprise Bargaining Agreement 1997 (Number AG 270 of 1997) to continue; and

WHEREAS the Respondent Union sought discussions with the Applicant's company's representative to address an issue relating to the payment of air fares to Perth for annual leave; and

WHEREAS it appears from information exchanged that the parties have made significant progress on a range of other issues relevant to a proposed new industrial agreement;

NOW therefore to prevent the deterioration of industrial relations and to facilitate conciliation, the Commission

pursuant to the powers under section 44 of the Act hereby orders—

THAT the parties undertake negotiations this afternoon under the chairmanship of Deputy Registrar McCann in Port Hedland; and

THAT the Respondent Union ensures that work resumes immediately and its members employed by the Applicant Company at Port Hedland, Newman and Karratha participating in strike action at present resume work immediately.

Provided further that the Applicant Company or Respondent Union on giving reasonable notice to the other may apply to the Commission to vary, revoke or otherwise set aside this Order.

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

CONFERENCES—
Matters referred—

2000 WAIRC 00629

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	METROPOLITAN HEALTH SERVICES BOARD APPLICANT v. THE AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION OF WORKERS — WESTERN AUSTRALIAN BRANCH & OTHERS RESPONDENTS
CORAM	COMMISSIONER S J KENNER
DELIVERED	MONDAY, 18 SEPTEMBER 2000
FILE NO/S	CR 63/2000

Decision	Matter referred to working party under award. Compensation awarded to employees.
Representation	
Applicant	Ms C Drew as agent on behalf of the Metropolitan Health Services Board
Respondents	Mr J Murie on behalf of the CEPU & AFMEPKIU Ms J Harrison on behalf of the BLPPU & CMETU Ms T Greer on behalf of the PGEU

Reasons for Decision.

1 The present matter before the Commission has a considerable history. It involves a claim by the Western Australian Builders Labourers, Painters and Plasterers Union of Workers ("the BLPPU") and the Construction, Mining Energy Timberyards, Sawmills and Woodworkers Union of Australia, Western Australian Branch ("the CMETU") that a carpenter and painter employed by the Metropolitan Health Services Board ("the MHSB") at Osborne Park Hospital ("OPH") perform work on a boiler located in the hospital. The performance of this work is supported by the MHSB but is strongly opposed by the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch ("the CEPU") and the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch ("the AFMEPKIU") and the Plumbers and Gasfitters Employees' Union of Australia, WA Branch ("the PGEU"). Despite a number of compulsory conferences, and some industrial action in connection with the dispute, the matter was unable to be resolved by agreement between the parties.

2 The substance of the dispute is best described in the schedule set out in the memorandum of matters for hearing and determination as referred under section 44(9) of the Industrial Relations Act 1979 ("the Act") as follows—

"The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch ("CEPU"), the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch ("AMWU"), the Plumbers and Gasfitters Employees' Union of Australia, WA Branch ("PGEU") and the applicant are in dispute in relation to an agreement entered into between the applicant and the Western Australian Builders Labourers, Painters and Plasters Union of Workers ("BLPPU") and the Construction, Mining, Energy Timberyards, Sawmills and Woodworkers Union of Australia, Western Australian Branch ("CMETU") to train a carpenter and a painter to perform boiler blow down work at Osborne Park Hospital with the intent to allow them to undertake this work upon successful completion of the training ("the Agreement"). The BLPPU and the CMETU contend that this work has, in the past, been undertaken by plant operators falling within the constitutional coverage of the CMETU and by other tradespersons and non-tradespersons on roster at the Osborne Park Hospital.

The CEPU, PGEU and the AMWU contend that the work is currently being undertaken by workers in the classifications of mechanical fitter, plumber and electrician.

The CEPU, PGEU and the AMWU claim that if employees in the classifications of carpenter and painter are trained in, or perform this work, it would constitute multi-skilling for the purposes of the Metropolitan Health Services Engineering and Building Services Award 1999 ("the Award"). They allege that all parties to the Award previously agreed to progress multi-skilling pursuant to clause 2 of Appendix B of the Award.

The CEPU, PGEU and the AMWU contend that the Agreement contravenes clause 2 of Appendix B of the Award and the matter should be dealt with under the Award as a multi-skilling issue.

The CMETU and the BLPPU contend that effect should be given, on a stand alone basis, to the Agreement between them and the applicant and furthermore, that their two members, Mr Paul Corr and Mr Barry Smith, should be paid by Osborne Park Hospital, a sum equal to that they would have received had they been rostered to perform the overtime boiler blow down work from on or about 20 March 2000.

The applicant submits to any order that may be made by the Commission.

The parties seek the following relief—

1. As to the BLPPU and the CMETU—

(a) a declaration and consequential orders to the effect that boiler blow down work undertaken at the Osborne Park Hospital has been and may be undertaken by plant operators and/or any person employed under a classification of the Award, on roster at the Osborne Park Hospital at its discretion, subject to applicable Award/Agreement obligations to consult;

(b) an order that, subject to the right of the Hospital to exercise its discretion in accordance with (a) above, that the

Osborne Park Hospital roster all tradespersons on boiler blow down work; and

(c) an order that Mr Paul Corr and Mr Barry Smith, employees employed at the Osborne Park Hospital, be paid a sum equal to that they should have been paid under their respective contracts of employment, as if they had been allocated overtime boiler blow down work pursuant to the Agreement, since on or about 20 March 2000.

2. As to the CEPU, PGEU and the AMWU—

(a) a declaration and consequential orders to the effect that the issue of boiler blow down work constitutes multi-skilling for the purposes of the Award and should be dealt with pursuant to clause 2 Appendix B of the Award.

3 As well as the merits of the matter, also at issue between the parties to this dispute is the interpretation of certain provisions of the Metropolitan Health Service Engineering and Building Services Enterprise Award 1999 made by the Commission in November 1999: (1999) 79 WAIG 3638 ("the Award"). In particular, the parties are in dispute as to the meaning and effect of the terms of Appendix B—Workplace Reform, most particularly clause 2—Multi-skilling.

Facts

4 The background to the present dispute is as follows.

5 For some years, fitters, electricians and a plumber have undertaken maintenance work on the two 20 hp low-pressure steam boilers at OPH. These boilers are known as fire tube boilers, which means that fire, not water, is inside the boiler tube. Apparently, fire tube boilers are more robust than water tube boilers and are less sensitive to temperature and pressure variations. In or about 1988 a roster system operated at OPH whereby electricians and a plumber were rostered to undertake safety checks of the boilers on weekends. The safety checks are designed to ensure that the safety mechanisms on the boilers are in proper working order to avoid the potential for explosion. The electricians and plumber concerned have substantial knowledge of the operations of the boilers and carry out work on the boilers as a part of their normal duties, as do the mechanical fitters at OPH.

6 The roster arrangement was such that the employees could attend the premises at any time on Saturday and Sunday to check the boilers. For this work, the employees are paid for two hours overtime at planned overtime rates.

7 The sequence of work is as follows. The tradesman reports at the OPH reception and then attends the boiler room. The work involves a visual inspection of the pressure gauges and the water levels, a check of safety devices and then a test "blow down" of the boilers. This work takes approximately half an hour on each occasion. The unattended boiler 24 hour check procedure prepared by the OPH engineering maintenance department, in contemplation of the carpenter and painter performing this work, reflected these duties as follows—

"SUBJECT: UNATTENDED BOILER 24HR CHECK PROCEDURE

STANDARD: The procedure will ensure reliability and maximum safety conditions of the steam boilers.

CRITERIA: Daily checking: The daily checking shall include the following—

1. Visually check operation of the water level controls on steam boilers.
2. Examine all glands, flanges and connections to ensure that there are not substantial leaks.
3. Blow down water gauge glasses and check for correct water level.
4. Check operation of flame failure detection system to shutdown energy input and boiler are in correct order.
5. Check start-up sequence and visual sequence indicator operation.
6. Check all valves are correctly set and water level is correct before leaving boiler.

Complied by: The Engineer with consultation with AS2593—1995 Boilers—Unattended and Limited Attendance."

8 In anticipation of the original roster arrangement commencing, the three trades persons involved underwent some training to ensure that the work would be attended to appropriately. From the commencement of the weekend roster, this situation continued until in or about 1996 when one of the trades persons left OPH. As a consequence, the OPH mechanical fitter was included in the weekend roster for the safety checks on the boilers. The engineer at OPH selected the mechanical fitter, electricians and the plumber to perform this work on the boilers because they were engaged in trades that ordinarily involved the performance of work duties on the boilers.

9 In approximately March 1999 both Mr Corr and Mr Smith raised the issue of being placed on the roster for weekend boiler duties. This was opposed by the CEPU and OPH declined such an approach, as those on the roster were those tradespersons who ordinarily performed work on the boilers; that OPH did not require additional staff on the roster and potential demarcation issues if this was agreed. The matter was further the subject of discussions at the OPH consultative committee but did not progress further. I note also that on the evidence of Mr Corr, he approached Mr Watts in 1989 about the issue but was told that as he did not possess a boilers certificate and nor was he mechanically minded, that this work would not be available to him.

10 In or about mid 1999 the issue was raised once again by the carpenter and painter at OPH. Various meetings took place between OPH representatives and the employees concerned, including representatives of the AFMEPKIU and the CEPU. Subsequently, after obtaining advice as to safety issues from Worksafe WA, the OPH engineer, Mr Watts, changed his mind and agreed to develop a training programme in order that the carpenter and painter could be placed on the roster to do the weekend boiler safety check duties. Equitable access to overtime was one consideration in this decision. In late 1999, the matter was formally placed in dispute between the parties, with the CEPU and the PGEU contending that the work involved multi-skilling, which needed to be progressed in accordance with the terms of the Award. I pause to observe that this was also the view of the MHSB at this time, acting on behalf of OPH, as expressed in a letter dated 6 December 1999, which was tab 10 to exhibit MHS 1.

11 Subsequently, by memorandum of 22 February 2000 from Mr Watts to the OPH engineering staff, the position changed again such that the matter would not now progress through the multi-skilling working party under the Award, as it was said that there were delays in setting up this working party and furthermore, further advice received by OPH from Mr Warner of the MHSB, was that the matter was a local matter and it was not appropriate to progress it in this fashion.

12 Because the issue of training of the carpenter and painter was placed in dispute, and as a result of conciliation proceedings in the Commission, the scheduled training for these two trades persons to commence on 20 March 2000 did not proceed and has not proceeded, pending the determination of the present application.

13 Based upon all of the evidence before the Commission in relation to the above, much of which was not in contest, I find accordingly.

Contentions of the Parties

14 On behalf of the MSHB, Ms Drew submitted that the dispute was really one about the equal allocation of overtime and not demarcation or multi-skilling between or within trades groups. It was submitted that the issue the subject of the present dispute was not one that fell within the terms of Appendix B of the Award. This

provision was intended to deal with the possible cross-skilling of trades in hospital maintenance departments and in particular, was developed with the prime object of introducing a single classification of hospital maintenance technician, as set out in clause 2(1)(c) of Appendix B, so the submission went.

15 Furthermore, the MHSB submission was that the work in question posed no safety concerns as long as the carpenter and painter were adequately trained, and there was no reason why the work could not be done by trades other than mechanical fitters, plumbers and electricians. It was therefore submitted that the carpenter and painter should be trained and rostered for this work. As to the claim by the BLPPU and the CMETU that Mr Corr and Mr Smith be retrospectively paid amounts representing work they would have performed on overtime, Ms Drew submitted that such an order should not be issued as the training requirement, as a condition of being placed on the roster, had not been met. In this regard, it was also said by the MHSB that there would have been no guarantee of Messrs Corr and Smith being placed on the roster and in any event, the employer complied with the Commission's recommendation of 17 March 2000 for the training to be deferred, pending the resolution of the dispute and in order to achieve cessation of industrial action then occurring.

16 Mr Murie, on behalf of the AFMEPKIU and the CEPU, submitted that the present dispute was not a dispute about the allocation of overtime but one that went to the essence of multi-skilling in the public hospital maintenance sector. He submitted that the appropriate trades to undertake this work were those presently performing the work by reason of their trades skills and trade training, which properly equipped them with an engineering focus, to enable them to have both a theoretical and practical understanding of the workings of a boiler and more importantly, how to deal with any issues arising whilst performing the safety check duty. The submission was that the work of boiler blow down duties could not be reasonably regarded as incidental or peripheral to the duties of a carpenter or painter.

17 In relation to the terms of the Award, Mr Murie submitted that the terms of Appendix B, when taken in the context of the history surrounding the development of the single award to apply to engineering and building services in metropolitan public hospitals, made it clear that this particular dispute was a dispute about multi-skilling in relation to which the parties had agreed on a proper process to deal with it and other related issues.

18 Additionally, it was submitted by Mr Murie that the present dispute could not be properly characterized as a small and local issue, but rather had clear implications right across the public hospital sector. A number of submissions were also made and materials tendered in relation to competency based training and what obligations this imposed upon the parties to the Award.

19 In relation to the referral of the matter the subject of the present dispute to the process provided for in Appendix B, it was submitted that the clear intent of this procedure was to avoid adversarial contests in the workplace between various unions involved in public hospital maintenance work at the enterprise level. Mr Murie's submission was that the Award clearly contemplates that these matters be resolved through a proper consultation process.

20 Ms Greer, on behalf of the PGEU, generally adopted the submissions put to the Commission by Mr Murie.

21 On behalf of the BLPPU and the CMETU Ms Harrison submitted that the matter the subject of the present dispute, was not, largely for the reasons outlined by the MSHB, appropriate to be dealt with in accordance with Appendix B of the Award. She submitted that in essence the dispute was in relation to the equitable allocation of overtime and was a site-specific "domestic" dispute at OPH, which type of dispute was required to be dealt with on a case-by-case basis. Ms Harrison also submitted that the terms of Appendix C to the Award had the effect of preserving productivity and efficiency gains under previous industrial agreements, one of which covered OPH, and the present work in dispute should be so characterised.

Consideration

22 At least in part, the resolution of the present dispute involves consideration of the relevant provisions of the Award. The relevant principles in relation to the interpretation of awards and other industrial instruments are well established. This involves a reading of the instrument itself and the words being given their ordinary and natural meaning: *Norwest Beef Industries Limited v Australian Meat Industries Employees' Union WA* (1985) AILR 73; *Nationwide News (trading as Sunday Times) v Printing and Kindred Industries Union (WA Branch) and Anor* (1988) AILR 358. Additionally, industrial instruments are to be generously construed and this is particularly the case when considering the terms of an industrial agreement, which arises from the consensus of the parties: *AITCO v Federated Liquor and Allied Industries Employees' Union* (1988) AILR 382.

23 The Award involved a consolidation of various industrial instruments having application to metropolitan health service hospital establishments in relation to engineering and building maintenance services. Additionally, by Appendix C of the Award, certain provisions of industrial agreements as replaced by the Award, are saved, in relation to the achievement of health care unit specific workplace reform and productivity improvement matters, that are not inconsistent with any express terms of the Award.

24 The most contentious issue the subject of submissions before the Commission was the meaning and the effect of Appendix B—Workplace Reform of the Award which is in the following terms:

> *"APPENDIX B.—WORKPLACE REFORM*
>
> *1. COMPETENCY BASED STANDARDS*
>
> *(1) It is a term of this Award that the parties agree to progress the implementation of the metal/electrical trades national competency standards in accordance with the Competency Standards Implementation Guide (Published June 1996), Metal and Engineering Training Package (National Code Identifier MEM98, published July 1998)and the National Metal and Engineering Competency Standards (published 1996), as issued and endorsed by the MERS ITAB, or subsequent amendments thereto where agreed between the parties. To the extent of any inconsistency between these documents and this Award, this Award shall take precedence.*
>
> *(2) The Competency Standards shall be implemented on the following basis—*
>
> *(a) Assessors*
>
> *(i) An assessment may be undertaken by any accredited assessor recognised , from time to time, by the Employer and Union. Such recognition may be withdrawn at any time by either party.*
>
> *(ii) The Employer shall endeavour to ensure that sufficient employees (to include trade and managerial staff employed by the Employer) are trained at any time, to meet the assessment requirements of the HCU.*
>
> *(iii) In the event of the parties being in dispute regarding the Employer unreasonably withholding or withdrawing recognition of an accredited assessor employed by the Employer, the dispute may be determined through the Dispute Resolution Procedures.*
>
> *(b) Assessment Appeals*
>
> *(i) In the event of an employee or the Employer disputing the outcome of an assessment, the aggrieved party may refer the matter to a Board of Reference, established in accordance with*

s 48 of the Industrial relations Act 1979, for determination.

(ii) The parties agree that the Board of Reference nominees shall consist of an accredited assessor to be nominated by the Employer, and an accredited assessor to be nominated by the employee.

(c) An employee shall be obliged to participate in competency based assessment, where requested by the Employer.

(3) It is a term of this Award that the parties agree to investigate the potential for developing competency based assessment for staff not covered by the metal/electrical trades national competency standards. In the event of the parties agreeing to pursue this item following such investigation, the terms of any implementation shall be the subject of a further agreement between the parties.

2. MULTISKILLING

(1) The parties shall establish a Working Party consisting of equal numbers of Employer and employee representatives, to examine the potential for multiskilling of engineering and building services staff. The Working Party shall be established between 4-6 months after the registration of this Award, in order that the skills analysis/ skills audit material produced during the implementation of the Competency Standards as defined in subclause (1), shall be available for use by the Working Party . The Working Party shall report back to the parties by no later than 2 months prior to the expiry date of this Award. The Terms of Reference of the working party shall be to—

(a) Identify maintenance functions requiring the use of more than one category of Tradesperson and which offer the potential for multiskilling.

(b) Identify what additional skills would be required of a tradesperson in particular trades (and what additional skills could legitimately be undertaken without breaching any licensing requirements etc) to be deemed competent to undertake this work.

(c) Assess the potential for and the implications of introducing a single classification of Hospital Maintenance Technician and develop a proposal for a classification structure and other changes which would be necessary to accommodate the development of such a classification of employee.

(d) Identify and detail career path options and training and development options for an employee in the proposed structure.

(2) Any such structure is to be built around and have regard to the metal/electrical trades national competency standards.

(3) The parties shall not be bound in any way by the Working Party's report."

25 Other relevant provisions of the Award that were the subject of submissions to the Commission include the following—

"8.—COMMITMENTS OF THE PARTIES

(1) Award Modernisation

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.

(2) Structural Efficiency

The parties are committed to co-operating positively to increase the efficiency, productivity and competitiveness of the Employer and to enhance the career opportunities and job security of employees.

(3) The parties are committed to maintaining the integrity of competency based training, the Award classification definitions and nationally approved competency standards, within the context of the operational requirements of the Employer. In so doing the parties to this Award reaffirm their commitment to maintaining the integrity of structured trade training."

"12A.—CONTRACT OF SERVICE

(4) Employees may be directed to perform any job within their area of expertise and scope of activity up to and at the classification level to which they are appointed provided that they have the necessary skills and competencies."

"APPENDIX A.—SALARIES

(7) Building Trades Employees

Except to the extent of any inconsistency with this Award, those parts of Appendix D—Award Restructuring of the Building Trades (Government) Award 1968 No. 31a of 1966 (as at the date of registration of this Award), which pertain to transfer from old classification structures, reclassification of employees and classification definitions, shall apply to this Award.

(8) Metal Trades Employees

Except to the extent of any inconsistency with this Award, those parts of Clause 5.—Classification Structure and Definitions of the Engineering Trades (Government) Award 1967 No. 29, 30 & 31 of 1961 & 3 of 1962, (as at the date of registration of this Award), which pertain to transfer from old classification structures, reclassification of employees and classification definitions, shall apply to this Award."

26 I have carefully considered the relevant provisions of the Award and the evidence led in relation to the history and development of the Award, in particular, the terms of Appendix B, dealing with the establishment of a working party to examine the potential for the multi-skilling of engineering and building services staff.

27 On the ordinary and natural meaning of the words used in Appendix B, in particular clause 2—Multi-Skilling, I am not persuaded to the narrow construction as urged upon me by the MHSB and the BLPPU. On its ordinary and natural meaning, whilst no doubt clause 2(c) includes reference to the working party assessing the potential for the introduction of a single classification of hospital maintenance technician, in my view, the scope of the working party terms of reference as set out in clauses 2(1)(a)—(d) is not limited to this task. For example, the terms of clause 2(1)(a), dealing with the identification of maintenance functions requiring the use of more than one category of trades person and which offer the potential for multi-skilling, is clearly not restricted, when taken in the context of the terms of the Award as a whole, to the sole function of the development of a single classification of hospital maintenance technician.

28 There is no doubt that the parties to the Award have committed to a process of award modernisation and structural efficiency, requiring co-operation in increasing the efficiency, productivity and competitiveness of the employer and enhancing the career opportunities and job security of employees. Furthermore, the terms of clause 12A(4) enable the employer to direct an employee to perform any job within an employee's area of expertise and scope of activity within their classification level. Such a provision is consistent with the commitments of the parties to the Award to which I have just referred. The question for resolution however, is whether the work in the present dispute can be characterized as work falling within the area of expertise and activity of a carpenter and painter or whether alternatively, the work involved is multi-skilling.

29 The concept of multi-skilling is a well known one which developed currency in particular, as a result of developments at the national and state levels in 1988—1989, in relation to the incorporation of structural efficiency guidelines into national and state principles of wage fixation. Multi-skilling has been defined to include "those processes leading to the attainment of increased functional flexibility by an employee or a workforce.": *Multi-skilling: A Critical Discussion of Perceived Benefits to Employees and Enterprises"* Cordery May 1987 at 3. At its most fundamental level, it refers to an employee being able to perform more than one skilled task as a part of an employee's ordinary duties. The process is usually accompanied by formal training, to increase the range and extent of organisationally relevant skills, both within and across work units, and across traditional craft or skilled boundaries: *Cordery* at 4.

30 In the context of the evidence before the Commission in relation to this dispute, I am of the view that the boiler blow down work sought to be performed is work that falls across traditional craft or skills boundaries, and is not work that is reasonably incidental or peripheral to the normal duties of a carpenter and/or painter, at least in the context of trade training syllabuses for those respective trades. I am also of the view on the evidence, and I find, that the subject of the present dispute does have implications across the public hospital sector and is not one that is isolated purely to the operations of OPH.

31 When read as a whole, I am of the opinion that the terms of Appendix B of the Award were intended by the parties to be an appropriate and structured vehicle to coherently pursue matters in relation to multi-skilling, in a non-adversarial environment and through the process of co-operation and consultation. I have no doubt from the plain terms of the Award, and to the extent that I need to refer to it the evidence before me, that the intent of this provision in the Award was to avoid site specific demarcation disputes between respective trades groups, of which in my view, the present case is an example.

32 Accordingly, the issue of the performance of boiler blow down work at OPH is a matter that should be properly referred to the working party in accordance with clause 2 of Appendix B of the Award to enable it, and other relevant matters concerning multi-skilling between the respective engineering and building services groups, to be properly considered in that forum.

33 Whilst there was a considerable body of evidence led before the Commission in support of the contentions advanced by the respective unions as to who should perform this type of work, it is unnecessary for me to conclusively determine that matter, as it is an issue that should be dealt with by the working party. Indeed, in view of my conclusions as to the interpretation of the relevant provisions of the Award, it would be both inappropriate and premature for the Commission to express a concluded view on this matter. I should observe however, that even though the matter presently before the Commission should be determined by the working party under Appendix B, that would not, in the event the parties are unable to reach agreement, preclude such a matter ultimately being referred to the Commission for resolution, as it applies to OPH or indeed, more broadly throughout the metropolitan public health service.

34 Moreover, in relation to what seems to be, at least in part on the evidence, a dispute between trades groups as to remuneration levels, it would be inappropriate to deal with that matter on the basis of the allocation of overtime, it being a matter that needs to be fundamentally addressed by the parties through the established process under the Award. In the event that those processes lead to a review of the remuneration for trades groups such as carpenters and/or painters through multi-skilling, then that may well not be inconsistent with the processes envisaged under the Award, in any event.

35 My conclusions on the substantive issue then lead to a consideration of the circumstances of Mr Corr and Mr Smith. As a matter of a contractual entitlement, the evidence is, and I find, that in or about June-July 1999 a commitment was given by OPH to place both Mr Corr and Mr Smith on the roster for boiler blow down work subject to their completing the necessary training, which on the evidence of Mr Watts, which I accept, was anticipated to take approximately four weeks. (See also exhibit MHS 1 tab 14). A training program (exhibit BLPPU 1) was developed at that time. Thereafter, as I have noted above in these reasons, the matter was the subject of dispute between the parties and the matter ultimately led to a recommendation of the Commission in March 2000 that the training scheduled for 20 March 2000, which had previously been scheduled and deferred by OPH, be further deferred on an interim basis, pending the determination of this dispute.

36 As a contractual matter, on the evidence, the successful completion of training was a condition precedent to placing Mr Corr and Mr Smith on the roster. However, it is also clear on the evidence, that both these employees were promised the benefit of being placed upon the roster, which benefit has not come to fruition, due to circumstances entirely not of their making. These employees were entitled in my view, to rely on the promise of the employer, which was clearly made to them. In these circumstances, the Commission is bound to act according to equity and good conscience pursuant to s 26 of the Act. In appropriate circumstances, the Commission can in my opinion, with equity and good conscience being the touchstone of the Commission's jurisdiction, have regard to appropriate principles of equity in dealing with and determining an industrial matter. This is particularly so where the circumstances of the strict application of the common law may lead to a harsh result: *Robe River Iron Associates v AMWU* (1987) 68 WAIG 4; *Walkley v Dairyvale Co-operative Ltd* (1972) 39 SAIR 327 at 342; *Ahern v The Australian Federation of Totally and Permanently Incapacitated Ex-servicemen and Women (WA Branch) Inc* (2000) 80 WAIG 1729.

37 With these comments in mind, I consider it only fair and equitable, that having lost the benefit of being placed on the roster through no fault of their own, and on the reasonable expectation, in the absence of any evidence to the contrary, that the training would have been satisfactorily completed within approximately four weeks, that Mr Corr and Mr Smith receive some compensation for the loss of a benefit, which they had every legitimate expectation of receiving in the ordinary course, but for the circumstances as they developed in this dispute. As a reasonable level of compensation for such a loss, I consider that a payment the equivalent of being on the roster from mid August 1999 to mid December 1999, about the time of OPH's formal submission of the matter to the working party, be made to Messrs Corr and Smith. The parties are directed to confer as to the appropriate sum within seven days and advise the Commission accordingly, following which an order determining this application will issue. Failing agreement, the Commission will determine the quantum.

2000 WAIRC 00830

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	METROPOLITAN HEALTH SERVICES BOARD, APPLICANT *v.* THE AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION OF WORKERS — WESTERN AUSTRALIAN BRANCH & OTHERS, RESPONDENT
CORAM	COMMISSIONER S J KENNER
DELIVERED	TUESDAY, 10 OCTOBER 2000
FILE NO/S	CR 63 OF 2000
CITATION NO.	2000 WAIRC 00830

Result	Matter referred to working party under award. Compensation awarded to employees.
Representation	
Applicant	Ms C Drew as agent on behalf of the Metropolitan Health Services Board
Respondent	Mr J Murie on behalf of the CEPU & AFMEPKIU Ms J Harrison on behalf of the BLPPU and CMETU Ms T Greer on behalf of the PGEU

Order.

HAVING heard Ms C Drew as agent on behalf of the applicant and Mr J Murie on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch and as agent on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch and Ms J Harrison on behalf of the Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and the Construction, Mining, Energy Timberyards, Sawmills and Woodworkers Union of Australia, Western Australian Branch and Ms T Greer on behalf of the Plumbers and Gasfitters Employees' Union of Australia, West Australian Branch, Industrial Union of Workers, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

1. THAT the issue of the performance of boiler blow down work by carpenters and/or painters at Osborne Park Hospital be and is hereby referred to the working party established or to be established pursuant to cl 2-Multi-skilling of Appendix B—Workplace Reform of the Metropolitan Health Services Engineering and Building Services Award 1999.
2. THAT the respondent pay to Mr Paul Corr the sum of $402.96 and to Mr Barry Smith the sum of $397.44 within 21 days hereof.

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

2000 WAIRC 00659

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	THE FEDERATED BRICK, TILE AND POTTERY INDUSTRIAL UNION OF AUSTRALIA (UNION OF WORKERS) WESTERN AUSTRALIAN BRANCH, APPLICANT *v.* METRO BRICK—CARDUP PLANT, RESPONDENT
CORAM	COMMISSIONER S J KENNER
DELIVERED	FRIDAY, 22 SEPTEMBER 2000
FILE NO/S	CR 220/1999

Decision	Application dismissed.
Representation	
Applicant	Mr J Bainbridge
Respondent	Mr T Heelan as agent

Reasons for Decision.

1. This matter is before the Commission pursuant to s 44(9) of the Industrial Relations Act 1979 ("the Act "), following a number of compulsory conferences in an endeavour to settle the matter by conciliation. The application by the Federated Brick, Tile and Pottery Industrial Union of Australia (Union of Workers), Western Australian Branch ("the applicant") seeks an order as reflected in the memorandum of matters for hearing and determination as follows—

   "The applicant union is in dispute with the respondent as to appropriate rates of pay payable to employees members of the applicant union engaged in the classifications of Machine Attendant under the terms of the Brick Manufacturing Award 1979 ("the Award") and the Metro Brick (Cardup) Enterprise Bargaining Agreement 1994 ("the Agreement").

   The applicant contends that as a result of the application of State Wage Case wage movements the rates of pay contained in the Agreement have, in some cases, been overtaken by the corresponding rates of pay in the Award. The applicant contends that contrary to an agreement reached between the applicant and the respondent in 1996, the respondent has refused to maintain the rates of pay in the Agreement, consistent with its undertaking.

   The applicant seeks a determination by the Commission as to the terms of the 1996 undertaking and the appropriate rates of pay that should be paid by the respondent to the affected employees.

   The respondent objects to and opposes the application in its entirety."
2. Mr Bainbridge represented the applicant and Metro Brick ("the respondent") was represented by Mr Heelan as agent.

Submissions

3. The applicant submitted that as a consequence of discussions in 1996 in accordance with the terms of the Metro Brick (Cardup) (Enterprise Bargaining) Agreement 1994 No AG 37 of 1995 ("the Agreement") for its renewal, an agreement was struck with the respondent for a new roster arrangement at the Cardup No. 2 plant to improve the levels of production at the plant. This arrangement also led to the creation of three new classifications of machine attendant levels 1-3, none of which were in either the Agreement or the "parent" Brick Manufacturing Award 1979 No. R 19 of 1979 ("the Award").
4. Whilst the basis for the contentions of the applicant as the calculation of these rates of pay was somewhat complex, the thrust was that there was an agreement between the applicant and the respondent that there be an averaging of rates across the three machine attendants classifications, which rates were aggregated to include

all other entitlements to overtime penalties, annual leave, loadings etc. Mr Bainbridge contended that the respondent agreed to effectively maintain the differential between the relevant rates under the Agreement and the Award, calculated on the aforementioned basis.

5. With successive State Wage Case decisions, as the Agreement has not been renegotiated, some rates of pay in the Award have now overtaken those in the Agreement. Thus the applicant says the respondent should honour its commitment given previously.

6. For the respondent, Mr Heelan made a number of submissions. First it was said that the application in essence sought the flow-on of arbitrated safety net wage increases to an enterprise specific industrial agreement, of which the Agreement was an example, and such was inconsistent with the terms of the Act. Secondly, it was submitted that to achieve it's stated aim, the applicant should simply give notice under the Act to retire from the Agreement, thereby requiring the respondent to pay the higher base rates in the Award.

7. As to the merits, the respondent submitted that the employees in question are in fact, when the earnings are aggregated, receiving more favourable conditions and pay than would be the case under the Agreement. The respondent strenuously denied that there was any agreement for the maintenance of the base rates of pay differential, as submitted by the applicant.

Evidence

8. The applicant filed three unsworn statements in support of its contentions in this matter. The respondent, prior to the hearing, put the applicant on notice that it contested the content of these statements. However, notwithstanding this, the applicant did not produce the makers of the statements to give sworn evidence and to be cross-examined. The applicant led no other evidence in support of the application.

9. For the respondent, evidence was adduced from Mr Nolan, the respondent's general manager of operations, who has occupied that position since 1995. He testified that in this position, he has been involved in enterprise bargaining discussions with the applicant concerning the Agreement, both prior to its registration by the Commission and during its operation. He said that he has also been directly involved in dealing with the present claim by the applicant.

10. In short, Mr Nolan testified that there was to his knowledge, never any agreement to maintain the rates of pay agreed with the applicant as a result of the roster changes for the Cardup plant and the new machine attendant positions. He said the rationale for the changes at Cardup was to build on improvements achieved elsewhere within the respondents operations, and to extend the available production at the plant.

11. Having considered the applicant's claim and the basis for it, he contended that in fact the employees in question were better off under the Agreement, on the present roster arrangements, than they would otherwise be under the terms of the Award.

12. As I have noted, this evidence was not contradicted by the applicant through sworn evidence and nor was it substantially eroded in cross-examination.

Conclusions

13. In terms of the respondent's submissions going to the jurisdiction of the Commission to entertain to claim, I am not persuaded that the matter is beyond the Commission's jurisdiction. It was clear from the submissions and the evidence, that the three "classifications" which became the source of the present dispute, were introduced effectively as over-award arrangements, not contained in either the Award or the Agreement. That much was common ground. In my opinion, it cannot therefore be said that the effect of the present claim is to seek a variation of the rates in the Agreement itself. Rather, the matter is one properly characterised as a claim for a contractual entitlement.

14. However, that being so, the onus is on the applicant to persuade me on the balance of probabilities, that it has established it's claim. Save for a submission from the bar table by Mr Bainbridge, the only testimony before the Commission is that of Mr Nolan. In the absence of any other evidence that directly contradicts Mr Nolan's evidence, I am obliged to accept his evidence unless I find it to be inherently incredible or otherwise unreliable, which I do not. I therefore accept his evidence.

15. On balance therefore, I am not persuaded that the applicant has discharged the onus on it and the matter will be determined by an order of dismissal.

2000 WAIRC 00660

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	THE FEDERATED BRICK, TILE AND POTTERY INDUSTRIAL UNION OF AUSTRALIA (UNION OF WORKERS) WESTERN AUSTRALIAN BRANCH, APPLICANT
	v.
	METRO BRICK—CARDUP PLANT, RESPONDENT
CORAM	COMMISSIONER S J KENNER
DELIVERED	FRIDAY, 22 SEPTEMBER 2000
FILE NO/S	CR 220/1999

Result	Application dismissed.
Representation	
Applicant	Mr J Bainbridge
Respondent	Mr T Heelan as agent

Order.

HAVING heard Mr J Bainbridge on behalf of the applicant and Mr T Heelan as agent 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.

2000 WAIRC 00716

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	AUSTRALIAN LIQUOR, HOSPITALITY AND MISCELLANEOUS WORKERS UNION, WESTERN AUSTRALIAN BRANCH, APPLICANT
	v.
	ADVANCED LIFE AMBULANCE SERVICE, RESPONDENT
CORAM	COMMISSIONER S J KENNER
DELIVERED	MONDAY, 25 SEPTEMBER 2000
FILE NO/S	CR 170 OF 2000
CITATION NO.	

Result	Application dismissed. Declaration and order issued
Representation	
Applicant	Mr J Rosales-Castenada
Respondent	Mr D Jones as agent

Reasons for Decision.

1. The substantive application in this matter is an allegation that the respondent harshly, oppressively and unfairly

dismissed a member of the applicant union. The matter was originally allocated to Smith C, who convened a compulsory conference pursuant to s 44 of the Industrial Relations Act 1979 ("the Act") and subsequently, on 10 August 2000, referred the matter for hearing and determination and issued an interlocutory order, for the discovery of documents.

2. The application was subsequently re-allocated to the Commission as presently constituted, following which a letter dated 30 August 2000, was received by the Commission from the Chamber of Commerce and Industry of Western Australia, who now represent the respondent. The letter raised a jurisdictional issue in relation to the competency of the application as originally filed on 28 June 2000, the validity of the memorandum of matters for hearing and determination referred under section 44(9) of the Act and the Commission's interlocutory order of 10 August 2000.

3. As a result, the matter was listed, in order that the Commission could hear from the parties as to the issue raised.

Submissions

4. Mr Jones, as agent for the respondent, submitted that the former employee of the respondent the subject of these proceedings, entered into an individual workplace agreement with the respondent under the Workplace Agreements Act 1993 ("the WPA"), which agreement was signed by the employee on 2 May 2000. The respondent submitted that by s 19(2) of the WPA, the workplace agreement had effect from that time, and it was lodged for approval with the Commissioner of Workplace Agreements within the 21-day period required by the WPA. The employee's employment thereafter ended on 22 June 2000.

5. Subsequently, by letter dated 27 June 2000, a copy of which was produced to this Commission, the Commissioner of Workplace Agreements notified the parties to the workplace agreement that the application to register it had been refused, pursuant to s 31 of the WPA. Critically to the respondent's contentions, the decision to refuse to register was made by a delegate of the Commissioner of Workplace Agreements, apparently duly authorized pursuant to s 93 of the WPA. There being no challenge to the validity of the delegation, it is to be assumed that the delegation was effective for the purposes of determining this matter.

6. I note also, that the letter from the delegate of the Commissioner of Workplace Agreements specified that the relevant workplace agreement ceased to have effect from 22 June 2000, pursuant to s 33 of the WPA, presumably that being the date of the refusal to register as specified in s 33(1)(a) of the WPA.

7. In accordance with the terms of s 34 of the WPA, a request was made by the former employee for the Commissioner of Workplace Agreements to review the delegate's decision to refuse to register the workplace agreement. Such a request was required to be made within 14 days of receipt of the letter of refusal to register. There was nothing before the Commission to indicate that such a request was outside this statutory limit. The request to review the decision resulted in the Commissioner of Workplace Agreements confirming the delegate's refusal to register the workplace agreement, which confirmation was notified to the former employee on 9 August 2000.

8. Mr Jones put a number of submissions to the Commission in relation to these matters. Firstly, he submitted that as at the date of the termination of the employee's employment on 22 June 2000, a valid workplace agreement existed under the WPA. The submission was that as at the date of the termination of the employment, by reason of s 51 of the WPA, the employee concerned had an alternative remedy to "appeal" from his dismissal, for the purposes of s 23(3)(d) of the Act. Furthermore, and most importantly in the respondent's submissions, it was said that the jurisdiction and power to refuse to register a workplace agreement pursuant to ss 31 and 33 of the WPA, can only be exercised by the Commissioner of Workplace Agreements and not his or her delegate, as both sections specifically refer only to "the Commissioner" exercising such powers, so the submission went.

9. Therefore, the respondent submitted that the relevant workplace agreement continued in force until it was refused registration by the Commissioner of Workplace Agreements on 9 August 2000, in the exercise of his power of review pursuant to s 34 of the WPA. Accordingly, the applicant's application pursuant to s 44, and all steps taken in relation to it by the Commission, were ultra vires the Act and of no effect. I should emphasize that it was common ground that as at the time the matter was before Smith C, the previous existence of a workplace agreement between the former employee and the respondent, was not a matter raised before the Commission.

10. For the applicant, Mr Rosales-Castenada submitted that the original s 44 application was properly within the Commission's jurisdiction under the Act, and all steps taken since that time were valid. He submitted that the former employee actually signed the workplace agreement on or about 14 April 2000 and subsequently received a letter from the Commissioner of Workplace Agreements dated 29 May 2000, advising that the agreement would be registered if no further contact was received by 12 June 2000. Mr Rosales-Castenada submitted that subsequently, on 2 June 2000, the employee requested that the registration of the workplace agreement under the WPA be "put on hold". The letter of 27 June 2000 from the delegate, to which I have referred above in these reasons was then received, refusing registration of the workplace agreement pursuant to s 31 of the WPA, effective 22 June 2000.

Conclusions

11. For the purposes of determining this preliminary matter, I consider that s 26A of the Act is no barrier to the Commission being informed as it has been, there being no workplace agreement in force under the WPA as at the time of these proceedings: ss 7; 26A Act. However, even if one was in force, without deciding the matter on this occasion, it would appear that in the context of proceedings to determine the issue of jurisdiction, it would be permissible for the parties to inform the Commission of the existence of a workplace agreement under the WPA, when s 26A of the Act is considered within the context of the Act as a whole, in particular s 24. Indeed, it would be impossible for the Commission to determine such a threshold matter if this was not the case, which matter could be fundamental to the Commission having jurisdiction and power to proceed to hear a substantive application.

12. Resolution of the present question involves consideration of ss 19, 31, 33, 34 and 93 of the WPA which relevantly provide as follows—

> "Commencement and duration
>
> 19. (1) …
>
> (2) Subject to sections 27 and 33, an individual workplace agreement has effect when it has been signed by the parties to the agreement, or from any later day provided for in the agreement…
>
> Registration
>
> 31. (1) …
>
> (2) Where in relation to an agreement the Commissioner is not satisfied as to the matters referred to in section 30 (1), the Commissioner must unless section 32 applies—
>
> (a) refuse to register the agreement; and
>
> (b) within 7 days after making that decision, give to each party a notice of the refusal and of the reasons for it.
>
> Position where an agreement is refused registration
>
> 33. (1) Where an individual workplace agreement or an agreement under section 23

(1) is lodged under section 29 but registration is refused by the Commissioner—

(a) the agreement ceases to have effect for the purposes of this Act as from the day of that refusal; and…

Delegation and review of delegate's decision

34. (1) Where a delegate of the Commissioner makes a decision under section 31 or 32 in relation to an agreement, a party to the agreement may, within 14 days of receiving notice of the decision, request the Commissioner to review the decision; and the Commissioner is to comply with such a request.

(2) An organization that has given an undertaking under section 11 (1) as part of a workplace agreement may request a review under subsection (1), but only where—

(a) the decision to be reviewed is a refusal under section 31 (2) to register the agreement; and

(b) the employee or employees who are parties to the agreement consent in writing to the request being made.

(3) On a review the Commissioner may confirm or reverse the decision; and is to give notice of the result of the review as mentioned in section 31 (1) (b) or (2) (b) or 32 (2) (c), whichever is applicable.

(4) The Commissioner may seek and receive such further information as the Commissioner may require for the purpose of a review under this section.

(5) In subsection (1) **"delegate"** means a person exercising delegated powers under section 93…

Delegation

93. The Commissioner may by instrument in writing, either generally or as otherwise provided by the instrument, delegate to a member of the Commissioner's staff the performance, on behalf of and subject to the direction and control of the Commissioner, of any of the functions of the Commissioner under this Act, but not including the power to delegate under this section."

13. Having carefully considered the submissions of the parties and the relevant statutory provisions, for the following reasons, I am not persuaded by the respondent's arguments that the substantive application is not properly within the Commission's jurisdiction.

14. By s 93 of the WPA, the Commissioner of Workplace Agreements may, by instrument in writing, either generally or as otherwise provided by the instrument, delegate to a member of the staff of the Commissioner the performance, on behalf of the Commissioner, any of the functions of the Commissioner under the WPA. Notably the delegation under s 93 is not in any way limited, except as to the power to delegate the power of delegation itself.

15. In my opinion, pursuant to s 31 of the WPA, the registration or the refusal of registration of a workplace agreement duly lodged for registration under the WPA and in accordance with its terms, is a "function" of the Commissioner. Therefore, it follows, that for the purposes of ss 31 and 33 of the WPA, the reference to "the Commissioner" must be taken to include a reference to a delegate of the Commissioner, validly appointed in accordance with s 93 of the WPA. Such a delegation, by the plain language of s 93, empowers a duly appointed delegate to act "on behalf of" the Commissioner, in respect of "any function of the Commissioner" under the WPA. The phrase "on behalf of" has no settled legal meaning but takes its color from the context in which it appears: *R v Portus; Ex parte Federated Clerks Union of Australia* (1949) 79 CLR 428; *In re Ross; Ex parte A-G for Northern Territory* (1979) 54 ALJR 145.

16. In my opinion, in the context of the WPA, the phrase is used in s 93 in the sense that a delegate effectively "stands in the shoes" of the Commissioner of Workplace Agreements when called upon to perform any function under the WPA, that the Commissioner of Workplace Agreements is empowered to perform. The effect of these provisions when read together, is clearly intended to enable a duly appointed delegate of the Commissioner of Workplace Agreements to exercise the function and power of registration or the refusal of registration of a workplace agreement as the case may be, instead of that power being exercised by the Commissioner of Workplace Agreements in person.

17. This construction of the WPA is confirmed by the terms of s 34 of the WPA. The exercise of a delegated power of either registration or the refusal to register a workplace agreement is reviewable on application by a party to such an agreement under this section. The plain words of s 34 (1), set out above, clearly provide for a delegate of the Commissioner making a "decision" under ss 31 or 32, in relation to an agreement. Section 34 recognizes that a party to a workplace agreement that has been the subject of a valid decision by a delegate may apply for that decision to be reviewed by the Commissioner of Workplace Agreements. This does not in any way in my opinion, derogate from the validity of such a decision taken in accordance with a valid and proper delegation of power under s 93 of the WPA. In my view, plain words would be needed in the legislation if this were not to be the case.

18. When reading these provisions of the WPA as a whole, for the purposes of the present matter, the effect of the decision of the delegate to refuse to register the agreement from 22 June 2000 meant that, on and from that time, the workplace agreement lodged for registration under the WPA ceased to have any legal effect. Similarly, in the period from the decision to refuse registration by the delegate effective 22 June 2000, to the decision by the Commissioner of Workplace Agreements to confirm that decision to refuse registration pursuant to s 34(3), the workplace agreement had no effect. In other words, for these provisions of the WPA to have any meaningful effect, unless and until the decision of the delegate was overturned on review, the refusal to register stood and the workplace agreement ceased to have any legal effect as of 22 June 2000.

19. Furthermore, should there be any doubt as to the construction of the relevant provisions of the WPA that I have adopted, then the terms of s 59(3) of the Interpretation Act 1984 (WA) put the matter beyond doubt in my view. Relevantly, s 59(3) of this statute provides—

"Construction of power to delegate

59. (1) …

(2) …

(3) Where under a written law an act or thing may or is required to be done to, by reference to or in relation to, a person and that person has under a written law delegated a relevant function conferred or imposed on him with respect to or in consequence of the doing of that act or thing, the act or thing shall be regarded as effectually done if done to, by reference to or in relation to the person to whom the function has been delegated."

20. To the extent that the delegate has therefore refused registration of the workplace agreement under s 31 of the WPA, then this provision makes it clear that such an act is effectively done as if the Commissioner of Workplace Agreements in person had done it.

21. Accordingly, in my opinion, the present application is properly within the Commission's jurisdiction and power under the Act and all steps taken and things done by the Commission must be so regarded. I declare accordingly.

W000 WAIRC 00705

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	AUSTRALIAN LIQUOR, HOSPITALITY AND MISCELLANEOUS WORKERS UNION, WESTERN AUSTRALIAN BRANCH, APPLICANT *v.* ADVANCED LIFE AMBULANCE SERVICE, RESPONDENT
CORAM	COMMISSIONER S J KENNER
DELIVERED	MONDAY, 25 SEPTEMBER 2000
FILE NO/S	CR 170 OF 2000
CITATION NO.	2000 WAIRC 00705

Result	Application dismissed. Order and declaration issued.
Representation	
APPLICANT	MR J ROSALES-CASTENADA
RESPONDENT	MR D JONES AS AGENT

Order.

HAVING heard Mr J Rosales-Castenada on behalf of the applicant and Mr D Jones as agent on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby—

(1) ORDERS that the application to dismiss the substantive application herein for want of jurisdiction be and is hereby dismissed.

(2) DECLARES that the substantive application herein as filed was and remains within the jurisdiction of the Commission.

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

CONFERENCES—Notation of—

PARTIES		COMMISSIONER/ CONFERENCE NUMBER	DATE	MATTER	RESULT
Australian Workers' Union	Chiquita Mushrooms	Smith C CR129/00	22/08/00	Termination	Discontinued by leave
Australian Workers' Union	BHP Iron Ore Pty Ltd	Kenner C C151/00	2/08/00	Alleged Unfair Transfer	Discontinued
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Henry Walker Eltin	Gregor C CR350/99	5/10/00	Dismissed for alleged safety breach	Discontinued
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Plumbers Industries Pty Ltd	Kenner C CR301/98	28/09/00	Redundancy Payment	Discontinued by leave
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Westrac Equipment Pty Ltd	Kenner C CR233/99	26/09/00	Unfair Dismissal	Discontinued by leave
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Metropolitan Health Services Board	Kenner C C63/00	27/04/00	Training Dispute	Referred
Brick, Tile and Pottery Industrial Union	Metro Brick (Cardup Plant)	Kenner C C220/99	30/05/00	Rates of Pay Dispute	Referred
Builders' Labourers, Painters and Plasterers Union	Osborne Park Hospital	Kenner C C71/00	27/04/00	Overtime	Referred
Independent Schools Salaried Officers' Association	Penrhos College (Inc.)	Kenner C C168/00	10/08/00	Return to Work	Discontinued
Liquor, Hospitality and Miscellaneous Workers' Union	Quirk Corporate Cleaning	Wood C C215/00	25/08/00	Alleged Unfair Dismissal	Discontinued
Liquor, Hospitality and Miscellaneous Workers' Union	Children's Services Support Unit	Scott C C192/00	4/08/00	Contractual Entitlements not paid to a member	Concluded
Liquor, Hospitality and Miscellaneous Workers' Union	Prestige Property Services Pty Ltd	Beech C C2/00	19/04/00	Alleged Unfair Dismissal	Referred
Liquor, Hospitality and Miscellaneous Workers' Union	Prestige Property Services Pty Ltd	Beech C CR2/00	12/10/00	Unfair Dismissal	Discontinued
York J	Mrs Hilary Lane c/- Hilary Lane and Associates	Wood C C134/00	29/06/00	Alleged underpayment of Long Service Leave Entitlements	Discontinued

PROCEDURAL DIRECTIONS AND ORDERS—

2000 WAIRC 00799

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	JOAN RIBI APPLICANT *v.* CURTIN UNIVERSITY OF TECHNOLOGY RESPONDENT
CORAM	CHIEF COMMISSIONER W S COLEMAN
DELIVERED	WEDNESDAY, 4 OCTOBER 2000
FILE NO/S	APPLICATION 2205 OF 1997
CITATION NO.	2000 WAIRC 00799

Result	dismissed for want of jurisdiction
Representation	
Applicant	Mr R Clohessy
Respondent	Ms L Long

Order.

HAVING heard Mr R Clohessy on behalf of the applicant and Ms L Long on behalf of the respondent and the Commission being satisfied that the applicant's employment was covered by the Community Colleges (Western Australia) Interim Award, 1995 and that the Curtin University of Technology is a constitutional corporation, hereby orders that;

The application be dismissed for want of jurisdiction

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

2000 WAIRC 00610

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	WILLIAM HULL APPLICANT v. CITY OF MANDURAH RESPONDENT
CORAM	COMMISSIONER S J KENNER
DELIVERED	THURSDAY, 14 SEPTEMBER 2000
FILE NO/S	APPL 706/1998

Result	Direction issued.
Representation	
Applicant	Mr D Howlett of counsel
Respondent	Mr A Randles of counsel

Direction.

HAVING heard Mr D Howlett of counsel for the applicant and Mr A Randles of counsel for the respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby directs—

1. THAT the respondent file and serve a notice of answer and counter proposal on the applicant by 20 September 2000.
2. THAT the respondent do file and serve a list of discoverable documents by 27 September 2000.
3. THAT the applicant and respondent exchange discoverable documents by 4 October 2000.
4. THAT any witness statements be filed, exchanged or delivered by either party, to the other, by 1 November 2000.
5. THAT if witness statements are not to be exchanged or delivered, a list of witnesses shall be provided, by either party, to the other by 1 November 2000.
6. THAT the applicant and respondent file an agreed statement of facts (if any) no later than 3 days prior to the date of hearing.
7. THAT the parties have liberty to apply on short notice.

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

2000 WAIRC 00759

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	WILLIAM HULL APPLICANT *v.* CITY OF MANDURAH RESPONDENT
CORAM	COMMISSIONER S J KENNER
DELIVERED	THURSDAY, 28 SEPTEMBER 2000
FILE NO/S	APPLICATION 706 OF 1998
CITATION NO.	2000 WAIRC 00759

Result	
Representation	
Applicant	Mr D Howlett of counsel
Respondent	Mr A Randles of counsel

Order.

HAVING heard Mr D Howlett of counsel for the applicant and Mr A Randles of counsel for the respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

1. THAT the respondent file and serve a notice of answer and counter proposal on the applicant by 5 October 2000.
2. THAT the respondent do file and serve a list of discoverable documents by 12 October 2000.
3. THAT the applicant and respondent exchange discoverable documents by 19 October 2000.
4. THAT any witness statements be filed, exchanged or delivered by either party, to the other, by 6 November 2000.
5. THAT if witness statements are not to be exchanged or delivered, a list of witnesses shall be provided, by either party, to the other by 1 November 2000.
6. THAT if the parties agree on a statement of facts, that the statement be filed by 3 November 2000.
7. THAT the parties have liberty to apply on short notice.

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

2000 WAIRC 00774

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	WILLIAM ROBERT SYMONDS APPLICANT *v.* COLLIER HOMES PTY LTD RESPONDENT
CORAM	COMMISSIONER A R BEECH
DELIVERED	FRIDAY, 29 SEPTEMBER 2000
FILE NO	APPLICATION 456 OF 2000
CITATION NO.	2000 WAIRC 00774

Result	Liberty granted to apply to amend application and balance of application dismissed
Representation	
Applicant	Mr W. Symonds appeared on his own behalf as the applicant.
Respondent	No appearance on behalf of the respondent.

Order.

HAVING HEARD Mr W. Symonds on behalf of himself 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 orders:

1. THAT so much of the application that relates to claims for commission in contracts 4859 (Demarte) and 4750 (Salvation Army) be dismissed; and
2. THAT liberty be granted to the applicant to apply to amend his claim within 14 days of the date of this Order.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

2000 WAIRC 00656

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	RUSTON ANTHONY KELLAR V BDM MARKETING PTY LTD
CORAM	COMMISSIONER S WOOD
DELIVERED	THURSDAY, 21 SEPTEMBER 2000
FILE NO	APPL 481/2000

Representation	
Applicant	Mr T Crossley as agent
Respondent	Mr B Murray

Orders and Directions.

This matter having come on for conference pursuant to section 32 of the Industrial Relations Act, 1979 on the 16th day of June 2000 & the 15th day of September 2000, and having heard Mr T Crossley on behalf of the applicant and Mr B Murray on behalf of the respondent, and the Commission having decided to list the matter for preliminary hearing as to whether the applicant was an employee or contractor, and the Commission having determined that the following orders and directions were necessary and expedient for the just hearing and determination of the matter, it is this day, the 21st day of September 2000, ordered and directed as follows —

1. THAT the applicant in these proceedings do file and serve written submissions on or before the 28th day of September 2000.
2. THAT the respondent in these proceedings do file and serve written submissions on or before the 5th day of October 2000.
3. THAT the applicant in these proceedings do file and serve written submissions in response on or before the 9th day of October 2000.

(Sgd.) S. WOOD,
[L.S.] Commissioner.

2000 WAIRC 00864

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	MARIANNE CLAIRE KERR, APPLICANT *v.* KWIK & SWIFT CO PTY LTD, RESPONDENT
CORAM	COMMISSIONER J H SMITH
DELIVERED	THURSDAY, 12 OCTOBER 2000
FILE NO/S	APPLICATION 766 OF 2000
CITATION NO.	2000 WAIRC 00864

Representation	
Applicant	in person
Respondent	in person

Order.

Having heard the Applicant on her own behalf and the Respondent on their own behalf, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders —

(a) Mr Hughes to provide Ms Kerr with a statement of employment containing the following—
   (i) dates of employment
   (ii) title of position; and
   (iii) statement of duties
(b) Mr Hughes undertakes on behalf of the Respondent Kwik and Swift Pty Ltd not to make any adverse comment about the termination of Ms Kerr's employment and to advise any person making a reference check enquiry, that it is the policy of the company not to provide any comment on the reasons for termination.
(c) On receipt of the statement of employment Ms Kerr will file a Notice of Discontinuance.
(d) All reference check enquiries to be referred to Mr Hughes.

(Sgd.) J. H. SMITH,
[L.S.] Commissioner.

2000 WAIRC 00762

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	JOAN ORCHARD, APPLICANT
	v.
	YORK & DISTRICTS CO-OPERATIVE LIMITED, RESPONDENT
CORAM	COMMISSIONER S J KENNER
DELIVERED	THURSDAY, 28 SEPTEMBER 2000
FILE NO/S	APPLICATION 812 OF 2000
CITATION NO.	2000 WAIRC 00762

Result	Interlocutory order issed.
Representation	
Applicant	Mr D Howlett of counsel
Respondent	Ms M Reynolds of counsel

Order.

HAVING heard Mr D Howlett of counsel on behalf of the applicant and Ms M Reynolds 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 any amendment to the notice of application be filed and served by 29 September 2000.
2. THAT the parties file and serve a list of discoverable documents by 10 October 2000.
3. THAT the parties exchange discoverable documents by 27 October 2000.
4. THAT the parties exchange a list of witnesses by 27 October 2000.
5. THAT evidence in chief be given by witness statements to be exchanged not less than 3 working days prior to the date of hearing.
6. THAT the matter be listed for hearing for 3 days.
7. THAT the parties have liberty to apply on short notice.

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

2000 WAIRC 00617

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	BEVERLEY ANNE SMITH, APPLICANT
	v.
	PENRHOS COLLEGE (INC), RESPONDENT
CORAM	COMMISSIONER S J KENNER
DELIVERED	FRIDAY, 15 SEPTEMBER 2000
FILE NO/S	APPL 1302/2000

Result	Direction issued.
Representation	
Applicant	Mr T Kucera of counsel
Respondent	Ms D Peters of counsel

Direction.

HAVING heard Mr T Kucera of counsel on behalf of the applicant and Ms D Peters of counsel on behalf of the respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby directs:—

1. THAT the respondent file and serve a notice of answer and counter proposal on the applicant by 21 September 2000.
2. THAT the applicant make an election to proceed with either application No. 1302 of 2000 or application No. C 194 of 2000 by 28 September 2000.
3. THAT if the applicant elects to proceed with application No. 1302 of 2000 that each party give an informal discovery of documents by serving its list of documents particularising any objections to production by 12 October 2000.
4. THAT inspection of documents shall be completed by 19 October 2000.
5. THAT the parties have liberty to apply on short notice.

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

2000 WAIRC 00859

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	BEVERLEY ANNE SMITH
	APPLICANT
	v.
	PENRHOS COLLEGE (INC)
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DELIVERED	WEDNESDAY, 11 OCTOBER 2000
FILE NO/S	APPLICATION 1302 OF 2000
CITATION NO.	2000 WAIRC 00859

Result	Order issued.
Representation	
Applicant	Mr T Kucera of counsel
Respondent	Ms D Peters of counsel

Order.

HAVING heard Mr T Kucera of counsel on behalf of the applicant and Ms D Peters of counsel on behalf of the respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 ("the Act"), hereby orders—

1. THAT the issue of whether the herein application was referred to the Commission within the time required by s 29(2) of the Act be heard and determined as a preliminary issue.
2. THAT each party shall give an informal discovery in relation to paragraph 1 of this order only by serving its list of documents by 24 October 2000.
3. THAT the applicant and respondent file and serve witness statements on this issue by 31 October 2000.
4. THAT if the herein application be held by the Commission to have been referred within time for the purposes of the Act that application No. C 194 of 2000 be dismissed.

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

AWARDS/AGREEMENTS—Consolidation by Registrar—

THE AMBULANCE SERVICE COMMUNICATION CENTRE EMPLOYEES' AWARD 1991.

No. A4 of 1991.

PURSUANT to section 93(6) of the Industrial Relations Act 1979 the following award has been consolidated and is been published hereunder for general information.

Dated at Perth this 25th day of September, 2000.

J. SPURLING,
Registrar.

The Ambulance Service Communication Centre Employees' Award 1991,

No. A4 of 1991

1.—TITLE

This Award shall be known as the "Ambulance Service Communication Centre Employees' Award 1991" and replaces the "Ambulance Service Communication Centre Employees' Order No. 125 of 1990".

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 $400.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2000.

(3) The Minimum Adult Award Wage of $400.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions to July, 2000, including the increase in Matter No. 654 of 2000.

(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 $400.40 per week.

(6) (a) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on traineeships or Jobskills placements, or to other categories of employees who by prescription are paid less than the minimum award rate.

(b) Liberty to apply is reserved in relation to any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.

(7) Subject to this clause the Minimum Adult Award Wage shall—

(a) apply to all work in ordinary hours.

(b) apply to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave and for all other purposes of this award.

(8) Minimum Adult Award Wage

The rates of pay in this award include the minimum weekly wage for adult employees payable under the July 2000 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.—ARRANGEMENT

1. Title
1B. Minimum Adult Award Wage
2. Arrangement
3. Scope
4. Term
5. Contract of Service
6. Acting Appointments and Relieving
7. Hours of Duty
8. Overtime
9. Wages
10. Shift and Weekend Penalties
11. Uniforms
12. Annual Leave
13. Public Holidays
14. Absence Through Sickness
15. Long Service Leave
16. Payment of Wages
17. Wage Record
18. Union Interviews
19. Notice Board
20. Compassionate Leave
21. Special Leave
22. Court Service
23. Jury Service
24. Amenities
25. Maternity Leave
26. Trade Union Training
27. Training Allowance
Appendix—Resolution of Disputes Requirement
Schedule A—Parties to the Award
Appendix—S.49B—Inspection Of Records Requirements

3.—SCOPE

This Award shall apply to employees engaged in the classifications mentioned in Clause 9.—Wages of this Award and who are employed by the St. John Ambulance Australia—W.A. Ambulance Service (Incorporated) to work within the Ambulance Service Communications Centre.

4.—TERM

This Award shall be for a period of two years as from the beginning of the first pay period commencing on or after 21 June 1991.

5.—CONTRACT OF SERVICE

(1) The contract of service shall be fortnightly and shall be terminable by two week's notice, or by the payment or forfeiture of two week's pay in lieu of such notice, on either side.

(2) The provisions of subclause (1) of this clause do not affect the employer's right to dismiss for misconduct and an officer so dismissed shall be entitled to wages up to the time of dismissal only.

(3) The employer shall forward to each new officer a letter of appointment, setting out the terms and conditions of employment together with a copy of this Award.

6.—ACTING APPOINTMENTS AND RELIEVING

(1) An officer may be appointed in an acting capacity to fill a vacant appointment for a period not exceeding six months.

(2) An officer may be appointed to relieve another officer in a higher classification when such officer is absent on leave, illness or other temporary absence.

(3) An officer who is appointed to assume acting or relieving duties of a higher classification shall be paid at the rate applying to the position for the time worked.

(4) All periods of acting in a higher capacity position for six weeks or more continuous acting will be aggregated and credited for calculations of Service prior to elevation to the second or third year rates of the higher position.

(5) Where annual leave or sick leave falls due within or immediately following the period of relief duty, the higher rate of pay shall be extended to annual leave, long service leave and/or sick leave.

(6) An officer shall not suffer any reduction of pay caused by the relief of another officer.

(7) Applications shall be called by the employer for all appointments.

7.—HOURS OF DUTY

(1) The ordinary hours of duty shall be an average of 38 per week, worked in a series of shifts arranged in a roster as agreed between the parties.

(2) No roster will require an officer to work more than six consecutive shifts.

8.—OVERTIME

(1) Any work done outside of the ordinary hours prescribed in Clause 7.—Hours of Duty of this Award, shall be deemed overtime and shall be paid for at the rate of double time except where work done outside the ordinary hours is performed in accordance with a Roster agreed to between the employer and the Union, in which case the excess hours shall be paid for at the rate of time and one half for the first two hours and double time thereafter.

(2) In the calculation of overtime each day shall stand alone.

(3) (a) Subject to the provisions of this clause an officer who is required to continue working after the usual ceasing time for more than one hour shall be supplied with a meal by the employer or be paid $6.77 for a meal.

(b) Where the amount of overtime worked necessitates more than one meal, the employer shall supply each such additional meal or pay to the officer $6.77 for each such additional meal. The officer shall be entitled to the additional meal or meal allowance after each four hours.

(c) For the purpose of paragraphs (a) and (b) of this subclause, the continuity of work shall not be deemed to have been interrupted by any meal break allowed.

(4) The provisions of subclause (3) of this clause shall not apply in respect of any period of overtime for which the officer has been notified on the previous day or earlier that the officer will be required.

(5) An officer recalled for duty outside the normal rostered hours shall be paid at overtime rates for a minimum of three hours.

(6) Period After Overtime

(a) When overtime is necessary it shall wherever reasonably practical be so arranged that officers have at least eight consecutive hours off duty between the work of successive days.

(b) An officer who works so much overtime between the termination of ordinary work on one day and the commencement of ordinary work on the next day that the officer has not had at least eight consecutive hours off duty between those times shall, subject to this subclause, be released after the completion of such overtime until the officer has had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

If, on the instruction of the employer, such officer resumes or continues work without having such eight consecutive hours off duty the officer shall be paid at double time until released from duty for such period. The officer shall then be entitled to be absent eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

9.—WAGES

The minimum rates of weekly wages payable for officers covered by this Award shall be as follows—

	Base Rate	Arbitrated Safety Net Adjustments	Minimum
	$	$	$
(1) (a) Communications Officer:			
1st year of employment	427.00	75.00	502.00
2nd year of employment	439.00	75.00	514.00
3rd year of employment	452.00	75.00	527.00
4th year of employment	466.00	73.00	539.00
5th year of employment	476.00	73.00	549.00
6th year of employment, and thereafter	491.00	73.00	564.00
(b) Senior Communications Officer:			
1st year of employment in this rank	508.00	73.00	581.00
2nd year of employment in this rank	522.00	71.00	593.00
3rd year of employment in this rank and thereafter	536.00	71.00	607.00

(c) The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

These arbitrated safety net adjustments may be offset against any equivalent amount in the rate of pay received by employees since 1 November 1991 above the rate prescribed in the Award, except where such absorption is contrary to the terms of an industrial agreement.

Increases in rates of pay otherwise made under the State Wage Case Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

(d) — deleted

(e) — deleted

(2) Where casual officers are employed, they shall be paid at the rates prescribed in paragraph (a) of subclause (1) of this clause, as applicable to first year of employment, plus 20%. Any casual officer shall only be employed for periods of less than two weeks duration.

10.—SHIFT AND WEEKEND PENALTIES

(1) A loading of 15% shall be paid for all time worked on an afternoon shift or a night shift as defined hereunder—

(a) Afternoon shift—commencing at or after 12.00 noon but before 6.00pm.

(b) Night shift—commencing at or after 6.00pm but before 7.00am.

(2) All ordinary hours worked between midnight Friday and midnight Sunday shall be paid at the rate of time and one half.

(3) Overtime on shift work shall be paid, based on the rate payable for shift work, and calculated on hours worked on each day falling within the agreed roster.

11.—UNIFORMS

Each officer shall be provided with a uniform issue on the following basis—

(1) Male—

Initial Issue—

1 Parka
3 Trousers
2 Shorts (*if not required an extra pair of trousers will be issued)
4 pair Walk socks—blue/grey (*if shorts supplied)
6 Shirts with roundells (*short sleeve)
2 Name badges
2 Blue Ties
1 Trouser Belt
1 Jumper—blue
1 Hold-all bag
1 pair Shoes—black
6 pair Socks—black
1 First aid kit
2 sets Epaulettes
4 small Buttons

The basis of replacement of these items shall be as follows—

18 Months—

2 Trousers or 1 Trousers and 1 shorts
4 Shirts with roundells
4 pair Socks—black
4 pair Walk socks—blue/grey (*if shorts supplied)

As Necessary—

Parka
Jumper—blue

Shoes
Tie
Name badge
Belt
Hold-all bag
First aid kit
Epaulettes

Any damaged item of uniform will be replaced as required, subject to fair wear and tear. The damaged/worn item must be handed in together with an authorised requisition.

(2) Female—

Initial Issue—

3 Navy blue skirts
1 Navy blue slacks (*if not required an extra skirt will be issued)
6 Shirts with roundells
1 Navy blue jumper
1 Parka
1 Sleeveless jumper
2 Name badges
1 First aid kit
1 Hold-all bag
2 sets Epaulettes
4 small Buttons
1 pair Shoes
30 pairs Stockings/Pantyhose

The basis of replacement of these items shall be as follows—

18 Months—

2 Skirts or 1 slacks and 1 skirt
4 Shirts with roundells
30 pairs Stockings/Pantyhose

As Necessary—

Jumper
Parka
Shoes
Name badge
First aid kit
Hold-all bag
Epaulettes

Damaged items of uniform will be replaced as required, subject to fair wear and tear. The damaged/worn item must be handed in together with an authorised requisition.

12.—ANNUAL LEAVE

(1) Except as hereinafter provided, a period of four consecutive weeks' leave with payment of ordinary wages as prescribed shall be allowed annually to an officer by the employer after a period of 12 months' continued service with the employer.

(2) (a) In addition to the entitlement prescribed in subclause (1) of this clause, a seven day shift officer shall receive one week's leave for being regularly rostered to work on Sundays and public holidays and a further week's leave in lieu of public holidays falling on rostered days off.

(b) Where an officer with 12 months' continuous service is engaged for part of a qualifying 12 monthly period as a seven day shift officer, that officer shall be entitled to have the period of annual leave to which the officer is otherwise entitled under this clause increased by 1/6th of a week for each completed month continuously so engaged.

(3) If any Award holiday falls within an officer's period of annual leave and is observed on a day which in the case of that officer 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, but this subclause shall not apply to a seven day shift officer.

(4) After one month's continuous service in any qualifying 12 monthly period an officer whose employment terminates shall be paid, in respect of each completed month of continuous service in that qualifying period, 1/3rd of a week's pay at the officers ordinary rate of wage with the exception of seven day shift officers who shall be paid half of a week's pay for each completed month of service in that qualifying period.

(5) Any time in respect of which an officer is absent from work except time for which that officer is entitled to claim sick pay or time spent on holidays, annual leave, accrued days off or long service leave as prescribed by this Award shall not count for the purpose of determining the officer's right to annual leave.

(6) In special circumstances, and by mutual consent of the employer and officer, annual leave may be taken in not more than two periods.

(7) (a) An officer who, at the commencement of annual leave/accrued days off, has an entitlement to payment for non attendance on the grounds of personal ill health for not less than 38 hours under the provisions of Clause 14.—Absence Through Sickness of this Award and who, within 14 days of resuming work produces to the employer a certificate from a qualified medical practitioner that during annual leave/accrued days off the officer was confined to home or to a hospital for a period of at least seven consecutive days for a reason which, if the officer had not been on annual leave/accrued days off, would have entitled the officer to payment under the provisions of the said Clause 14.—Absence Through Sickness of this Award shall be deemed to be absent from work through sickness for so much of that period as the officer would otherwise have been entitled to payment under that clause.

(b) An officer to whom paragraph (a) of this subclause applies shall take the period deemed to be absence through sickness as annual leave/accrued days off at a time convenient to the employer but on ordinary pay, without the loading prescribed in subclause (8) of this clause.

(8) During a period of annual leave an officer shall be paid a loading of 17.5% calculated on the officer's ordinary wage as prescribed or shift penalties where applicable, whichever is the greater.

13.—PUBLIC HOLIDAYS

(1) (a) The following days, or the days observed in lieu shall, subject as hereinafter provided, be allowed as holidays without deduction of pay, namely: New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Anzac Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in this subclause.

(b) Where Christmas Day or New Year's Day falls on a Saturday or a Sunday such holiday shall be observed on the next succeeding Monday and where Boxing Day falls on a Sunday or a Monday, such holiday shall be observed on the next succeeding Tuesday; in each case the substituted day shall be deemed a holiday without deduction of pay in lieu of the day for which it is substituted and the Saturday and Sunday deemed an ordinary weekend.

(2) Where—

(a) a day is proclaimed as a public holiday or as a public half holiday under Section 7 of the Public and Bank Holidays Act, 1972; and

(b) that proclamation does not apply throughout the State or to the metropolitan area of the State,

that day shall be a whole holiday or, as the case may be, a half holiday for the purposes of this Award within the district or locality specified in the proclamation.

(3) All time worked on such days shall be paid for at the rate of double time and one half.

(4) Where an officer is required to work overtime on a holiday that officer shall be paid for a minimum of three hours at the rate appropriate to the day.

(5) The foregoing provisions of this clause with the exception of subclause (4) of this clause shall not apply to seven day shift officers, who shall receive in lieu of any penalties for working on public holidays, a payment equivalent to one week's ordinary pay including penalties as prescribed in Clause 9.—Wages and Clause 10.—Shift and Weekend Penalties of this Award when they proceed on each six week annual leave period.

14.—ABSENCE THROUGH SICKNESS

(1) An officer who is unable to attend for work by reason of personal illness or injury (not being illness or injury arising from the officer's misconduct or wilful default or from an injury arising out of or in the course of employment) shall be entitled to leave of absence without deduction of pay for a period of two weeks in each leave year (commencing on 1.7.88). The absence will be payable at the Officer's usual weekly rate of pay. Any absence in excess of this period shall be subject to review by the employer.

(2) At the conclusion of each twelve month entitlement period, the officer's sick leave entitlement will be credited with any unused portion of the entitlement referred to in subclause (1) of this clause. Sick leave entitlements unused in any leave year shall continue to accrue pursuant to the provisions of this subclause and may be claimed by the officer if an absence by reason of ill health or injury exceeds entitlement which has accrued for the year at the time of absence. Provided that an officer shall not be entitled to claim payment for any period exceeding twelve weeks in any one year of service.

(3) For the purpose of this clause, the officer's usual weekly rate of pay shall mean the total weekly rate prescribed in Clause 9.—Wages and Clause 10.—Shift and Weekend Penalties of this Award.

(4) The provisions of this clause do not apply to an officer who fails to produce a certificate from a medical practitioner dated at the time of the absence or who fails to supply such other proof of the illness or injury as the employer may reasonably require provided that the officer shall not be required to produce a certificate from a medical practitioner with respect to absences of two days or less unless, after two or more such absences in any year of service the employer requests in writing that the next and subsequent absences in that year, if any, shall be accompanied by such certificate.

(5) No payment shall be made for any absence where the officer has failed to notify the employer at least two hours prior to the commencement of a day shift or at least four hours prior to the commencement of a night shift, provided that this subclause shall not apply where the nature of this illness or injury is such that the employee is unable to notify the employer within the prescribed time.

(6) The provisions of this clause do not apply to casual officers.

(7) The provisions of this clause with respect to payments do not apply to officers who are entitled to payment under the Worker's Compensation and Assistance Act.

15.—LONG SERVICE LEAVE

(1) With the exception of the first qualifying period for those officers covered under subclause (2) of this clause, all officers shall be entitled to long service leave pursuant to the conditions laid down in the document Long Service Leave Conditions—State Government Wages Employees, as consolidated and amended from time to time.

(2) Those officers employed prior to 1 August 1986 shall be entitled to 13 weeks' long service leave after their initial seven years' service. All other conditions relating to long service leave, shall be pursuant to the document referred to in subclause (1) of this clause.

16.—PAYMENT OF WAGES

(1) On each fortnightly pay day each officer shall be furnished a statement or envelope showing the gross wage, overtime penalty rates, together with all details of deductions.

(2) Wages shall be paid by the employer, into an agreed account as nominated by the officer.

17.—WAGE RECORD

(1) The employer shall keep a record at the head office of the organisation showing—

(a) The name and address of all officers.

(b) The nature of the work.

(c) The starting and finishing time of each day.

(d) The total hours worked.

(e) The wages and overtime paid.

(2) The time and wages record shall be open for inspection by a duly accredited official of the Union, during the usual office hours, at the employer's office or other convenient place, and the official shall be allowed to take extracts therefrom. Before exercising a power of inspection the representative shall give notice of not less than 24 hours to the employer. Provided that if for any reason the record be not available when the official calls to inspect it, it shall be made available for inspection within 24 hours either at the employer's office or other convenient place.

Provided further that nothing in this subclause shall empower a duly accredited official of the Union to enter any part of the premises of the employer, pursuant to this subclause, unless the employer is the employer or former employer of a member of the union.

Before exercising a power of inspection the representative shall give reasonable notice of not less than 24 hours to the employer.

18.—UNION INTERVIEWS

(1) A duly accredited representative of the Union shall be permitted to interview any officer, on union business, on the employer's premises, at a convenient time and with the permission of the employer.

(2) Permission pursuant to (1) hereof shall not unreasonably be withheld.

19.—NOTICE BOARD

(1) An employer shall provide a notice board of reasonable dimension to be erected in a prominent position in the establishment upon which an accredited union representative shall be permitted to post formal union notices, signed or countersigned by the representative posting them.

(2) Any notice posted on such a board not signed or countersigned may be removed by an accredited union representative or the employer.

(3) A copy of this Award shall be allowed to be posted on the notice board referred to in subclause (1) of this clause.

20.—COMPASSIONATE LEAVE

(1) An officer shall on notice be entitled—

(a) on the death or serious illness within Australia of a wife, husband, father, mother, brother, sister, child or stepchild, mother-in-law or father-in-law, grandparent, grandchild;

(b) on the death only outside of Australia of a wife, husband, mother, father, sister, brother, child, to leave without deduction of pay for a period not exceeding the number of hours worked by the officer in four ordinary days' work.

(2) Proof of such death or serious illness shall be furnished by the officer to the satisfaction of the employer. In the case of serious illness, the officer must establish that the relative or others normally dependent on the relative, require the care and attention of the officer during the period of the entitlement.

(3) Provided that this clause shall have no effect while the period of entitlement of leave under it coincides with any other period of entitlement to leave.

(4) For the purpose of this clause the words "wife" and "husband" shall include a person who lives with the officer as a defacto wife or husband.

21.—SPECIAL LEAVE

(1) Leave of absence, without pay, may be granted in special circumstances at the discretion of the employer. Leave of absence so granted in accordance with (1) hereof shall be in writing.

(2) An officer taking the said leave will not forfeit any accumulated long service leave entitlement from the time the officer commences employment to the time the said leave of absence is commenced.

22.—COURT SERVICE

(1) Notwithstanding anything else contained in this Award where an officer has been summoned to appear before a Coroner's Court or other court arising out of the course of the officer's employment, the officer shall be paid at the officer's usual weekly rate of pay and shall be paid for all time whilst the officer attends the said court.

(2) Where an officer is summoned to appear in court during the officer's rostered time off duty, the officer shall be entitled to overtime rates as prescribed in Clause 8.—Overtime of this Award.

(3) Where an officer is summoned to appear in court during a period of annual leave/accrued days off or long service leave, the officer shall receive an additional paid day's leave, inclusive of all penalties, added to the end of the officer's leave period, for each day or part thereof the officer was required to interrupt the leave for the purpose of travelling to and from and attending the said court.

(4) An officer, to become entitled to payment pursuant to this clause shall furnish proof of service of the abovementioned court, along with any payment received for attending the court, to the employer.

23.—JURY SERVICE

(1) An officer required to attend for jury service during ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of the attendance for such jury service and the amount of wages pursuant to Clause 9.—Wages of this Award that would have received in respect of ordinary time worked had the officer not been on jury service.

(2) An officer shall notify the employer as soon as possible of the date upon which the officer is required to attend for jury service.

(3) Further, the officer shall provide the employer with proof of attendance, the duration of such attendance and the amount received in respect of such service.

24.—AMENITIES

The employer shall provide officers with such amenities as adequate change rooms, showers, wash rooms, etc., and dining/eating facilities of a standard agreed between the parties to this Award.

25.—MATERNITY LEAVE

(1) Eligibility for Maternity Leave

An officer who becomes pregnant shall, upon production to her employer of a certificate from a duly qualified medical practitioner stating the presumed date of her confinement, be entitled to maternity leave provided that she has had not less than 12 months' continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

For the purposes of this clause—

(a) An officer shall include a part time officer but shall not include an officer engaged upon casual or seasonal work.

(b) Maternity leave shall mean unpaid maternity leave.

(2) Period of Leave and Commencement of Leave

(a) Subject to subclauses (3) and (6) hereof, the period of maternity leave shall be for an unbroken period of from 12 to 52 weeks and shall include a period of six weeks' compulsory leave to be taken immediately before the presumed date of confinement and a period of six weeks' compulsory leave to be taken immediately following confinement.

(b) An officer shall, not less than 10 weeks prior to the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.

(c) An officer shall give not less than four weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave, stating the period of leave to be taken.

(d) An officer shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with paragraph (c) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

(3) Transfer to a Safe Job

Where in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the officer make it inadvisable for the officer to continue at her present work, the officer shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

If the transfer to a safe job is not practicable, the officer may, or the employer may require the officer to, take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (7), (8), (9) and (10) hereof.

(4) Variation of Period of Maternity Leave

(a) Provided the addition does not extend the maternity leave beyond 52 weeks, the period may be lengthened once only, save with the agreement of the employer, by the officer giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened.

(b) The period of leave may, with the consent of the employer, be shortened by the officer giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(5) Cancellation of Maternity Leave

(a) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an officer terminates other than by the birth of a living child.

(b) Where the pregnancy of an officer then on maternity leave terminates other than by the birth of a living child, it shall be the right of the officer to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the officer to the employer that she desires to resume work.

(6) Special Maternity Leave

(a) Where the pregnancy of an officer not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—

(i) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work; or

(ii) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a duly qualified medical practitioner certifies as necessary before her return to work.

(b) Where an officer not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate leave and maternity leave shall not exceed 52 weeks.

(c) For the purposes of subclause (7), (8) and (9) hereof, maternity leave shall include special maternity leave.

(d) An officer returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an officer who was transferred to a safe job pursuant to subclause (3) of this clause, to the position she held immediately before such transfer.

Where such position no longer exists but there are other positions available, for which the officer is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(7) Maternity Leave and Other Leave Entitlements

Provided the aggregate of leave including leave taken pursuant to subclauses (3) and (6) hereof does not exceed 52 weeks—

(a) An officer may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is then entitled.

(b) Paid sick leave or other paid authorised Award absences (excluding annual leave or long service leave), shall not be available to an officer during her absence on maternity leave.

(8) Effect of Maternity Leave on Employment

Notwithstanding any order, or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an officer but shall not be taken into account in calculating the period of service for any purpose of the Award.

(9) Termination of Employment

(a) An officer on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this Award.

(b) An employer shall not terminate the employment of an officer on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(10) Return to Work After Maternity Leave

(a) An officer shall confirm her intention of returning to her work by notice in writing to the employer giving not less than four weeks prior to the expiration of her period of maternity leave.

(b) An officer, upon the expiration of the notice required by paragraph (a) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an officer who was transferred to a safe job pursuant to subclause (3) hereof to the position which she held immediately before such transfer. Where such position no longer exists but there are other positions available for which the officer is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(11) Replacement Employees

(a) A replacement officer is an officer specifically engaged as a result of an officer proceeding on maternity leave.

(b) Before an employer engages a replacement officer under this subclause, the employer shall inform that person of the temporary nature of the employment and of the rights of the officer who is being replaced.

(c) Before an employer engages a person to replace an officer temporarily promoted or transferred in order to replace an officer exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the officer who is being replaced.

(d) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement officer.

(e) A replacement officer shall not be entitled to any of the rights conferred by this clause except where his/her employment continues beyond the 12 months' qualifying period.

26.—TRADE UNION TRAINING

(1) An employee shall be granted up to four shifts' leave with pay plus four shifts' leave without pay each calendar year non-cumulative to attend courses conducted or approved by the Australian Trade Union Training Authority, subject to the conditions shown under subclause (2) hereof.

(2) The granting of such leave shall be subject to—

(a) The employee or Union giving not less than one month's notice of the intention to attend such course, or such lesser period as may be agreed between the employer, Union and employee concerned, and the operations of the Ambulance Service not being unduly affected by the employee's absence; provided that the employer's approval will not be unreasonably withheld.

(b) All applications for such leave shall be accompanied by a statement from the Union advising—

(i) the name of the employee nominated for the course;

(ii) details of course content, duration, commencement date and venue.

(c) Leave in lieu shall not apply when the course dates coincide with any public holiday, rostered day off, annual and long service leave.

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

(4) Each employee on paid study leave pursuant to this clause shall be paid all wages which normally become due and payable during the period of leave, as if the employee were at work, employed on the employees' normal duties, provided the employer shall not be liable for any expenses incurred by the employee attending an approved course.

27.—TRAINING ALLOWANCE

A Senior Officer called upon to train a new officer for practical 'on-job' training will be entitled to claim an allowance of $2.30 per shift for each occasion such training is given for a full shift. Provided that this allowance will not be paid when any familiarisation training is provided for casual staff.

APPENDIX—RESOLUTION OF DISPUTES REQUIREMENT

(1) This Appendix is inserted into the award/industrial agreement as a result of legislation which came into effect on 16 January 1996 (Industrial Relations Legislation Amendment and Repeal Act 1995) and further varied by legislation which came into effect on 23 May 1997 (Labour Relations Legislation Amendment Act 1997).

(2) Subject to this appendix, and in addition to any current arrangements the following procedures shall apply in connection with questions, disputes or difficulties arising under this award/industrial agreement.

(a) The persons directly involved, or representatives of person/s directly involved, shall discuss the question, dispute or difficulty as soon as is practicable.

(b) (i) If these discussions do not result in a settlement, the question, dispute or difficulty shall be referred to senior management for further discussion.

(ii) Discussions at this level will take place as soon as practicable.

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

(4) Any settlement reached which is contrary to the terms of this award/industrial agreement shall not have effect unless and until that conflict is resolved to allow for it.

(5) Nothing in this appendix shall be read so as to exclude an organisation party to or bound by the award/industrial agreement from representing its members.

(6) Any question, dispute or difficulty not settled may be referred to the Western Australian Industrial Relations Commission 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..

SCHEDULE A—PARTIES TO THE AWARD

The following organisation is a party to this award—

The Federated Miscellaneous Workers' Union of Australia, W.A. Branch.

APPENDIX—S.49B—INSPECTION OF RECORDS REQUIREMENTS

(1) Where this award, order or industrial agreement empowers a representative of an organisation of employees party to this award, order or industrial agreement to inspect the time and wages records of an employee or former employee, that power shall be exercised subject to the Industrial Relations (General) Regulations 1997 (as may be amended from time to time) and the following—

(a) 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 organisation would infringe the privacy of persons who are not members of the organisation; and

(ii) the employer undertakes to produce the records to an Industrial Inspector within 48 hours of being notified of the requirement to inspect by the representative.

(b) The power of inspection may only be exercised by a representative of an organisation of employees authorised for the purpose in accordance with the rules of the organisation.

(c) Before exercising a power of inspection, the representative shall give reasonable notice of not less than 24 hours to an employer.

THE BREADCARTERS' (METROPOLITAN) AWARD. No. 35 of 1963.

PURSUANT to section 93(6) of the Industrial Relations Act 1979 the following award has been consolidated and is been published hereunder for general information.

Dated at Perth this 3rd day of October, 2000.

(Sgd.) J. SPURLING,
[L.S.] Registrar.

1.—TITLE

This award shall be known as the "Breadcarters' (Metropolitan) Award" and replaces Award No. 29 of 1949, as amended.

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 $400.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2000.

(3) The Minimum Adult Award Wage of $400.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions to July, 2000, including the increase in Matter No. 654 of 2000.

(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 $400.40 per week.

(6) (a) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on traineeships or Jobskills placements, or to other categories of employees who by prescription are paid less than the minimum award rate.

(b) Liberty to apply is reserved in relation to any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.

(7) Subject to this clause the Minimum Adult Award Wage shall—

(a) apply to all work in ordinary hours.

(b) apply to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave and for all other purposes of this award.

(8) Minimum Adult Award Wage

The rates of pay in this award include the minimum weekly wage for adult employees payable under the July 2000 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.—ARRANGEMENT

1. Title
1B. Minimum Adult Award Wage
2. Arrangement
3. Scope
4. Area
5. Term
6. Wages
6A. Supplementary Payment and Safety Net Adjustment
7. Hours
8. Overtime
9. Holidays
10. Payment of Wages
11. Shortages and Change Money
12. General Conditions
13. Definitions
14. Annual Leave
15. Payment for Sickness
16. Engagement
17. Meal and Rest Breaks
18. Time and Wages Record
19. Learning a Round
20. Junior Worker's Certificate
21. Breakdowns
22. Long Service Leave
23. Workers—Additional Obligation re Employment
24. Part-Time Loaders and Drivers/Merchandisers
24A Casual Employment
25. Bereavement Leave
26. Maternity Leave
27. Air Conditioning
28. Settlement of Disputes Procedure
29. Award Modernisation
30. Training Leave
31. Supported Wage System
Appendix—Resolution of Disputes Requirements
Schedule of Respondents
Appendix—S.49B—Inspection Of Records Requirements

3.—SCOPE

This award shall apply to the workers classified in clause 6.—Wages, employed in or in connection with the delivery or conveyance of bread.

4.—AREA

This award shall apply to the locality comprised within radius of 45 kilometres from the G.P.O. Perth.

5.—TERM

The term of the award shall be for a period of three (3) years from the date hereof.

6.—WAGES

(1) The following shall be the total minimum rates of wages payable to employees covered by this award.

	Base Rate $	Supplementary Payment $	Safety Net Adjustment $	Total Weekly Wage $
Grade 1	314.30	44.90	75.00	434.20
Loader Yardperson				
Grade 2	327.70	46.80	75.00	449.50
Breadcarter in charge of rigid vehicle up to 4.5 tonnes Gross Vehicle Mass (GVM) or Gross Combination Mass (GCM) Loader in charge of automatic slicing and wrapping machine Breadcarter				
Grade 3	334.40	47.80	75.00	457.20
Breadcarter in charge of rigid vehicle 4.5 to 13.9 tonnes GVM or GCM				
Grade 4	344.50	49.20	75.00	468.70
Breadcarter in charge of rigid vehicle over 13.9 tonnes GVM or GCM up to 13 tonnes capacity				

	Base Rate $	Supplementary Payment $	Safety Net Adjustment $	Total Weekly Wage $
Grade 5	351.10	50.20	75.00	476.30
Breadcarter in charge of rigid vehicle and trailer up to 22.4 tonnes GCM over 10 and up to 15 tonnes capacity				
Grade 6				
Breadcarter in charge of articulated vehicle 3 or more axles over 22.4 tonnes GCM over 22 and up to 39 tonnes capacity	357.90	51.10	75.00	484.00

Leading Hands

A leading hand appointed as such by the employer and placed in charge of—

(a) Not less than three and not more than ten other workers shall be paid $19.26 per week extra.

(b) More than ten and not more than twenty other workers shall be paid $28.74 per week extra.

(c) More than twenty other workers shall be paid $36.42 per week extra.

(2) JUNIOR WORKERS

Rates of pay (percent of total wage payable to an adult worker for the class of work performed).

	%
If under 17 years of age	60
If 17 and under 18 years of age	70
If 18 and under 19 years of age	85
If 19 and under 20 years of age	90
If 20 years of age	100

No junior under 17 years of age shall be permitted to be in sole charge of a motor vehicle.

A junior who is required to have a "B" class motor vehicle driver's license shall be paid the full adult rate.

(3) CASUALS

Casual hands shall be paid at the rate of 20 per cent in addition to the rates prescribed herein.

(4) Breadcarters who are required in any week to collect monies and account for them as part of their duties are to be paid $5.11 per week in addition to the rates before mentioned.

(5) (a) Loaders who are required to commence working before 4.00 a.m. on any day shall be paid for each day so worked, an extra 30 per cent—

(b) Loaders who are required to commence work between 4.01 a.m. and 7.00 a.m. on any day shall be paid an extra 15 per cent for each day so worked.

(6) Breadcarters who are required to commence working before 7.00 am on any day shall be paid an extra 15 per cent for each day so worked.

6A.—SUPPLEMENTARY PAYMENT AND SAFETY NET ADJUSTMENT

(1) The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

These arbitrated safety net adjustments may be offset against any equivalent amount in the rate of pay received by employees since 1 November 1991 above the rate prescribed in the Award, except where such absorption is contrary to the terms of an industrial agreement.

Increases in rates of pay otherwise made under the State Wage Case Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

(2) The supplementary payment payable to an employee pursuant to the provisions of Clause 6.—Wages hereof shall be for all purposes of this Award.

(3) The supplementary payments prescribed in Clause 6.—Wages hereof are in substitution for overaward payments as defined to the extent of any Award wage increase arising out of the application of minimum rates adjustments and broadbanding increases arising out of the September 1989 State Wage Decision.

(4) "Overaward payment" is defined as the amount (whether it be termed overaward payment, attendance bonus, service increment, or any term whatsoever) which an employee would receive in excess of the award wage which applied immediately prior to the introduction of supplementary payments for the classification in which such employee is engaged. Provided that such payment should exclude overtime, shift allowances, penalty rates, disability allowances, fares and travelling time allowances and any other ancillary payments of a like nature prescribed by this Award.

(5) Supplementary payments set out in Clause 6.—Wages hereof represent payment in lieu of equivalent overaward payments.

"Overaward Payment" is defined as the amount (whether it be termed "overaward payment", "attendance bonus", "service increment" or any term whatsoever) which an employee would receive in excess of the "award wage" which applied prior to the decision of the Western Australian Industrial Relations Commission dated 24 December, 1993 (Application No. 1457 of 1993) for the classification in which such employee is engaged. Provided that such payment shall exclude overtime, shift allowances, penalty rates, disability allowances, fares and travelling time allowances and any other ancillary payments of a like nature prescribed by the Award.

7.—HOURS

SECTION A—HOURS

(1) The ordinary hours of work shall be an average of 38 per week to be worked on one of the following basis—

(a) 38 hours within a work cycle not exceeding seven consecutive days; or

(b) 76 hours within a work cycle not exceeding 14 consecutive days; or

(c) 114 hours within a work cycle not exceeding 21 consecutive days; or

(d) 152 hours within a work cycle not exceeding 28 consecutive days.

(2) The ordinary hours of work shall consist of work performed over a period of eight consecutive hours on each working day unless agreed between the employer and the majority of his employees in the plant or section or sections concerned. Such work shall not, in any one week be performed on more than five consecutive days being Monday to Friday inclusive.

(3) Any time worked after eight hours on any one day will be paid for at the rate of time and one half for the first two hours and double time thereafter.

(4) In a week in which an award holiday/holidays falls on what would otherwise be an ordinary working day/days, the ordinary weekly hours shall be reduced by the number of hours that would have been worked on that day/days.

(5) No employee shall be allowed to resume work until he has had a clear ten hours off.

SECTION B—Implementation of 38 Hour Week—

(1) Except as provided in subclause (4) hereof, the method of implementation of the 38 hour week may be any one of the following—

(a) by employees working less than eight ordinary hours each day;

(b) by employees working less than eight ordinary hours on one or more days each week; or

(c) by fixing one day of ordinary working hours on which all employees will be off duty during a particular work cycle; or

(d) by rostering employees off duty on various days of the week during a particular work cycle so that each employee has one day of ordinary hours off duty during that cycle.

(e) Any day off duty shall be arranged so that it does not coincide with a holiday prescribed in subclause (1) of Clause 9.—Holidays, of this award.

(2) In each plant, an assessment should be made as to which method of implementation best suits the business and the proposal shall be discussed with the employees concerned, the objective being to reach agreement on the method of implementation prior to 29/5/85.

(3) In the absence of an agreement at plant level, the procedure for resolving special, anomalous or extraordinary problems shall be as follows—

(a) Consultation shall take place within the particular establishment concerned.

(b) If it is unable to be resolved at establishment level, the matter shall be referred to the State Secretary of the Union (or Unions) concerned or his deputy, at which level a conference of the parties shall be convened without delay.

(c) In the absence of agreement either party may refer the matter to the Western Australian Industrial Relations Commission.

(4) Different methods of implementation of a 38 hour week may apply to various groups or sections of employees in the plant or establishment concerned.

(5) Notice of Days Off Duty

Except as provided in subclause (6) hereof, in cases where, by virtue of the arrangement of his ordinary working hours, an employee in accordance with paragraphs (c) and (d) of subclause (1) hereof, is entitled to a day off duty during his work cycle, such employee shall be advised by the employer at least four weeks in advance of the day he is to take off duty.

(6) (a) An employer, with the agreement of the majority of employees concerned, may substitute the day an employee is to take off in accordance with paragraphs (c) and (d) of subclause (1) hereof, for another day in the case of a breakdown in machinery or a failure or shortage of electric power or to meet the requirements of the business in the event of rush orders or some other emergency situation.

(b) An employer and employee may by agreement substitute the day the employee is to take off for another day.

(c) An employer may institute a banking system of Rostered Days Off.

Employees would therefore work on what would normally have been their rostered day off and accrue an entitlement to bank a rostered day off to be taken at a mutually convenient time for both the employee and the employer.

No payments or penalty payment shall be made to employees working under this substitute banked Rostered Day Off. However the employer will maintain a record of the number of Rostered Days banked and will apply the Average Pay System during the weeks when an employee elects to take a banked Rostered Day Off.

$$\frac{\text{Average weekly pay}}{5} \times \text{Number of Banked Substitute Days}$$

SECTION C—Procedures for In-Plant Discussions—

(1) Procedures shall be established for in-plant discussions, the objective being to agree on the method of implementing a 38 hour week in accordance with Section A—Hours and B—Implementation of 38 Hour Week of this clause and shall entail an objective review of current practices to establish where improvements can be made and implemented.

(2) The procedures should allow for in-plant discussions to continue even though all matters may not be resolved by 29/5/85.

(3) The procedures should make suggestions as to the recording of understandings reached and methods of communicating agreements and understandings to all employees, including the overcoming of language difficulties.

(4) The procedures should allow for the monitoring of agreements and understandings reached in-plant.

(5) In cases where agreement cannot be reached in-plant in the first instances or where problems arise after initial agreements of understandings have been achieved in-plant, a formal monitoring procedure shall apply. The basic steps in this procedure shall be as applies with respect to special, anomalous or extraordinary problems as prescribed in subclause (3) of Section B of this clause.

SECTION D—Hours Transition Provision—

(1) The concept of a 38 hour week shall operate from the beginning of the first pay period commencing on or after 29/5/85 however in recognition of the difficulties associated with its introduction an employer may implement the 38 hour week after that date provided that such implementation shall occur no later than 29/8/85.

(2) Where an employer implements the 38 hour week at a date later than the beginning of the first pay period commencing on or after 29/5/85 an employee shall become entitled to a payment at the date of implementation which shall accrue at the rate of two ordinary hours' pay for each week of 40 ordinary hours that is worked after the beginning of the first pay period commencing on or after 29/5/85. Provided that in any such week where less than 40 ordinary hours are worked then the rate of two ordinary hours' pay shall be reduced proportionately except where an employee is absent from duty in a circumstance that entitles him to payment for the absence pursuant to other provisions of this award.

8.—OVERTIME

(1) All overtime shall be paid in addition to the ordinary wage at the rate of time and one half for the first two hours and double time thereafter.

(2) Overtime shall be paid for all hours on duty in excess of the hours prescribed in Clause 7.—Hours of this Award.

(3) Notwithstanding anything contained herein—

(a) Any employer may require any worker to work reasonable overtime at overtime rates and such worker shall work overtime in accordance with such requirements.

(b) No organisation, party to this Award, or worker or workers covered by this award shall in any way, whether directly or indirectly, be a party to or concerned in any ban, limitation, or restriction upon the working of overtime in accordance with the requirements of this subclause.

(4) No worker shall be allowed to resume work until the worker has had a clear ten hours off.

(5) A worker required to work overtime for more than one and one half hours without being notified on the previous day or earlier that he will be so required to work shall be supplied with a reasonable meal by the employer or paid $5.50 for a meal.

(6) If the amount of overtime required to be worked necessitates a second or subsequent meal, the employer shall, unless he has notified the worker concerned on the previous day or earlier that such second or subsequent meal will also be required to provide such meals or pay an amount of $3.80 for each second or subsequent meal.

(7) No such payments need to be made to a worker living in the same locality as his place of work who can reasonably return home for such meals.

9.—HOLIDAYS

(a) (i) Subject to subclause (c) of this clause,the following days, or the days observed in lieu thereof shall be granted as holidays to all workers without deduction of pay, namely: New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Anzac Day, State Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

(ii) Where Christmas Day or New Year's Day falls on a Saturday or a Sunday such holiday shall be observed on the next succeeding Monday and where Boxing Day falls on a Sunday or a Monday such holiday shall be observed on the next succeeding Tuesday; in each such case the substituted day shall be deemed a holiday without deduction of pay in lieu of the day for which it is substituted.

(b) Any worker who is absent from work for any cause other than sickness (proof whereof shall lie on the worker) on the working day immediately before or the working day immediately following any of the days mentioned in subclause (1) hereof shall not be entitled to payment for the holiday.

(c) Within a radius of twenty-eight miles of the G.P.O. Perth, workers may be required to work on the loading and delivery of bread only on Australia Day, Foundation Day and Sovereign's Birthday and on New Year's Day and Anzac Day when

these days are observed on a Monday in which case an additional day on fullpay shall be added to the annual leave of the worker or payment of one and a half day's pay for such holiday shall be made to the worker. Provided that volunteers shall have the first option of working on the foregoing holidays. Provided further that if as a result of the worker's own default only part of a day is worked by the worker on any such day additional pay or leave shall be equivalent only to the time actually worked on such day.

10.—PAYMENT OF WAGES

(1) Wages shall be paid weekly on a Wednesday, Thursday or Friday. No employer shall hold more than two days wages in hand, except for circumstances agreed between the Union and the employer to be beyond the employer's control.

(2) All wages shall be paid enclosed in an envelope, which shall be clearly endorsed on the outside with the particulars hereunder—

(a) Name
(b) Hourly Rate
(c) Overtime
(d) Allowance
(e) Penalties
(f) Gross Wage
(g) Deductions
(h) Nett Wage

Provided that at the option of the employer, the particulars mentioned may be stated on a slip of paper and included in the envelope.

(3) An employee may be paid his wages by cheque or into his bank or building society account. Where wages continue to be paid in cash payment may be made during the employees time provided that the employee is kept waiting no longer than 15 minutes.

(4) Employee who actually works 38 ordinary hours each week

In the case of an employee whose ordinary hours of work are arranged so that he works 38 ordinary hours each week, wages shall be paid weekly.

(5) Employee who works an average of 38 ordinary hours each week

In the case of an employee whose ordinary hours of work are arranged so that he works an average of 38 ordinary hours each week during a particular work cycle, wages may be paid weekly according to a weekly average of ordinary hours worked even though more or less than 38 ordinary hours may be worked in any particular week of the work cycle.

(6) Rostered day off coinciding with pay day

In the event that an employee, by virtue of the arrangement of his ordinary working hours, is to take a day off on a day which coincides with pay day, such employee shall be paid no later than the working day immediately following pay day.

(7) Commencement and Termination of Employment

(a) An employee who lawfully leaves his employment or is dismissed for reasons other than misconduct shall be paid all monies due to him at the termination of his service with the employer, before leaving the employers premises or alternatively (except in the case of casual employees) a cheque for the amount due may be forwarded to the employees last known address within 48 hours of such termination.

(b) An employee who commences employment during a work cycle shall either—

(i) receive payment for any Day Off duty occasioned by Clause 7.—Hours only for the hours accrued toward that day off during the work cycle;

(ii) be paid for the hours actually worked in that work cycle and not be granted a day off with pay.

(c) An employee who has not taken the Day Off due to him during the work cycle in which employment is terminated, the wages due to that employee shall include a total of hours accrued toward that day off during that work cycle for which payment has not already been made.

(d) Where the employee has taken a Day Off during the work cycle in which employment is terminated, the wages due to that employee shall be reduced by the total of hours for which payment has already been made but which have not accrued toward that Day Off during the work cycle.

(8) Payment for Day Off

An employee who is absent from duty other than on a public holiday or day in lieu thereof, paid sick leave, or bereavement leave shall have his payment for any Day Off duty occasioned by Clause 7.—Hours of this award reduced proportionately.

11.—SHORTAGES AND CHANGE MONEY

(1) A worker with a shortage debited against him shall be allowed to check his books and sheets and any previous relevant books or sheets.

(2) The employer may deduct any shortage from any wages due or otherwise recover the amount from him.

(3) Employer to advise workers of any shortages on a daily basis on the next working day.

(4) If shortages exceed $100.00 in any week, a worker with the consent of the Union may agree to allow such shortages to carry over for one more week before being deducted.

(5) In the absence of consent referred to in (3) such shortages shall be deducted on a weekly basis.

(6) A worker shall not be required to use nor shall he use his own money for the purpose of giving change.

12.—GENERAL CONDITIONS

(1) The employer shall place a copy of this award in a convenient place where the industry is carried on and is easily accessible to the workers.

(2) Juniors may be employed in the proportion of one junior to every five adults or fraction of five employed.

(3) (a) An employer may direct an employee to carry out such duties as are within limits of the employee's skill, competence and training consistent with the classification structure of this award, provided that such duties are not designed to promote deskilling.

(b) An employer may direct an employee to carry out such duties and use such tools and equipment as may be required, provided that the employee has been trained in the use of such tools and equipment.

(c) Any direction issued by an employer pursuant to paragraphs (a) and (b) shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

13.—DEFINITIONS

(1) "Bread Carter" shall mean an employee appointed as such who may be required to perform incidental and peripheral work of a general nature in addition to the following specific duties—

- delivery and conveying of bread and associated products
- loading and packing of vehicle
- maintain the vehicle in a clean condition and carry out minor maintenance/checking to maintain the vehicle in a roadworthy condition
- collect crates
- maintain the paperwork associated with the load and sales
- merchandise products by delivery and replenishing of stock in retail outlets.

(2) "Junior" shall mean any person in receipt of less than the adult wage.

(3) "Yardperson" shall mean an employee appointed as such who may be required to perform general duties in and around the bakery and which may involve cleaning and crate washing.

(4) "Loader" shall mean and include a worker engaged in the sorting, packing, wrapping, slicing or loading of bread.

(5) "Gross Combination Mass" means—

(a) in the case of an articulated truck or trailer combination—

the maximum permissible mass (whether described as the gross train mass or otherwise) for the motor vehicle and the trailer(s) or semi-trailer(s) attached to it, together with the load carried on each, as stated in any certificate that is issued in respect of the motor vehicle by the relevant Authority or by the corresponding authority of another State or Territory or that is required by law to be painted or displayed on the motor vehicle; and

(b) in any other case—

the maximum permissible mass (whether described as the gross vehicle mass or otherwise) for the motor vehicle and its load (including any trailer and its load) as stated in a certificate of registration or other certificate that is issued in respect of the motor vehicle by the relevant Authority or by the corresponding authority of another State or Territory or that is required by law to be painted or displayed on the motor vehicle.

(c) this definition is inclusive of that for "Gross Vehicle Mass".

14.—ANNUAL LEAVE

(1) Except as hereinafter provided, a period of four consecutive weeks' leave with payment of ordinary wages as prescribed shall be allowed annually to a worker by his employer after a period of twelve months' continuous service with that employer.

(2) (a) During a period of annual leave a worker shall be paid a loading of 17 1/2 per cent calculated on his ordinary wage as prescribed.

Provided that where the worker would have received early start loadings prescribed by Clause 6.—Wages had he not been on leave during the relevant period and such loadings would have entitled him to a greater amount than the loading of 17 1/2 per cent, then the early start loadings shall be added to the rate of wage as prescribed in subclause (1) hereof in lieu of the 17 1/2 per cent loading.

(b) The loading prescribed by this subclause shall not apply to proportionate leave on termination.

(3) If any award holiday falls within a worker's period of annual leave and is observed on a day which in the case of that worker would have been an ordinary working day there shall be added to that period one day being an ordinary working day for each such holiday observed as aforesaid.

(4) Any time in respect of which a worker is absent from work except time for which he is entitled to claim sick pay or time spent on holidays or annual leave as prescribed by this award shall not count for the purpose of determining his right to annual leave.

(5) (a) A worker whose employment terminates after he has completed a twelve monthly qualifying period and who has not been allowed the leave prescribed under this clause in respect of that qualifying period shall be given payment in lieu of that leave or, in a case to which subclause (7) of this clause applies, in lieu of so much of that leave as has not been allowed unless—

(i) he has been justifiably dismissed for misconduct; and

(ii) the misconduct for which he has been dismissed occurred prior to the completion of that qualifying period.

(b) If, after one month's continuous service in any qualifying twelve monthly period an employee lawfully leaves his employment or his employment is terminated by the employer through no fault of the employee, the employee shall—

(i) if such termination occurs before 29/5/85 be paid 3.08 hours' pay at the rate of wage prescribed by subclause (1) of this clause, divided by forty, in respect of each completed week of continuous service; or

(ii) if termination occurs on or after 29/5/85 be paid 2.923 hours pay at the rate of wage prescribed by subclause (1) of this clause, divided by thirty-eight, in respect of each completed week of continuous service.

(6) In the event of a worker being employed by an employer for portion only of a year, he shall only be entitled, subject to subclause (5) hereof to such leave on full pay as is proportionate to his length of service during that period with such employer, and if such leave is not equal to the leave given to the other workers, he shall not be entitled to work or pay whilst the other workers of such employer are on leave on full pay.

(7) In special circumstances and by mutual consent of the employer, the worker and the Union, annual leave may be taken in not more than two periods.

(8) The provisions of this clause shall not apply to casual workers.

(9) Short-term Annual Leave

An employee may request and, with the consent of the employer, take short-term annual leave, not exceeding four days in any calendar year, at a time or times separate from any of the periods determined in accordance with subclause (7).

(10) An employer may require annual leave to be taken within 12 months of it becoming due. An employee, in following the requirement of an employer pursuant to this subclause, may take all Annual Leave due including any pro-rata or proportionate entitlement due.

15.—SICK LEAVE

(1) (a) An employee who is unable to attend or remain at his place of employment during the ordinary hours of work by reason of personal ill health or injury shall be entitled to payment during such absence in accordance with the provisions of this clause.

(b) An employee who works an average of 38 ordinary hours each week during a particular work cycle shall be entitled to pay during such absence calculated as follows—

$$\frac{\text{duration of absence}}{\text{ordinary hours normally worked that day}} \times \frac{\text{appropriate weekly rate}}{5}$$

An employee shall not be entitled to claim payment for personal ill health or injury nor will his sick leave entitlement be reduced if such ill health or injury occurs on the week day he is to take off duty occasioned by Clause 7.—Hours of this award.

(c) Notwithstanding the provisions of paragraph (b) of this subclause an employer may adopt an alternative method of payment of sick entitlements where the employer and the majority of his employees so agree.

(d) Entitlement to payment shall accrue at the rate of 1/6th of a week for each completed month of service with the employer.

(e) If in the first or successive years of service with the employer an employee is absent on the ground of personal ill health or injury for a period longer than his entitlement to paid sick leave, payment may be adjusted at the end of that year of service, or at the time the employee's services terminate, if before the end of that year of service, to the extent that the employee has become entitled to further paid sick leave during that year of service.

(2) The unused portions of the entitlement to paid sick leave in any one year shall accumulate from year to year and subject to this clause may be claimed by the employee if the absence by reason of personal ill health or injury exceeds the period for which entitlement has accrued during the year at the time of the absence. Provided that an employee shall not be entitled to claim payment for any period exceeding ten weeks in any one year of service.

(3) To be entitled to payment in accordance with this clause the employee shall as soon as reasonably practicable advise the employer of his inability to attend for work, the nature of his illness or injury and the estimated duration of the absence. Provided that such advice, other than in extraordinary circumstances shall be given to the employer within 24 hours of the commencement of the absence.

(4) The provisions of this clause do not apply to an employee who fails to produce a certificate from a medical practitioner dated at the time of the absence or who fails to

supply such other proof of the illness or injury as the employer may reasonably require provided that the employee shall not be required to produce a certificate from a medical practitioner with respect to absences of two days or less unless after two such absences in any year of service the employer requests in writing that the next and subsequent absences in that year if any, shall be accompanied by such certificate.

(5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to an employee who suffers personal ill health or injury during the time when he is absent on annual leave and an employee may apply for and the employer shall grant paid sick leave in place of paid annual leave.

(b) Application for replacement shall be made within seven days of resuming work and then only if the employee was confined to his place of residence or a hospital as a result of his personal ill health or injury for a period of seven consecutive days or more and he produces a certificate from a registered medical practitioner that he was so confined. Provided that the provisions of this paragraph do not relieve the employee of the obligation to advise the employer in accordance with subclause (3) of this clause if he is unable to attend for work on the working day next following his annual leave.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the employee was entitled at the time he proceeded on annual leave and shall not be made with respect to fractions of a day.

(d) Where paid sick leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the employee or, failing agreement, shall be added to the employee's next period of annual leave or, if termination occurs before then, be paid for in accordance with the provisions of Clause 14.—Annual Leave.

(e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in Clause 14.—Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.

(6) Where a business has been transmitted from one employer to another and the employee's service has been deemed continuous in accordance with subclause (3) of clause 2 of the Long Service Leave provisions published in volume 59 of the Western Australian Industrial Gazette at pages 1-6, the paid sick leave standing to the credit of the employee at the date of transmission from service with the transmittor shall stand to the credit of the employee at the commencement of service with the transmittee and may be claimed in accordance with the provisions of this clause.

(7) The provisions of this clause with respect to payment do not apply to employees who are entitled to payment under the Workers' Compensation and Assistance Act nor to employees whose injury or illness is the result of the employee's own misconduct.

(8) The provisions of this clause do not apply to casual employees.

16.—ENGAGEMENT

(a) Except as hereinafter provided the contract of service shall be by the week and shall be terminable by one (1) week's notice on either side or by the payment or fortfeiture as the case may be of one (1) week's wages.

(b) In the case of casual workers the contract of service shall be by the hour and shall be terminable by one (1) hour's notice on either side or by the payment or forfeiture as the case may be of one (1) hour's wages.

(c) This clause does not affect the right to dismiss for misconduct in which case wages shall be paid up to the time of dismissal.

17.—MEAL AND REST BREAKS

(1) Meal Break—

A meal interval of not less than 30 minutes nor more than one hour shall be allowed to and taken by each worker daily to commence at any time between the end of the fourth hour of the days work and the end of five and one half hours work from the commencement of such work.

(2) Rest Break—

An employee shall be entitled to a rest period of ten minutes, after eight hours of work in any shift and a further rest period of ten minutes for every two hours worked thereafter in that shift.

Such rest periods shall count as part of the time worked and shall be taken at a time to suit the convenience of the employer and the employee before or after the entitlement accrues.

(3) A loader shall be permitted to partake of refreshment at or in the vicinity of his place of work provided that work is not interrupted.

18.—TIME AND WAGES RECORD

A time and wages record shall be kept by the employer in a place readily accessible to each worker in which such worker shall enter time he starts and finishes work each day, the times during which the meal interval is taken, the hours worked each week and the amount of wages received, together with his signature for same. Such book shall be open for inspection during ordinary working hours by a duly accredited official or either the applicant or respondent Union and he shall be allowed to take extracts therefrom. Before exercising a power of inspection the representative shall give reasonable notice of not less than 24 hours to the employer. If for any reason the book be not available at the bakehouse when the official calls to inspect it, it shall be made available for inspection within twelve (12) hours. Any system of automatic recording by mechanical means shall be deemed a compliance with this clause, to the extent of the information recorded.

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 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.

19.—LEARNING A ROUND

An employer shall be permitted to reduce the prescribed wage of a bread carter to the minimum wage whilst such worker is learning a round under the supervision of another employee but for no longer than the first ten days of his employment as a bread carter.

20.—JUNIOR WORKER' CERTIFICATE

(1) Junior workers, upon being engaged, shall if required, furnish the employer with a certificate containing the following particulars—

(i) Name in full
(ii) Age and date of birth
(iii) Name of each previous employer
(iv) Class of work performed for each previous employer.

(2) No worker shall have any claim upon any employer for additional pay in the event of the age of the worker being wrongly stated on the certificate, and, in such case, the employer shall not be guilty of a breach of this award.

21.—BREAKDOWNS

The employer shall be permitted to deduct payment for any day or portion of a day upon which a worker cannot be usefully employed because of any strike by the union or unions affiliated with it or by any other Association or union, or through the breakdown of the employer's machinery but not including the breakdown of a vehicle used in the delivery of bread, or any stoppage of work by any cause which the employer cannot reasonably prevent.

22.—LONG SERVICE LEAVE

The long service leave provisions set out in Volume 60 of the "Western Australian Industrial Gazette" at pages 1 to 6 both inclusive are hereby incorporated in and shall be deemed to be part of this award.

23.—WORKERS—ADDITIONAL OBLIGATIONS RE: EMPLOYMENT

Repealed by Section 7(1)(k) of Industrial Arbitration Act, 1979.

24.—PART-TIME LOADERS AND DRIVERS/ MERCHANDISERS

(1) Notwithstanding anything contained in this award, an employer may employ employees as part time loaders and drivers/merchandisers regularly.

(2) Part time employee means an employee working less than 38 hours each week.

(3) Part time employees shall be paid an hourly rate which is 1/38th of the weekly rate for the type of work being performed.

(4) A part time employee may be employed for up to eight ordinary hours in any one day.

(5) A part time employee who works in excess of the ordinary daily or weekly hours of work shall be paid overtime in accordance with Clause 8.—Overtime of this award.

(6) The "early start premiums" provided by Clause 6.—Wages, subclauses (5) and (6) shall only apply to ordinary hours worked and not be payable on overtime hours worked.

(7) Part time employees shall be entitled to receive pro-rata entitlements to: payment for absence due to personal illness, annual leave, bereavement leave, jury service, long service leave.

(8) Where a part-time employee is normally rostered or expected to work on a day which is a public holiday and is not required to work on that day, the employee shall receive payment for the number of hours that would have been worked.

24A.—CASUAL EMPLOYMENT

(1) An employer shall, wherever practicable, notify a casual employee that their services are not required the next working day.

(2) A casual employee may be employed for up to eight ordinary hours in any one day.

(3) A casual employee while working ordinary hours, shall be paid on an hourly basis 1/38th of the appropriate weekly wage rate prescribed by the award, plus 20% of ordinary time earnings for the work performed. A minimum payment of four hours is to be paid each day required.

(4) The "early start premium" provided by subclauses (5) and (6) of Clause 6.—Wages of this award shall only apply to ordinary hours worked and not payable on overtime hours worked.

(5) In addition to normal overtime rates a casual employee while working overtime or outside of ordinary hours, shall be paid on an hourly basis 1/38th of the appropriate weekly wage rate prescribed by the award, plus 10% of ordinary time earnings for the work performed.

(6) A casual employee shall not be entitled to the benefits of clauses 9.—Holidays, 14.—Annual Leave, 15.—Sick Leave or 25.—Bereavement Leave of this Award.

25.—BEREAVEMENT LEAVE

(1) A worker, other than a casual worker, 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 worker in two ordinary working days. Proof of such death shall be furnished by the worker to the satisfaction of his employer.

(2) Payment in respect of bereavement leave is to be made only where the worker otherwise would have been on duty and shall not be granted in any case where the worker concerned would have been off duty in accordance with any shift roster, or on long service leave, annual leave, sick leave, worker's compensation, leave without pay or on a public holiday.

26.—MATERNITY LEAVE

(1) Eligibility for Maternity Leave

A worker who becomes pregnant shall, upon production to her employer of a certificate from a duly qualified medical practitioner stating the presumed date of her confinement, be entitled to maternity leave provided that she has had not less than 12 months' continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

For the purposes of this clause—

(a) A worker shall include a part-time worker but shall not include a worker engaged upon casual or seasonal work.

(b) Maternity leave shall mean unpaid maternity leave.

(2) Period of Leave and Commencement of Leave

(a) Subject to subclauses (3) and (6) hereof, the period of maternity leave shall be for an unbroken period of from twelve to 52 weeks and shall include a period of six weeks' compulsory leave to be taken immediately before the presumed date of confinement and a period of six weeks' compulsory leave to be taken immediately following confinement.

(b) A worker shall, not less than 10 weeks prior to the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.

(c) A worker shall give not less than four weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave, stating the period of leave to be taken.

(d) A worker shall not be in breach of this order as a consequence of failure to give the stipulated period of notice in accordance with paragraph (c) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

(3) Transfer to a Safe-Job

Where in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the worker make it inadvisable for the worker to continue at her present work, the worker shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

If the transfer to a safe job is not practicable, the worker may, or the employer may require the worker to, take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (7), (8), (9) and (10) hereof.

(4) Variation of Period of Maternity Leave

(a) Provided the addition does not extend the maternity leave beyond 52 weeks, the period may be lengthened once only, save with the agreement of the employer, by the worker giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened.

(b) The period of leave may, with the consent of the employer, be shortened by the worker giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(5) Cancellation of Maternity Leave

(a) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of a worker terminates other than by the birth of a living child.

(b) Where the pregnancy of a worker then on maternity leave terminates other than by the birth of a living child, it shall be right of the worker to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the worker to the employer that she desires to resume work.

(6) Special Maternity Leave and Sick Leave

(a) Where the pregnancy of a worker not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—

(i) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, or

(ii) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a duly qualified medical

practitioner certifies as necessary before her return to work

(b) Where a worker not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed 52 weeks.

(c) For the purposes of subclauses (7), (8) and (9) hereof, maternity leave shall include special maternity leave.

(d) A worker returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of a worker who was transferred to a safe job pursuant to subclause (3), to the position she held immediately before such transfer.

Where such position no longer exists but there are other positions available, for which the worker is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(7) Maternity Leave and Other Leave Entitlements

Provided the aggregate of leave including leave taken pursuant to subclauses (3) and (6) hereof does not exceed 52 weeks.

(a) A worker may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is then entitled.

(b) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to a worker during her absence on maternity leave.

(8) Effect of Maternity Leave on Employment

Notwithstanding any award, or other provision to the contrary, absence on maternity leave shall not break the continuity of service of a worker but shall not be taken into account in calculating the period of service for any purpose of the award.

(9) Termination of Employment

(a) A worker on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.

(b) An employer shall not terminate the employment of a worker on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(10) Return to Work After Maternity Leave

(a) A worker shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.

(b) A worker, upon the expiration of the notice required by paragraph (a) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of a worker who was transferred to a safe job pursuant to subclause (3), to the position which she held immediately before such transfer. Where such position no longer exists but there are other positions available for which the worker is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(11) Replacement Workers

(a) A replacement worker is a worker specifically engaged as a result of a worker proceeding on maternity leave.

(b) Before an employer engages a replacement worker under this subclause, the employer shall inform that person of the temporary nature of the employment and of the rights of the worker who is being replaced.

(c) Before an employer engages a person to replace a worker temporarily promoted or transferred in order to replace a worker exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the worker who is being replaced.

(d) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement worker.

(e) A replacement worker shall not be entitled to any of the rights conferred by this clause except where her employment continues beyond the twelve months qualifying period.

27.—AIR CONDITIONING

(1) Subject to the exclusions in subclause (3) of this clause, where the employer commences to lease or renew a lease or first purchase a motor vehicle after 29th July, 1982, for use by an employee working under the terms of this award, such motor vehicle shall be fitted with and continue to be fitted with a refrigerated air conditioning unit in reasonable working order.

(2) Subject to the exclusions contained in subclause (3) of this clause, where the employer commenced to lease or renewed a lease or first purchased a motor vehicle before 29th July, 1982, for use by an employee working under the terms of this award, such motor vehicle shall be fitted with a refrigerated air conditioning unit in reasonable operating order before November 1, 1984.

(3) Provided that subclauses (1) and (2) of this clause shall not apply—

(a) if the employer, the employee and union mutually agree in writing that an air-conditioning unit should not be provided in respect of a particular vehicle. A copy of any such agreement shall be provided to the employer, the employee and the union;

(b) to an employer in respect to an employee using a motor vehicle where such employee works solely outside of the summer months of the year;

(c) to an employer in respect to an employee using a motor vehicle in any sector of Western Australia south of the 26th parallel of latitude in respect of which the provision of an air-conditioning unit is mutually agreed in writing between the employer, the employee and the union to be inappropriate. Where no agreement is reached the matter shall be determined by the Commission.

(d) to an employer in respect to an employee using a motor vehicle in any sector of Western Australia south of the 26th parallel of latitude where the nature of deliveries in the industry involves a substantial number of short duration stops which significantly affect the capability of an air conditioning unit in reducing the heat disability. This exclusion applies to van driver/salesmen of all descriptions and small order deliveries and pickups of all descriptions. Any dispute as to the application of this paragraph shall be determined by the Commission.

28.—SETTLEMENT OF DISPUTE PROCEDURE

Subject to the Industrial Relations Act, 1979, any dispute or claim shall be dealt with in the following manner—

(1) In the first instance all the facts of the dispute matter or grievance will be discussed without delay between the employee/s concerned and the appropriate supervisor/s. The appropriate Shop Steward/s to be present if requested by the employee/s.

(2) If not settled, the matter shall be discussed between an accredited Union Representative and the delegated Officer of the Company.

(3) If agreement has not then been reached, the matter shall be discussed between a Management Representative of the Company and an appropriate Official of the Union.

(4) If the matter is still not settled, it shall be submitted to the W.A. Industrial Relations Commission for decision which shall, subject to any appeal in accordance with the Act, be final.

(5) Until the matter is determined, work shall continue in accordance with the pre-dispute conditions. No party shall be prejudiced as to the final settlement by the continuance of work in accordance with this subclause.

(6) The parties will co-operate to ensure that these procedures are carried out expeditiously.

(7) In the event of a work stoppage, such employees as are necessary shall, where appropriate, complete production in process to avoid spoilage and clean the plant according to hygiene requirements before stopping work.

29.—AWARD MODERNISATION

(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) In conjunction with testing the new award structure, the union is prepared to discuss all matters raised by the employers for increased flexibility. As such any discussion with the union must be premised on the understanding that—

(a) The majority of employees at each enterprise must genuinely agree.

(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) 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 in the implementation process on a particular issue.

(3) Should an agreement be reached pursuant to subclause (2) at a particular enterprise and that agreement requires award variation the parties will not oppose that award variation for that particular provision for that particular enterprise.

(4) The parties agree that under this heading any award matter can be raised for discussion.

(5) The parties agree that working parties will meet and continue to meet with the aim of modernising the award.

30.—TRAINING LEAVE

(1) Following proper consultation, which may involve the setting up of training committees, the employer shall develop a training policy and programme consistent with—

(a) the current and future skill needs of the enterprise;

(b) the size, structure and nature of the operations of the enterprise;

(c) the need to develop vocational skills relevant to the enterprise and the Transport/Baking Industry, through courses conducted by accredited educational institutions and providers.

(2) Where it is agreed by the employer that additional training should be undertaken by an employee, training may be undertaken either on or off the job. If the training is undertaken during ordinary working hours, the employee concerned shall not suffer any loss of pay. An employer shall not unreasonably withhold such paid training leave.

31.—SUPPORTED WAGE SYSTEM

(1) This clause sets out the provisions to apply to employees who because of the effects of a disability are eligible to be employed under the Supported Wage System in accordance with this clause.

(2) Definitions

In the context of this clause, the following definitions shall apply—

(a) "Supported Wage System" means the Commonwealth Government system to promote employment for people who can not work at full award wages because of a disability, as documented in 'Supported Wage System: Guidelines and Assessment Process'.

(b) "Accredited Assessor" means a person accredited by the Management Unit established by the Commonwealth under the Supported Wage System to perform assessment of an individual's productive capacity within the Supported Wage System.

(c) "Disability Support Pension" means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the Social Security Act 1991, as amended from time to time, or any successor to that scheme.

(d) "Assessment Instrument" means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

(3) Eligibility Criteria

(a) Employees covered by this clause will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and, who meet the impairment criteria for receipt of a Disability Support Pension.

(b) The clause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this clause relating to the rehabilitation of employees who are injured in the course of their current employment.

(c) (i) This clause does not apply to employers in respect of their facility, program, undertaking, service or the like which receive funding under the 'Disability Services Act 1986', and fulfil the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or eligible for a Disability Support Pension.

(ii) Provided that this exclusion shall not prevent services funded under Sections 10 or 12A of the Act referred to in sub-paragraph (i) hereof, engaging persons who meet the eligibility criteria under the Supported Wages System, on work covered by this award, where both parties wish to access the system provided all other criteria are met.

(4) Supported Wage Rates

(a) (i) Employees to whom this clause applies shall be paid the applicable percentage of the minimum rate of pay prescribed by this award for the class of work which the person is performing according to the following schedule—

Assessed Capacity	% of Prescribed Award Rate
10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

(ii) Provided that the amount payable shall be not less than the 'ordinary income free area' as defined in the Social Security Act 1991 (which at 1 July 1994 was $45 per week).

(b) Where an employee's assessed capacity rate is ten percent, they shall receive a high degree of assistance and support.

(5) Assessment of Capacity

(a) For the purpose of establishing the percentage of the award rate to be paid to an employee under this award, the productivity capacity of the employee will be assessed in accordance with the Supported Wage System and documented in an assessment instrument by either—

(i) The employer and the union, in consultation with the employee, or, if desired, by any of these; or

(ii) The employer and an accredited assessor from a panel agreed to by the parties to the award and the employee.

(6) Lodgment of Assessment Instrument

(a) All assessment instruments under the condition of this clause including the appropriate percentage of the award rate to be paid to the employee, shall be lodged by the employer with the Registrar of the Western Australian Industrial Relations Commission.

(b) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where the union party to this award is not a party to the assessment, it shall be referred by the Registrar to the union by certified mail and shall take effect unless an objection is notified to the Registrar within 10 working days.

(7) Review of Assessment

The assessment of the applicable percentage to be applied in respect of the rate of pay should be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedure for assessing capacity under the Supported Wage System.

(8) Other Terms and Conditions of Employment

Where an assessment has been made, the applicable percentage shall apply to the minimum wage rate only. Employees covered by the provisions of the clause will be entitled to the same terms and conditions of employment as all other employees covered by this award, but be paid at the rate of wage as determined in accordance with this clause.

(9) Workplace Adjustment

An employer wishing to employ a person under the provisions of this clause shall take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve redesign of job duties, working time arrangements and work organisation in consultation with other employees in the area.

(10) Trial Period

(a) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provision of this clause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time, not exceeding four weeks, may be utilised where required.

(b) During the trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.

(c) The minimum amount payable to the employee during the trial period shall be not less than the figure defined in subclause (4) (a) (ii) of this clause.

(d) Work trials should include induction or training as appropriate to the job being trialed.

(e) Where the employer and the employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under subclause (5) of this clause.

(11) The conditions of employment to apply during the trial period or in a continuing employment relationship shall be documented, a copy of which shall be provided by the employer to the person employed in accordance with this clause.

APPENDIX—RESOLUTION OF DISPUTES REQUIREMENTS

(1) This Appendix is inserted into the award/industrial agreement as a result of legislation which came into effect on 16 January 1996.(Industrial Relations Legislation Amendment and Repeal Act 1995) and further varied by legislation which came into effect on May 23 1997 (Labour Relations Legislation Amendment Act 1997.)

(2) Any dispute or grievance procedure in this award/industrial agreement shall also apply to any questions, disputes or difficulties which may arise under it.

(3) With effect from 22 November 1997 the dispute or grievance procedures in this award/industrial agreement is hereby varied to include the requirement that persons involved in the question, dispute or difficulty will confer among themselves and make reasonable attempts to resolve questions, disputes or difficulties before taking those matters to the Commission..

SCHEDULE OF RESPONDENTS

Bread Manufacturers (Perth and Suburbs) Industrial Union of Employers of Western Australia.

APPENDIX—S.49B—INSPECTION OF RECORDS REQUIREMENTS

(1) Where this award, order or industrial agreement empowers a representative of an organisation of employees party to this award, order or industrial agreement to inspect the time and wages records of an employee or former employee, that power shall be exercised subject to the Industrial Relations (General) Regulations 1997 (as may be amended from time to time) and the following—

(a) 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 organisation would infringe the privacy of persons who are not members of the organisation; and

(ii) the employer undertakes to produce the records to an Industrial Inspector within 48 hours of being notified of the requirement to inspect by the representative.

(b) The power of inspection may only be exercised by a representative of an organisation of employees authorised for the purpose in accordance with the rules of the organisation.

(c) Before exercising a power of inspection, the representative shall give reasonable notice of not less than 24 hours to an employer.

THE WATCHEMAKERS' AND JEWELLERS' AWARD, 1970 NO. A10 OF 1970

PURSUANT to section 93(6) of the Industrial Relations Act 1979 the following award has been consolidated and is been published hereunder for general information.

Dated at Perth this 4th October 2000.

(Sgd.) J. SPURLING,
[L.S.] Registrar.

The Watchemakers' and Jewellers' Award, 1970 No. A10 of 1970

1.—TITLE

This award shall be known as the "Watchmakers' and Jewellers' Award, 1970" and replaces Award No. 49 of 1955 as amended.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Scope
4. Term

5. Hours
6. Overtime
7. Meal Hours
8. Wages
8A. Minimum Wage—Adult Males and Females
9. Payment of Wages
10. Record
11. Meal Money
12. Holidays and Annual Leave
13. Absence through Sickness
14. Apprentices
15. Definitions
16. Tools, etc.
17. Board of Reference
18. Representative Interviewing Workers
19. Under-Rate Workers
20. Contract of Service
21. Breakdowns, etc.
22. Notices and Posting of Award
23. Higher Duties
24. Long Service Leave
25. Deleted
26. Bereavement Leave
27. Maternity Leave
28. Payment of Wages—38 Hour Week
29. Part-Time Workers
30. Superannuation
31. Award Modernisation and Enterprise Consultation
Appendix—Resolution of Disputes Requirement
Schedule A—Parties to the Award
Schedule B—Respondent
Appendix—S.49B—Inspection Of Records Requirements

3.—AREA AND SCOPE

This award shall apply to workers employed as watchmakers, clock makers, watch and clock repairers, jewellers, setters, general jewellers' tradesmen and engravers connected with the jewellery trade and workers using a watch cleaning machine throughout the state of Western Australia.

4.—TERM

The term of this award shall be for a period of one year from the beginning of the first pay period commencing on or after the date hereof.

5.—HOURS

SECTION A—HOURS—

(1) (a) The provisions of this clause apply to all employees to whom this award applies.

(b) Subject to the provisions of this clause the ordinary hours of work shall be an average of 38 per week to be worked on one of the following basis—

(i) 38 hours within a work cycle not exceeding seven consecutive days; or

(ii) 76 hours within a work cycle not exceeding 14 consecutive days; or

(iii) 114 hours within a work cycle not exceeding 21 consecutive days; or

(iv) 152 hours within a work cycle not exceeding 28 consecutive days.

(c) The ordinary hours of work may be worked on any or all days of the week, Monday to Friday inclusive, and shall be worked between the hours of 7.30 am and 5.30 pm. Provided that the ordinary hours applying on the day of late night trading as prescribed in subclause (2) hereof shall be between 7.30 am and 9.00 pm.

(d) The ordinary hours of work shall not exceed 10 hours on any day.

Provided that in any arrangement of ordinary working hours, where such ordinary hours are to exceed eight hours on any day, the arrangement of hours shall be subject to the agreement between the employer and the majority of employees in the plant or section or sections concerned.

(e) The ordinary hours of work shall be consecutive except for the meal break as prescribed in subclause (f) hereof.

(f) A meal break of not more than one hour nor less than 30 minutes shall be granted each day.

(2) Late Night Trading

(a) The provisions of this clause shall apply to retail shops observing that period of trading as allowed by Section 85 of the Factories and Shops Act, 1963 between the hours of 6.00 pm and 9.00 pm for at least four consecutive weeks.

(b) No employee shall be rostered to work more than 11.5 ordinary hours on the day of late night trading.

(c) An employee who works ordinary hours on Monday to Friday, inclusive, between the hours of 8.00 am and 6.00 pm shall be paid at the rate of double time for any overtime worked during the hours of late night trading. Provided that if the overtime is worked to meet an emergency then the rate shall be determined by the provisions of Clause 8.—Overtime of the award.

(d) Meal Break

(i) Not less than 45 minutes nor more than one hour shall be allowed and taken for a meal on the day of late night trading.

(ii) An employee shall not be required to work for more than five hours without a break for a meal.

(iii) An employee who is required to work ordinary hours on the night of late night trading shall be entitled to an evening meal break between 4.30 pm and 7.00 pm.

SECTION B—IMPLEMENTATION OF 38 HOUR WEEK—

(1) Except as provided in subclause (4) hereof, and subject to the proviso hereof, the method of implementation of the 38 hour week may be any one of the following—

(a) By employees engaged in retail sales working less than eight ordinary hours each day or fortnight; or

(b) By employees working less than eight ordinary hours on one or more days each week; or

(c) By fixing one day of ordinary working hours on which all employees will be off duty during a particular work cycle; or

(d) By rostering employees off duty on various days of the week during a particular work cycle so that each employee has one day of ordinary hours off duty during that cycle.

(e) Any day off duty shall be arranged so that it does not coincide with a holiday prescribed in subclause (1) of Clause 12.—Holidays and Annual Leave of this award.

Provided that the method of implementation shall be subject to the following conditions unless there is specific agreement to the contrary between an employer, an employee and the Union—

(i) In establishments employing on a regular basis 15 or more employees per week, an employee shall not be required to work ordinary hours on more than 19 days in each four week cycle.

(ii) In establishments employing on a regular basis more than five but less than 15 employees per week on a regular

basis, an employee may work ordinary hours on one of the following basis—

(aa) Not more than 19 days in each four week cycle.

(bb) Not more than four hours' work on one day in each two week cycle.

(cc) Not more than six hours' work on one day in each week.

(iii) In establishments employing on a regular basis five or less employees per week, employees may work their ordinary hours in any of the methods specified in paragraph (a), (b), (c) or (d) hereof.

(2) In each plant an assessment should be made as to which method of implementation best suits the business and the proposal shall be discussed with the employees concerned, the objective being to reach agreement on the method of implementation prior to 1 November 1988.

(3) In the absence of an agreement at plant level, the procedure for resolving special, anomalous or extraordinary problems shall be as follows—

(a) Consultation shall take place within the particular establishment concerned.

(b) If it is unable to be resolved at establishment level, the matter shall be referred to the Secretary of the Union or his/her deputy, at which level a conference of the parties shall be convened without delay.

(c) In the absence of agreement either party may refer the matter to the Western Australian Industrial Relations Commission.

(4) Different methods of implementation of a 38 hour week may apply to various groups or sections of employees in the plant or establishment concerned.

(5) Notice of Days Off Duty

Except as provided in subclause (6) hereof, in cases where, by virtue of the arrangement of his/her ordinary working hours, an employee, in accordance with paragraphs (c) and (d) of subclause (1) hereof, is entitled to a day off duty during his/her work cycle, such employee shall be advised by the employer at least four weeks in advance of the day he/she is to take off duty.

(6) (a) An employer, with the agreement of the majority of employees concerned, may substitute the day an employee is to take off in accordance with paragraphs (c) and (d) of subclause (1) hereof, for another day in the case of a breakdown in machinery or a failure or shortage of electric power or to meet the requirements of the business in the event of rush orders or some other emergency situation.

(b) An employer and employee may by agreement substitute the day the employee is to take off for another day.

(c) Where Accrued Days Off are allowed to accumulate, the employer may require that they be taken within 12 months of the employee becoming entitled to an ADO.

SECTION C—PROCEDURES FOR IN PLANT DISCUSSIONS—

(1) Procedures shall be established for in plant discussions, the objective being to agree on the method of implementing a 38 hour week in accordance with Section A—Hours and Section B—Implementation of 38 Hour Week of this clause and shall entail an objective review of current practices to establish where improvements can be made and implemented.

(2) The procedures should allow for in plant discussions to continue even though all matters may not be resolved by 1 November 1988.

(3) The procedures should make suggestions as to the recording of understandings reached and methods of communicating agreements and understandings to all employees, including the overcoming of language difficulties.

(4) The procedures should allow for the monitoring of agreements and understandings reached in plant.

(5) In cases where agreement cannot be reached in plant in the first instances or where problems arise after initial agreements or understandings have been achieved in plant, a formal monitoring procedure shall apply. The basic steps in this procedure shall be as applies with respect to special, anomalous or extraordinary problems as prescribed in subclause (3) of Section B—Implementation of 38 Hour Week of this clause.

6.—OVERTIME

(1) The provisions of this clause apply to all employees.

(2) (a) An employer may require any employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirement.

(b) No organisation party to this award, or employee or employees covered by this award, shall in any way, whether directly or indirectly, be a party to or concerned in any ban, limitation, or restriction upon the working of overtime in accordance with the requirements of this subclause.

(c) Any worker recalled to work shall be paid for a minimum of three hours at the appropriate overtime rates and for all reasonable expenses incurred in returning to work.

(3) (a) Subject to the provisions of this subclause, all work done beyond the ordinary working hours on any day, Monday to Friday inclusive, shall be paid for at the rate of time and one half for the first two hours and double time thereafter.

For the purposes of this subclause, ordinary hours shall mean the hours of work fixed in an establishment in accordance with Sections A—Hours, B—Implementation of 38 Hour Week and C—Procedures for In Plant Discussions of Clause 5.—Hours.

(b) (i) Work done on Saturdays after 12.00 noon or on Sundays shall be paid for at the rate of double time.

(ii) Work done on any day prescribed as a holiday under this award shall be paid for at the rate of double time and one half.

(c) In computing overtime each day shall stand alone.

(4) (a) By agreement between the employee and employer time off in lieu of payment for overtime may be granted proportionate to the payment to which the employee is entitled. Such time to be taken in unbroken periods according to each period of overtime worked unless otherwise agreed between the employee and employer concerned.

(b) The actual period of time off may be accrued and taken at a time agreed between the employer and employee concerned.

7.—MEAL HOURS

Not less than half an hour nor more than one hour shall be allowed to any employee for a meal break. Such meal break shall be taken between the hours of 12 noon and 2 p.m., unless the employer and the employee concerned otherwise mutually agree.

8.—WAGES

(1) The minimum weekly rate of wage payable to adult employees covered by this award shall include the base rate plus the arbitrated safety net adjustment expressed hereunder, from the beginning of the first pay period on or after 20th day of July, 1998.

		Base Rate	Supplementary Payment	Arbitrated Safety Net Adjustments	Minimum Rates
(a) Watchmaker, Clockmaker watch and clock repairer		365.20	52.00	$75.00	$492.20
(b) Jeweller, setter, general jeweller's tradesman and engraver		365.20	52.00	$75.00	$492.20
(c) Process Worker	% of trade				
Grade 1	78	284.86	35.28	$75.00	$395.14
Grade 2	80	292.16	36.80	$75.00	$403.96
Grade 3	85	310.42	40.60	$75.00	$426.02

(2) (a) The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

These arbitrated safety net adjustments may be offset against any equivalent amount in the rate of pay received by employees since 1 November 1991 above the rate prescribed in the Award, except where such absorption is contrary to the terms of an industrial agreement.

Increases in rates of pay otherwise made under the State Wage Case Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

(b) Deleted.

(c) Deleted.

(3) Apprentices (wage per week expressed as a percentage of the respective tradesman's rate)

(a) 5 Year Term:	%
1st year	40
2nd year	48
3rd year	55
4th year	75
5th year	88
(b) 4 Year Term:	
1st year	42
2nd year	55
3rd year	75
4th year	88

(4) Leading Hands—

Any jeweller or watchmaker placed in charge of not more than ten (10) jewellers or watchmakers shall be paid $18.80 per week in addition to the rates of pay prescribed by this award.

(5) Tool Allowance—

Watchmakers and apprentices to watchmaking shall be paid a tool allowance of $9.70 per week extra.

(6) Junior process worker (percentage of adult process worker—Grade 1).

	%
At 16 years of age and under	50
At 17 years of age	60
At 18 years of age	75
At 19 years of age	90
At 20 years of age	100

8A.—MINIMUM WAGE—ADULT MALES AND FEMALES

(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 $400.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2000.

(3) The Minimum Adult Award Wage of $400.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions to July 2000, including the increase in Matter No. 654 of 2000.

(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 $400.40 per week.

(6) (a) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on traineeships or Jobskills placements, or to other categories of employees who by prescription are paid less than the minimum award rate.

(b) Liberty to apply is reserved in relation to any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.

(7) Subject to this clause the Minimum Adult Award Wage shall—

(a) apply to all work in ordinary hours.

(b) apply to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave and for all other purposes of this award.

(8) Minimum Adult Award Wage

The rates of pay in this award include the minimum weekly wage for adult employees payable under the July 2000 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.

9.—PAYMENT OF WAGES

(1) All wages shall be paid weekly and not later than Friday in each week.

(2) No deduction shall be made from a worker's wages unless the worker has authorised such deduction in writing.

(3) All wages shall be paid in the employer's time unless otherwise provided in this award.

10.—RECORD

(1) The employer shall keep or cause to be kept a record showing—

(a) the name and classification of each worker;

(b) the starting and finishing times on each day;

(c) the hours worked;

(d) the wages and overtime (if any) paid.

(2) Such record (if correct) shall be signed by the worker each week, and shall be open for inspection by the secretary or other duly accredited representative of the union during working hours and such person may take extracts therefrom. Before exercising a power of inspection the representative shall give reasonable notice of not less than 24 hours to the employer.

11.—MEAL MONEY

(1) Subject to the provisions of subclause (2) of this clause an employee, required to work overtime for more than two hours, shall be supplied with a meal by the employer or be paid $5.50 for a meal and, if owing to the amount of overtime worked, a second or subsequent meal is required the employee shall be supplied with such meal by the employer or paid $3.80 for each meal so required.

(2) The provisions of subclause (1) of this subclause do not apply—

(a) in respect of any period of overtime for which the employee has been notified on the previous day or earlier that he/she will be required; or

(b) to any employee who lives in the locality in which the place of work is situated in respect of any meal for which he/she can reasonably go home.

(3) If an employee to whom paragraph (a) of subclause (2) of this clause applies has, as a consequence of the notification referred to in that paragraph, provided himself with a meal or meals and is not required to work overtime or is required to work less overtime than the period notified, he shall be paid, for each meal provided and not required, the appropriate amount prescribed in subclause (1) of this clause.

(4) Late Night Trading Meal Allowance—

An employee who commences work prior to 4.30 pm on the day of late night trading and is required to work beyond 7.00 pm on that day, shall be paid a meal allowance of $5.50.

12.—HOLIDAYS AND ANNUAL LEAVE

(1) The following days or the days observed in lieu shall, subject to Clause 6.—Overtime of this award be allowed as holidays without deduction of pay, namely—New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, State Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in the subclause.

(2) Where—

(a) a day is proclaimed as a whole public holiday or a half public holiday under section 7 of the Public and Bank Holidays Act, 1972; and

(b) that proclamation does not apply throughout the State or to the metropolitan area of the State, that day shall be a whole holiday or, as the case may be, a half holiday for the purposes of this award within the district or locality specified in the proclamation.

(3) When any of the days mentioned in subclause (1) hereof falls on a Saturday or a Sunday the holiday shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday, the holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall be a holiday without deduction of pay, and the day for which it is substituted shall not be a holiday.

(4) Except as hereinafter provided, a period of four consecutive weeks' leave with payment of ordinary wages as prescribed shall be allowed annually to a worker by his/her employer after a period of twelve months' continuous service with such employer.

(5) A worker before going on leave shall be paid the wages he/she would have received in respect of the ordinary time he/she would have worked had he/she not been on leave during the relevant period.

(6) (a) In addition to his/her payment for annual leave a worker shall receive a loading of 17.5 percent calculated on his/her ordinary rate of wage. Provided that where the worker would have received any additional rates for the work performed in ordinary hours, as prescribed by this award, had he/she not been on leave during the relevant period and such additional rates would have entitled him/her to a greater amount than the loading of 17.5 percent, then such additional rates shall be added to his/her ordinary wage in lieu of the 17.5 percent loading. Provided further, that if the additional rates would have entitled him/her to a lesser amount than the loading of 17.5 percent, then such loading of 17.5 percent shall be added to his/her ordinary rate of wage in lieu of the additional rates.

(b) The loading prescribed by this subclause shall not apply to proportionate leave on termination.

(7) If any award holiday falls within a worker's period of annual leave and is observed on a day which in the case of that worker would have been an ordinary working day, there shall be added to that period one day being an ordinary day for each such holiday observed as aforesaid.

(8) Any time in respect of which a worker is absent from work except time for which he/she is entitled to claim sick pay or time spent on holidays, annual leave or long service leave as prescribed by this award shall not count for the purpose of determining his/her right to annual leave.

(9) In special circumstances and by mutual consent of the employer, the worker and the union concerned, annual leave may be taken in not more than two periods.

(10) Notwithstanding the provisions of this clause an employer who observes a Christmas close-down for the purpose of granting annual leave may require a worker to take his/her annual leave in not more than two periods but neither of such periods shall be less than one week.

(11) In the event of a worker being employed by an employer for portion only of a year, he/she shall only be entitled, subject to subclause (12) of this clause to such leave on full pay as is proportionate to his/her length of service during that period with such employer, and if such leave is not equal to the leave given to the other workers he/she shall not be entitled to work or pay whilst the other workers of such employer are on leave on full pay.

(12) If, after one month's continuous service in any qualifying 12 monthly period an employee lawfully leaves his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall—

(i) If such termination occurs before 1 November 1988 be paid 3.08 hours' pay at the rate of wage prescribed by subclause (1) of this clause, divided by 40, in respect of each completed week of continuous service; or

(ii) If termination occurs on or after 1 November 1988 be paid 2.923 hours' pay at the rate of wage prescribed by subclause (1) of this clause, divided by 38, in respect of each completed week of continuous service.

(13) In addition to any payment to which he/she may be entitled under subclause (12) of this clause, a worker whose employment terminates after he/she has completed a twelve monthly qualifying period and who has not been allowed the leave prescribed under this award in respect of that qualifying period shall be given payment in lieu of that leave or, in a case to which subclause (9) or (10) of this clause applies, in lieu of so much of that leave as has not been allowed unless—

(a) he/she has been justifiably dismissed for misconduct; and

(b) the misconduct for which he/she has been dismissed occurred prior to the completion of that qualifying period.

(14) The provisions of this clause shall not apply to casual workers.

(15) An employer may specify a reasonable period during which annual leave may not be taken to meet production requirements at the workplace concerned.

(16) An employer may require an employee to take annual leave within twelve months of such leave falling due.

(17) Where an employee has additional leave granted pursuant to subclause (1) of this clause, the employer may require such leave to be taken within twelve months of falling due.

13.—ABSENCE THROUGH SICKNESS

(1) (a) An employee who is unable to attend or remain at his/her place of employment during the ordinary hours of work by reason of personal ill health or injury shall be entitled to payment during such absence in accordance with the provisions of this clause.

(i) Employee who actually works 38 ordinary hours each week—

An employee whose ordinary hours of work are arranged in accordance with paragraph (a) or (b) of subclause (1) of Section B—Implementation of 38 Hour Week of Clause 5.—Hours so that he/she actually works 38 ordinary hours each week shall be entitled to payment during such absence for the actual ordinary hours absent.

(ii) Employee who works an average of 38 ordinary hours each week—

An employee whose ordinary hours of work are arranged in accordance with paragraph (c) or (d) of subclause (1) of Section B—Implementation of 38 Hour Week of Clause 5.—Hours so that he/she works an average of 38 ordinary hours each week during a particular work cycle shall be entitled to pay during such absence calculated as follows—

$$\frac{\text{duration of absence}}{\text{ordinary hours normally worked that day}} \times \frac{\text{appropriate weekly rate}}{5}$$

An employee shall not be entitled to claim payment for personal ill health or injury nor will his/her sick leave entitlement be reduced if such ill health or injury occurs on the week day he/she is to take off duty in accordance with paragraph (c) or (d) of subclause (1) of Section B—Implementation of 38 Hour Week of Clause 5.—Hours.

(b) Notwithstanding the provisions of paragraph (a) of this subclause an employee may adopt an alternative method of payment of sick leave entitlements where the employer and the majority of his/her employees so agree.

(c) Entitlement to payment shall accrue at the rate of 1/6th of a week for each completed month of service with the employer.

(d) If in the first or successive years of service with the employer an employee is absent on the ground of personal ill health or injury for a period longer than his/her entitlement to paid sick leave, payment may be adjusted at the end of that year of service, or at the time the employee's services terminate, if before the end of that year of service, to the extent that the employee has become entitled to further paid sick leave during that year of service.

(2) The unused portions of the entitlement to paid sick leave in any one year shall accumulate from year to year and subject to this clause may be claimed by the employee if the absence by reason of personal ill health or injury exceeds the period for which entitlement has accrued during the year at the time of the absence. Provided that an employee shall not be entitled to claim payment for any period exceeding 10 weeks in any one year of service.

(3) To be entitled to payment in accordance with this clause the employee shall as soon as reasonably practicable advise the employer of his/her inability to attend for work, the nature of his/her illness or injury and the estimated duration of the absence. Provided that such advice, other than in extraordinary circumstances, shall be given to the employer within 24 hours of the commencement of the absence. Where practicable notification of absence due to sickness is to be given no later than two hours after the normal start time. In the case of shiftworkers, where practicable, the notification is to be given prior to the start of normal shift hours.

(4) The provisions of this clause do not apply to an employee who fails to produce a certificate from a medical practitioner dated at the time of the absence or who fails to supply such other proof of the illness or injury as the employer may reasonably require provided that the employee shall not be required to produce a certificate from a medical practitioner with respect to absences of two days or less unless after two such absences in any year of service the employer requests in writing that the next and subsequent absences in that year, if any, shall be accompanied by such certificate.

(5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to an employee who suffers personal ill health or injury during the time when he/she is absent on annual leave and the employee may apply for the employer shall grant paid sick leave in place of paid annual leave.

(b) Application for replacement shall be made within seven days of resuming work and then only if the employee was confined to his/her place of residence or a hospital as a result of his/her personal ill health or injury for a period of seven consecutive days or more and he/she produces a certificate from a registered medical practitioner that he/she was so confined. Provided that the provisions of this paragraph do not relieve the employee of the obligation to advise the employer in accordance with subclause (3) of this clause if he/she is unable to attend for work on the working day next following his/her annual leave.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the employee was entitled at the time he/she proceeded on annual leave and shall not be made with respect to fractions of a day.

(d) Where paid sick leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the employee or, failing agreement, shall be added to the employee's next period of annual leave or, if termination occurs before then, be paid for in accordance with the provisions of Clause 9A.—Annual Leave.

(e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in Clause 9A.—Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.

(6) Where a business has been transmitted from one employer to another and the employee's service has been deemed continuous in accordance with subclause (3) of Clause 2 of the Long Service Leave Provisions published in Volume 66 of the Western Australian Industrial Gazette at pages 1 to 4, the paid sick leave standing to the credit of the employee at the date of transmission from service with the transmittor shall stand to the credit of the employee at the commencement of service with the transmittee and may be claimed in accordance with the provisions of this clause.

(7) The provisions of this clause with respect to payment do not apply to employees who are entitled to payment under the Workers' Compensation and Assistance Act nor to employees whose injury or illness is the result of the employee's own misconduct.

(8) The provisions of this clause do not apply to casual employees.

14.—APPRENTICES

(1) The employment of apprentices shall be governed by the Apprenticeship Regulations, 1964.

(2) Apprentices may be taken to the following trades—

(a) Watch and clock repairing;

(b) Jewellery (as defined in clause 15.—Definitions).

(3) The maximum number of apprentices allowed to any employer shall be in the proportion of one apprentice to every two or fraction of two journeymen employed by him in the jewellery trade and in the watchmaking trade respectively: Provided that the fraction shall not be less than one.

(4) The Apprenticeship Agreement shall be for a period of five years.

(5) Where classes are provided by the Technical Education Department in the locality in which the Apprentice is employed, the hours of attendance at such classes shall be eight hours per week for the first and second school years and eight hours per fortnight for the third school year or equivalent.

15.—DEFINITIONS

(1) "Jeweller" shall mean any worker employed wholly or partly—

(a) in the manufacture or repair of new or second hand jewellery;

(b) in engraving in any metal by hand where such engraving is associated with jewellery, watchmaking, and gold and silversmith's work; or

(c) designing jewellery and/or engraving in the jewellery or watchmaking trade, including silversmith's work.

(2) "Watchmaker, clockmaker, watch and clock repairer" shall mean any worker employed wholly or partly in the manufacture or repair of new or second-hand watches, clocks or timepieces.

(3) "Process Worker"

(a) Process Worker

Grade 1

A new employee in the first three (3) months of full-time permanent employment who performs routine duties whilst working under direct supervision and undergoing training to enable them to work at the Grade 2 level.

Training

- Undertakes induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout and processes, work and documentation procedures, equal employment opportunity and quality control/assurance, timekeeping, housekeeping.
- Undertakes training on matters involved with occupational health and safety.

(b) Process Worker

Grade 2

Shall mean an employee who has completed up to three months structured training so as to enable the employee to perform work within the scope of this level.

Specific Duties

- General labouring.
- Assembling and/or repetitive manual tasks.
- Assists an employee in Grade 3.
- Understands and undertakes basic quality control procedures.
- Carries out simple manual processes.

Experience

- An employee who is initially employed as a Process Worker—Grade 1 shall automatically progress from Grade 1 to Grade 2 after not more then three (3) months service with the employer.

Training

Shall have completed all aspects of Grade 1 training, including—

- Health and safety related to specific tasks to be performed, timekeeping records, and quality awareness related to particular processes.
- Quality control procedures including the ability to recognise faults and deviations.
- Proficiency and efficiency.
- Elementary tasks, skills and procedures.

(c) Process Worker

Grade 3

Shall mean an employee classified and appointed as such who is engaged to perform work within the scope of this level.

Specific Duties

- Assembling components
- Basic soldering
- Cleaning up castings
- Polishing

Experience

Not less than 9 months experience in Grade 2, unless otherwise agreed.

Training

Shall have completed all aspects of Grade 2 training, including—

- Health and safety related to specific tasks to be performed, timekeeping records, and quality awareness related to particular processes.
- Quality control procedures.
- Proficiency and efficiency.

16.—TOOLS, ETC

The employer shall supply destructible tools such as files, saws, scorpers, gravers, broaches and brushes for the use of workers.

17.—BOARD OF REFERENCE

(1) The Commission hereby appoints for the purposes of this award, a Board of Reference consisting of a Chairman and two other members who shall be appointed pursuant to section 48 of the Industrial Arbitration Act 1979.

(2) The Board of Reference is hereby assigned the function of allowing, approving fixing, determining or dealing with any matter of difference between the parties in relation to any matter which, under this award, may be allowed, approved, fixed, determined or dealt with by a Board of Reference.

18.—REPRESENTATIVE INTERVIEWING WORKERS

(1) On notifying the employer or his representative an accredited representative of the union shall be permitted to interview a worker during the recognised meal hour on the business premises of the employer at the place at which the meal is taken but this permission shall not be exercised without the consent of the employer more than once in any one week.

(2) In the case of a disagreement existing or anticipated concerning any of the provisions of this award, an accredited representative of the union, on notifying the employer or his representative, shall be permitted to enter the business premises of the employer to view the work the subject of any such disagreement but shall not interfere in any way with the carrying out of such work.

19.—UNDER-RATE WORKERS

(1) Any worker who by reason of old age or infirmity is unable to earn the minimum rate of wage prescribed herein for his or her class of work, may be paid such lesser wage as may from time to time be agreed upon in writing between the Union and the employer.

(2) In the event of no agreement being arrived at the matter may be referred to the Board of Reference for determination.

(3) After application has been made to the Board and pending the Board's decision, the worker shall be entitled to work for and be employed at the proposed lesser rate.

20.—CONTRACT OF SERVICE

(1) On the first day of engagement an employee shall be notified by the employer or by the employers' representative, whether the duration of his/her employment is expected to exceed one month and, if the employee is hired as a casual employee, he/she shall be advised accordingly.

(2) Except in the case of casual or probationary workers employed in accordance with this clause, one week's notice on either side shall be necessary to terminate the engagement. If an employer or a worker fails to give the required notice, one week's wages shall be paid or forfeited as the case may be.

(3) Provided that this shall not affect the right of an employer to dismiss a worker without notice for misconduct in which case wages shall be paid up to the time of dismissal.

(4) (a) The period of notice of termination in the case of a casual employee shall be one hour.

(b) If the required notice of termination is not given one hour's wages shall be paid by the employer or forfeited by the employee.

(5) An employee shall for the purposes of this award be deemed to be a casual employee—

(a) if the expected duration of the employment is less than one month; or

(b) if the notification referred to in this clause is not given and the employee is dismissed through no fault of his/her own within one month of commencing employment.

(6) Any employee employed as a casual in accordance with this clause shall receive 20% in addition to the rate prescribed for his/her class of work performed.

(7) The employer may engage an employee on a probationary period for not longer than three months during which time it will be possible for either the employee or employer to end the contract with one days notice.

(8) The employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training.

21.—BREAKDOWNS, ETC.

The employer shall be entitled to deduct payment for any day or portion of a day upon which the worker cannot be usefully employed because of any strike by the union or unions affiliated with it, or by any other association or union, or through any breakdown of the employer's machinery, or any stoppage of work by any cause which the employer cannot reasonably prevent.

22.—NOTICES AND POSTING OF AWARD

Every employer shall allow union notices and a copy of this award to be posted up by the union in a place accessible to the workers and approved by the employer.

23.—HIGHER DUTIES

A worker engaged on duties carrying a higher rate than his/her ordinary classification shall be paid the higher rate for the time he/she is so engaged, but if he/she is so engaged for more than two hours on any day, he/she shall be paid the higher rate for the whole day.

24.—LONG SERVICE LEAVE

The Long Service Leave provisions set out in Volume 59 of the Western Australian Industrial Gazette at pages 1 to 6 both inclusive, are hereby incorporated in and shall be deemed to be part of this award.

25.—DELETED

26.—BEREAVEMENT LEAVE

A worker shall, on the death within Australia of a wife, husband, de-facto wife, or de-facto husband, parent, parent-in-law, brother, sister, child or step-child, 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 worker in two ordinary working days. Proof of such death shall be furnished by the worker to the satisfaction of his employer.

Provided that payment in respect of bereavement leave is to be made only where the worker otherwise would have been on duty and shall not be granted in any case where the worker concerned would have been off duty in accordance with his/her roster, or on long service leave, annual leave, sick leave, workers' compensation, leave without pay or on a public holiday.

27.—MATERNITY LEAVE

(1) Eligibility for Maternity Leave

A worker who becomes pregnant shall, upon production to her employer of a certificate from a duly qualified medical practitioner stating the presumed date of her confinement, be entitled to maternity leave provided that she has had not less than 12 months' continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

For the purposes of this clause—

(a) A worker shall include a part-time worker but shall not include a worker engaged upon casual or seasonal work.

(b) Maternity leave shall mean unpaid maternity leave.

(2) Period of Leave and Commencement of Leave

(a) Subject to subclauses (3) and (6) hereof, the period of maternity leave shall be for an unbroken period of from 12 to 52 weeks and shall include a period of six weeks' compulsory leave to be taken immediately before the presumed date of confinement and a period of six weeks' compulsory leave to be taken immediately following confinement.

(b) A worker shall, not less than 10 weeks prior to the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.

(c) A worker shall give not less than four weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave, stating the period of leave to be taken.

(d) A worker shall not be in breach of this order as a consequence of failure to give the stipulated period of notice in accordance with paragraph (c) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

(3) Transfer to a Safe-Job

Where in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the worker make it inadvisable for the worker to continue at her present work, the worker shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

If the transfer to a safe job is not practicable, the worker may, or the employer may require the worker to, take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (7), (8), (9) and (10) hereof.

(4) Variation of Period of Maternity Leave

(a) Provided the addition does not extend the maternity leave beyond 52 weeks, the period may be lengthened once only, save with the agreement of the employer, by the worker giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened.

(b) The period of leave may, with the consent of the employer, be shortened by the worker giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(5) Cancellation of Maternity Leave

(a) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of a worker terminates other than by the birth of a living child.

(b) Where the pregnancy of a worker then on maternity leave terminates other than by the birth of a living child, it shall be right of the worker to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the worker to the employer that she desires to resume work.

(6) Special Maternity Leave and Sick Leave

(a) Where the pregnancy of a worker not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—

(i) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, or

(ii) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a duly qualified medical practitioner certifies as necessary before her return to work

(b) Where a worker not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed 52 weeks.

(c) For the purposes of subclauses (7), (8) and (9) hereof, maternity leave shall include special maternity leave.

(d) A worker returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of a worker who was transferred to a safe job pursuant to subclause (3), to the position she held immediately before such transfer.

Where such position no longer exists but there are other positions available, for which the worker is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(7) Maternity Leave and Other Leave Entitlements

Provided the aggregate of leave including leave taken pursuant to subclauses (3) and (6) hereof does not exceed 52 weeks.

(a) A worker may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is then entitled.

(b) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave),

shall not be available to a worker during her absence on maternity leave.

(8) Effect of Maternity Leave on Employment

Notwithstanding any award, or other provision to the contrary, absence on maternity leave shall not break the continuity of service of a worker but shall not be taken into account in calculating the period of service for any purpose of the award.

(9) Termination of Employment

(a) A worker on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.

(b) An employer shall not terminate the employment of a worker on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(10) Return to Work After Maternity Leave

(a) A worker shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.

(b) A worker, upon the expiration of the notice required by paragraph (a) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of a worker who was transferred to a safe job pursuant to subclause (3), to the position which she held immediately before such transfer. Where such position no longer exists but there are other positions available for which the worker is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(11) Replacement Workers

(a) A replacement worker is a worker specifically engaged as a result of a worker proceeding on maternity leave.

(b) Before an employer engages a replacement worker under this subclause, the employer shall inform that person of the temporary nature of the employment and of the rights of the worker who is being replaced.

(c) Before an employer engages a person to replace a worker temporarily promoted or transferred in order to replace a worker exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the worker who is being replaced.

(d) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement worker.

(e) A replacement worker shall not be entitled to any of the rights conferred by this clause except where her employment continues beyond the 12 months qualifying period.

28.—PAYMENT OF WAGES—38 HOUR WEEK

(1) Each employee shall be paid the appropriate rate shown in Clause 8.—Wages of this award. Subject to subclause (2) of this clause payment shall be pro rata where less than the full week is worked.

(2) From the date that a 38 hour week system is implemented by an employer, wages shall be paid as follows—

(a) Actual 38 ordinary hours

In the case of an employee whose ordinary hours of work are arranged in accordance with paragraph (a) or (b) of subclause (1) of Section B—Implementation of 38 Hour Week of Clause 5.—Hours so that he/she works 38 ordinary hours each week, wages shall be paid weekly or fortnightly according to the actual ordinary hours worked each week or fortnight.

(b) Average of 38 ordinary hours

Subject to subclauses (3) and (4) hereof, in the case of an employee whose ordinary hours of work are arranged in accordance with paragraph (c) or (d) of subclause (1) of Section B—Implementation of 38 Hour Week of Clause 5.—Hours so that he/she works an average of 38 ordinary hours each week during a particular work cycle, wages shall be paid weekly or fortnightly according to a weekly average of ordinary hours worked even though more or less than 38 ordinary hours may be worked in any particular week of the work cycle.

SPECIAL NOTE—EXPLANATION OF AVERAGING SYSTEM

As provided in paragraph (b) of this subclause, an employee whose ordinary hours may be more or less than 38 in any particular week of a work cycle, is to be paid his/her wages on the basis of an average of 38 ordinary hours so as to avoid fluctuating wage payments each week. An explanation of the averaging system of paying wages is set out below—

(i) Section B—Implementation of 38 Hour Week in Clause 5.—Hours in subclause (1) paragraphs (c) and (d) provides that in implementing a 38 hour week the ordinary hours of an employee may be arranged so that he/she is entitled to a day off, on a fixed day or rostered day basis, during each work cycle. It is in these circumstances that the averaging system would apply.

(ii) If the 38 hour week is to be implemented so as to give an employee a day off in each work cycle this would be achieved if, during a work cycle of 28 consecutive days (that is, over four consecutive weeks) the employee's ordinary hours were arranged on the basis that for three of the four weeks he/she worked 40 ordinary hours each week and in the fourth week he/she worked 32 ordinary hours. That is, he/she would work for eight ordinary hours each day, Monday to Friday inclusive, for three weeks and eight ordinary hours on four days only in the fourth week—a total of 19 days during the work cycle.

(iii) In such case the averaging system applies and the weekly wage rates for ordinary hours of work applicable to the employee shall be the average weekly wage rates set out for the employee's classification in Clause 8.—Wages of this award and shall be paid each week even though more or less than 38 ordinary hours are worked that week.

In effect, under the averaging system, the employee accrues a 'credit' each day he/she works actual ordinary hours in excess of the daily average which would otherwise be seven hours 36 minutes. This 'credit' is carried forward so that in the week of the cycle that he/she works on only four days, his/her actual pay would be for an average of 38 ordinary hours even though, that week, he/she works a total of 32 ordinary hours.

Consequently, for each day an employee works eight ordinary hours he/she accrues a 'credit' of 24 minutes (0.4 hours).

The maximum 'credit' the employee may accrue under this system is 0.4 hours on 19 days; that is, a total of seven hours and 36 minutes.

(iv) As provided in subclause (3) of this clause, an employee will not accrue a 'credit' for each day he/she is absent from duty other than on annual leave, long service leave, holidays prescribed under this award, paid sick leave, workers' compensation or bereavement leave.

(3) Absences From Duty

(a) An employee whose ordinary hours are arranged in accordance with paragraph (c) or (d) of Section B—Implementation of 38 Hour Week of Clause 5.—Hours and who is paid wages in accordance with paragraph (a) of subclause (2) hereof and is absent from duty (other than on annual leave, long service leave, holidays prescribed under this award, paid sick

leave, workers' compensation or bereavement leave) shall, for each day he/she is so absent, lose average pay for that day calculated by dividing his/her average weekly wage rate by five.

An employee who is so absent from duty for part of a day shall lose average pay for each hour he/she is absent by dividing his/her average daily pay rate by eight.

(b) Provided when such an employee is absent from duty for a whole day he/she will not accrue a 'credit' because he/she would not have worked ordinary hours that day in excess of seven hours 36 minutes for which he/she would otherwise have been paid. Consequently, during the week of the work cycle he/she is to work less than 38 ordinary hours he/she will not be entitled to average pay for that week. In that week, the average pay will be reduced by the amount of the 'credit' he/she does not accrue for each whole day during the work cycle he/she is absent.

The amount by which an employee's average weekly pay will be reduced when he/she is absent from duty (other than on annual leave, long service leave, holidays prescribed under this award, paid sick leave, workers' compensation or bereavement leave) is to be calculated as follows—

$$\text{Total of 'credits' not accrued during cycle} \times \frac{\text{average weekly pay}}{38}$$

Examples—

(An employee's ordinary hours are arranged so that he/she works eight ordinary hours on five days of each week for three weeks and eight ordinary hours on four days of the fourth week).

1. Employee takes one day off without authorisation in first week of cycle.

Week of Cycle		Payment
1st week	=	average weekly pay less one day's pay (ie. 1/5th)
2nd and 3rd weeks	=	average weekly pay each week
4th week	=	average pay less credit not accrued on day of absence
	=	$\frac{\text{average pay less 0.4 hours x average weekly pay}}{38}$

2. Employee takes each of the four days off without authorisation in the fourth week.

Week of Cycle		Payment
1st, 2nd and 3rd weeks	=	average pay each week
4th week	=	average pay
	=	less 4/5ths of average pay for the four days absent less total of credits not accrued that week
	=	$\frac{\text{1/5th average pay less 0.4 hours x average weekly pay}}{38}$
	=	$\frac{\text{1/5th average pay less 1.6 hours x average weekly pay}}{38}$

(4) Alternative Method of Payment

An alternative method of paying wages to that prescribed by subclauses (2) and (3) of this clause may be agreed between the employer and the majority of the employees concerned.

(5) Day Off Coinciding With Pay Day

In the event that an employee, by virtue of the arrangement of his/her ordinary working hours, is to take a day off duty on a day which coincides with pay day, such employee shall be paid no later than the working day immediately following pay day. Provided that, where the employer is able to make suitable arrangements, wages may be paid on the working day preceding pay day.

(6) Termination of Employment

An employee who lawfully leaves his/her employment or is dismissed for reasons other than misconduct shall be paid all monies due to him/her at the termination of his/her service with the employer.

Provided that in the case of an employee whose ordinary hours are arranged in accordance with paragraph (c) or (d) of subclause (1) of Section B—Implementation of 38 Hour Week and who is paid average pay and who has not taken the day off due to him/her during the work cycle in which his/her employment is terminated, the wages due to that employee shall include a total of credits accrued during the work cycle as detailed in the Special Note following paragraph (b) of subclause (2) of this clause.

Provided further, where the employee has taken a day off during the work cycle in which his/her employment is terminated, the wages due to that employee shall be reduced by the total of credits which have not accrued during the work cycle.

(7) Details of Payments to be Given

Where an employee requests his/her employer to state in writing with respect to each week's wages the amount of wages to which he/she is entitled, the amount of deductions made therefrom, the net amount being paid to him/her and the number of hours worked, the employer shall do so not less than two hours before the employee is paid.

(8) Calculation of Hourly Rate

Except as provided in subclause (3) of this clause, the ordinary rate per hour shall be calculated by dividing the appropriate weekly rate by 38.

29.—PART-TIME WORKERS

(1) A part-time worker may be engaged on a weekly contract in accordance with Clause 20.—Contract of Service of this award to work a regularly rostered number of hours each week. Provided that a part-time worker shall not be rostered to work less than two days or 16 hours per week.

(2) A part-time worker shall be paid a weekly rate calculated pro rata to the class of work on which the worker is engaged in the proportion which the worker's hours of work bear to 38.

(3) Part-time workers shall be entitled to payment for annual leave, public holidays, long service leave and sick leave on a pro rata basis in the same proportion as the number of hours worked per week bears to 38.

(4) The hours of part-time workers shall not be altered without their agreement or the giving of one week's notice.

30.—SUPERANNUATION

The superannuation provisions contained herein operate subject to the requirements of the hereinafter prescribed provision titled—Compliance, Nomination and Transition.

(1) Employer Contributions—

(a) An employer shall contribute 3% of ordinary time earnings per eligible employee into one of the following Approved Superannuation Funds—

(i) Westscheme; or

(ii) an exempted Fund allowed by subclause (4) of this clause.

(b) Except where the Trust Deed provides otherwise employer contributions shall be paid on a monthly basis for each week of service that the eligible employee completes with the employer.

(c) No contributions shall be made for periods of unpaid leave, or unauthorised absences in excess of 38 ordinary hours or for periods of workers' compensation in excess of 52 weeks. No contributions shall be made in respect of annual leave paid out on termination or any other payments on terminations.

(2) Fund Membership—

(a) Contributions in accordance with subclause (1)—Employer Contributions of this clause, shall be calculated by the employer on behalf of each employee from the date one month after the employee commences employment, unless the employee fails to return a completed application to join the Fund and the employer has complied with the following—

(i) the employer shall provide the employee with an application to join the Fund and documentation explaining the Fund within one week of employment commencing.

(ii) If the employee fails to return to the employer a completed application to join the Fund within two weeks of receipt, the employer shall send to the employee by certified mail, a letter setting out relevant superannuation information, the letter of denial set out in subclause (6) of this clause and an application to join the Fund.

(iii) Where the employee completes and returns the letter of denial, no contribution need be made on that employee's behalf.

(iv) Where the employee completes and returns neither the application to join the Fund nor the letter of denial within one week of postage, the employer shall advise either the Union or the Fund Administrator in writing of the employee's failure to return the completed form.

(v) From two weeks following the employer's advice pursuant to paragraph (iv) should the employee not have returned the completed form the employer shall be under no obligation to make superannuation payments on behalf of that employee.

Provided that if at any time an employee returns a signed application form, notwithstanding a previous failure to return such form or the return of a letter of denial, the employer shall make contributions on behalf of that employee from the date of return of the signed application form.

(b) Part-time employees shall not be entitled to receive the employer contribution mentioned in subclause (1)—Employer Contributions of this clause, unless they work a minimum of 12 hours per week.

(c) Casual employees who are employed for 32 consecutive working days or less shall not be entitled to the benefits of this clause.

(3) Definitions—

"Approved Fund" shall mean any Fund which complies with the Australian Government's Operational Standards for Occupational Superannuation.

"Ordinary time earnings" shall mean the salary, wage or other remuneration regularly received by the employee in respect of the time worked in ordinary hours and shall include shift work penalties, payments which are made for the purpose of District or Location Allowances or any other rate paid for all purposes of the award to which the employee is entitled for ordinary hours of work. Provided that "ordinary time earnings" shall not include any payment which is for vehicle allowances, fares or travelling time allowances (including payments made for travelling related to distant work), commission or bonus.

(4) Exemptions—

Exemptions from the requirements of this clause shall apply to an employer who at the date of this Order—

(a) was contributing to a Superannuation Fund, in accordance with an Order of an industrial tribunal; or

(b) was contributing to a Superannuation Fund, in accordance with an Order or Award of an industrial tribunal, for a majority of employees and makes payment for employees covered by this award in accordance with that Order or Award; or

(c) subject to notification to the Union, was contributing to a Superannuation Fund for employees covered by this award where such payments are not made pursuant to an Order of an industrial tribunal; or

(d) was not contributing to a Superannuation Fund for employees covered by this award; and

(i) written notice of the proposed alternative Superannuation Fund is given to the Union; and

(ii) contributions and benefits of the proposed alternative Superannuation Fund are no less than those provided by this clause; and

(iii) within one month of the notice prescribed in paragraph (i) being given, the Union has not challenged the suitability of the proposed Fund by notifying the Western Australian Industrial Relations Commission of a dispute.

(5) Operative Date—

This clause shall operate from the beginning of the first full calendar month following the Western Australian Industrial Relations Commission approval of the clause.

(6) Letter of Denial—

The letter of denial shall be in the following form—

"To (employer)

I have received an application for membership of the non-contributory Superannuation Fund and understand—

(1) that should I sign such form you will make contributions on my behalf; and

(2) that I am not required to make contributions of my own; and

(3) that no deductions will be made from my wages for superannuation without my consent.

However, I do not wish to be a member of the Fund or have contributions made on my behalf.

.....
(Signature)

.....
(Name)

.....
(Address)

.....
(Classification)

.....
(Date)"

Compliance, Nomination and Transition

Notwithstanding anything contained elsewhere herein which requires that contribution be made to a superannuation fund or scheme in respect of an employee, on and from 30 June 1998—

(a) Any such fund or scheme shall no longer be a complying superannuation fund or scheme for the purposes of this clause unless—

(i) the fund or scheme is a complying fund or scheme within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; and

(ii) under the governing rules of the fund or scheme, contributions may be made by or in respect of the employee permitted to nominate a fund or scheme;

(b) The employee shall be entitled to nominate the complying superannuation fund or scheme to which contributions are to be made by or in respect of the employee;

(c) The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable;

(d) A nomination or notification of the type referred to in paragraphs (b) and (c) of this subclause shall, subject to the requirements of regulations made pursuant to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the employee to whom such is directed;

(e) The employee and employer shall be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made;

(f) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by a employee;

Provided that on and from 30 June 1998, and until an employee thereafter nominates a complying superannuation fund or scheme—

(g) if one or more complying superannuation funds or schemes to which contributions may be made be specified herein, the employer is required to make contributions to that fund or scheme, or one of those funds or schemes nominated by the employer;

or

(h) if no complying superannuation fund or scheme to which contributions may be made be specified herein, the employer is required to make contributions to a complying fund or scheme nominated by the employer.

31.—AWARD MODERNISATION AND ENTERPRISE CONSULTATION

(1) The parties to this award are committed to co-operating positively to increase the efficiency and productivity of the industry to enhance the career opportunities and job security of employees in the industry.

(2) At each plant or enterprise a consultative mechanism may be established by the employer, or shall be established upon request by the employees or their Union. The consultative mechanism and procedure shall be appropriate to the size, structure and needs of that plant or enterprise.

(3) Where a consultative committee is established, it will be free to address any matter which is consistent with the objectives of subclause (1) of this clause.

(4) Discussions that take place will have regard to the following requirements—

(a) the changes sought shall not affect provisions reflecting State standards;

(b) the majority of employees affected by the change at the plant or enterprise must genuinely agree to the change;

(c) any agreement shall not, in the context of a total package, provide for a set of conditions of a lesser standard than that provided by the award and no employee shall have a lesser income as a result of the conditions provided for in such agreement;

(d) the Union must be a party to any agreement which affects the wages and/or conditions of employment of employees;

(e) the Union shall not unreasonably oppose any agreement;

(f) any agreement relating to award matters shall be subject to approval by the Western Australian Industrial Relations Commission and, if approved, shall operate as a schedule to this award and take precedence over any provision of this award to the extent of any inconsistency;

(g) if agreement cannot be reached on a particular issue, then the matter may be referred to the Western Australian Industrial Relations Commission for determination.

APPENDIX—RESOLUTION OF DISPUTES REQUIREMENT

(1) This Appendix is inserted into the award/industrial agreement as a result of legislation which came into effect on 16 January 1996 (Industrial Relations Legislation Amendment and Repeal Act 1995) and further varied by legislation which came into effect on 23 May 1997 (Labour Relations Legislation Amendment Act 1997).

(2) Subject to this appendix, and in addition to any current arrangements the following procedures shall apply in connection with questions, disputes or difficulties arising under this award/industrial agreement.

(a) The persons directly involved, or representatives of person/s directly involved, shall discuss the question, dispute or difficulty as soon as is practicable.

(b) (i) If these discussions do not result in a settlement, the question, dispute or difficulty shall be referred to senior management for further discussion.

(ii) Discussions at this level will take place as soon as practicable.

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

(4) Any settlement reached which is contrary to the terms of this award/industrial agreement shall not have effect unless and until that conflict is resolved to allow for it.

(5) Nothing in this appendix shall be read so as to exclude an organisation party to or bound by the award/industrial agreement from representing its members.

(6) Any question, dispute or difficulty not settled may be referred to the Western Australian Industrial Relations Commission 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..

SCHEDULE A—PARTIES TO THE AWARD

The following organisation is a party to this award—

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

SCHEDULE B—RESPONDENT

Caris the Jeweller
713 Hay Street
PERTH WA 6000

Mazzuchelli's Jewellers Pty Ltd
676 Hay Street
City Arcade
PERTH WA 6000

East West Chain Pty Ltd
(no longer in business)

APPENDIX—S.49B—INSPECTION OF RECORDS REQUIREMENTS

(1) Where this award, order or industrial agreement empowers a representative of an organisation of employees party to this award, order or industrial agreement to inspect the time and wages records of an employee or former employee, that power shall be exercised subject to the Industrial Relations (General) Regulations 1997 (as may be amended from time to time) and the following—

(a) 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 organisation would infringe the privacy of persons who are not members of the organisation; and

(ii) the employer undertakes to produce the records to an Industrial Inspector within 48 hours of being notified of the requirement to inspect by the representative.

(b) The power of inspection may only be exercised by a representative of an organisation of employees authorised for the purpose in accordance with the rules of the organisation.

(c) Before exercising a power of inspection, the representative shall give reasonable notice of not less than 24 hours to an employer.