Western Australian

Industrial Gazette

PUBLISHED BY AUTHORITY

Sub-Part 4 | WEDNESDAY, 22 AUGUST, 2001 | Vol. 81—Part 2

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

CUMULATIVE CONTENTS AND DIGEST APPEAR AT THE END OF THIS PUBLICATION

GENERAL ORDER—*continued*

Variation Schedules

TEACHERS' AIDES' (INDEPENDENT SCHOOLS) AWARD 1988

NO. A 27 OF 1987

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 $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(3) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(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 $413.40 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 2001 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.

14.—WAGES

The minimum hourly award rate of wage payable to employees covered by this award operative from the beginning of the first pay period on or after 1st day of August, 2001 shall be—

(1) Teachers Aides

	Base Rate (Per Hour)	Arbitrated Safety Net Adjustments (Per Hour)	Minimum Award Rate (Per Hour)
	$	$	$
Step 1	9.35	2.61	11.96
Step 2	9.54	2.61	12.15
Step 3	9.74	2.61	12.35
Step 4	9.98	2.61	12.59
Step 5	10.27	2.61	12.88
Step 6	10.64	2.61	13.25
Step 7	10.95	2.61	13.56
Step 8	10.71	2.61	13.32
Step 9	11.02	2.61	13.63
Step 10	11.33	2.61	13.94
Step 11	11.63	2.61	14.24
Step 12	11.82	2.61	14.43
Step 13	11.96	2.61	14.57

(Note: ASNA rate is divided by 32.5 hours as per clause 6)

Progression along the wages scale shall be by annual increment.

Level One

Teachers' Aides in Primary Schools, Pre-Primary Schools or Pre-Schools Teaching Assistants

Enter Step 1

Exit Step 4

Level Two

Teachers' Aides in Aboriginal Schools, where the required training has been completed.

Teachers' Aides involved in a Special Education Programme (a part-time programme for one or more students within a mainstream school).

Enter Step 2

Exit Step 5

Level Three

Teachers' Aides in Aboriginal Secondary Schools

Teachers' Aides in Special Education Centres (a full-time class, serving a region, within a mainstream school)

Enter Step 4

Exit Step 7

Level Four

Teachers' Aides in Aboriginal Schools on satisfactory completion of the first year of Aboriginal Teachers' Training Course

Employees who have completed an approved "Classroom Assistant" Course at a recognised training institution or equivalent as agreed between the Union and the Respondents

Teachers' Aides in Special Education Schools (schools with limited enrolment to students with a particular disability)

Teaching Assistants who have completed initial training as detailed in the Aboriginal Teaching Assistants Programme Manual.

Enter Step 8

Exit Step 11

Teachers' Aides in Special Education Schools who have completed an approved "Classroom Assistant" Course at a recognised training institution

Teaching Assistants who have completed year 1 of the Diploma of Teaching or Bachelor of Education as specified in the Aboriginal Teaching Assistants Programme Manual.

Step 12

Level Five

Employees who have completed the Child Care Certificate, National Nursery Examination Board Certificate or other equivalent qualifications as agreed between the Union and the Respondents

Teachers' Aides in Aboriginal Schools on satisfactory completion of the second year of Aboriginal Teachers' Training Course

Teaching Assistants who have completed year 2 of the Diploma of Teaching or Bachelor of Education as specified in the Aboriginal Teaching Assistants Programme Manual.

Step 13

(2) A Teachers' Aide left in charge of pupils for a full session shall be paid at his/her ordinary rate plus 10% for the period for which they are left in charge, provided that, if the period for which the employee is left in charge exceeds three days, they shall be paid at the ordinary rate plus 20% for the whole period for which they are in charge.

			Base Rate (Per Hour) $	Arbitrated Safety Net Adjustments (Per Hour) $	Min. Hourly Award Rate (Per Hour) $
(3)	(a)	Child Care Workers			
		1st year of experience	11.19	2.49	13.68
		2nd year of experience	12.37	2.49	14.86
		3rd year of experience	13.00	2.55	15.55
		4th year of experience	13.63	2.55	16.18
		5th year of experience	14.27	2.55	16.82

(Note: ASNA is divided by 32.5 hours as per clause 6)

(b) An employee left in charge of pupils for a full session or more shall be paid no less than the rate applicable to a Child Care Worker in their fifth year of employment for the whole period they are in charge.

(4) 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.

(7) An employee who has had previous experience relevant to employment covered by this award may have that experience taken into account in determining the "year of employment" at which an employee is appointed and paid.

(8) A casual employee shall be paid 20 percent in addition to the rates prescribed in this clause.

TEACHERS' AIDES' AWARD, 1979

NO. R 4 OF 1979

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 $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(3) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(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 $413.40 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 2001 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.

14—WAGES

(1) (a) The total minimum hourly award rate payable to employees covered by this award operative from the beginning of the first pay period on or after 1 August 2000.

	Base Rate (Per Hour)	Arbitrated Safety Net Adjustments (Per Hour)	Minimum Award Rate (Per Hour)
	$	$	$
Step 1	9.35	2.61	11.96
Step 2	9.54	2.61	12.15
Step 3	9.74	2.61	12.35
Step 4	9.98	2.61	12.59
Step 5	10.27	2.61	12.88
Step 6	10.64	2.61	13.25
Step 7	10.95	2.61	13.56
Step 8	10.71	2.61	13.32
Step 9	11.02	2.61	13.63
Step 10	11.33	2.61	13.94
Step 11	11.63	2.61	14.24
Step 12	11.82	2.61	14.43
Step 13	11.96	2.61	14.57

Progression along the wages scale shall be by annual increment.

Level One

Aboriginal Education Workers in Aboriginal Schools, Early Childhood Education or Transport.

Teachers Aides in Junior Primary Schools, Pre-primary Schools or Pre-schools.

Bus Wardens

Step 1 to Step 4, inclusive

Step 1	9.35	2.61	11.96
Step 2	9.54	2.61	12.15
Step 3	9.74	2.61	12.35
Step 4	9.98	2.61	12.59

Level Two

Aboriginal Education Workers in Aboriginal Schools, or Early Childhood Education where the required in-service training has been completed.

Teacher Aide in Education Support Units.

Step 2 to Step 5, inclusive.

Step 2	9.54	2.61	12.15
Step 3	9.74	2.61	12.35
Step 4	9.98	2.61	12.59
Step 5	10.27	2.61	12.88

Level Three

Aboriginal Education Workers where a basic child care course has been completed.

Special Aboriginal Education Worker placements in Secondary Schools.

Teacher Aide in Education Support Centres.

Step 4 to Step 7, inclusive.

	Base Rate (Per Hour)	Arbitrated Safety Net Adjustments (Per Hour)	Minimum Award Rate (Per Hour)
	$	$	$
Step 4	9.98	2.61	12.59
Step 5	10.27	2.61	12.88
Step 6	10.64	2.61	13.25
Step 7	10.95	2.61	13.56

Level Four

Aboriginal Education Workers on satisfactory completion of the first year of Aboriginal Teachers' Training Course.

Employees who have completed an approved "Classroom Assistant" Course at a recognised training institution or other equivalent qualification approved by the Minister as being appropriate after consultation with the Union.

Ethnic Aides,

Regional Kindergarten Aides,

Rural Integration Programme Aides,

Teacher Aides in Education Support Schools.

Step 8 to Step 11, inclusive.

Step 8	10.71	2.61	13.32
Step 9	11.02	2.61	13.63
Step 10	11.33	2.61	13.94
Step 11	11.63	2.61	14.24

Teachers' Aides in Education Support Schools, Regional Kindergarten Assistants or Ethnic Aides who have completed an approved "Classroom Assistant" Course at a recognised training institution or other equivalent qualification approved by the Minister as being appropriate after consultation with the Union; and who have completed four years of service, or equivalent.

Step 12	11.82	2.61	14.43

Level Five

Aboriginal Education Workers on satisfactory completion of the second year of Aboriginal Teachers' Training Course.

Employees who have completed the Child Care Certificate, National Nursery Examination Board Certificate or other equivalent qualifications approved by the Minister as being appropriate after consultation with the Union.

Step 13	11.96	2.61	14.57

(b) 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.

TEACHERS (PUBLIC SECTOR PRIMARY AND SECONDARY EDUCATION) AWARD 1993

NO. TA 1 OF 1992

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 $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(3) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(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 $413.40 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 2001 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.

SCHEDULE B—SALARIES AND ADDITIONAL PAYMENTS

TABLE I—TEACHERS AND SCHOOL ADMINISTRATORS

	Minimum Salary $ Per Annum	Safety Net Adjustment $ per annum	Total Salary $ per annum
Level 1	21,317	3026	24343
	22,446	3026	25472
	23,764	3131	26895
	24,807	3131	27938
	26,439	3027	29466
	28,020	3027	31047
	30,085	3131	33216
	31,460	3131	34591

	Minimum Salary $ Per Annum	Safety Net Adjustment $ per annum	Total Salary $ per annum
	33,700	3131	36831
Level 2	34,748	3131	37879
	36,204	3131	39335
	38,950	3131	42081

Teachers
Lecturers (Senior Colleges)

Level 3	41,782	3131	44913
	43,406	3131	46537
	45,245	3131	48376

Principal of Primary School (< 100 students)
Principal of Education Support School (< 40 students)
Principal of Agricultural School/College (< 40 students)
Deputy Principal District High School (Secondary)
Deputy Principal District High School (Primary) (< 200 students)
Deputy Principal of Primary School
Programme Co-ordinator (Primary)—Distance Education
Head of Department—Secondary Schools (previously known as Senior Teacher)
Programme Co-ordinator—(previously limited tenure Senior Teacher positions)
Senior Lecturer—Senior College
Deputy Principal Education Support School (>40 students)

	Minimum Salary $ Per Annum	Safety Net Adjustment $ per annum	Total Salary $ per annum
Level 4	47,262	3131	50393
	48,524	3131	51655
	49,786	3131	52917

Principal of Agricultural School (40 to 80 students)
Principal of Primary School (100 to 300 students)
Principal of Education Support School (40 to 80 students)
Deputy Principal High and Senior High Schools (provided that Deputy Principals of High and Senior High Schools with an enrolment of > 600 students may progress to the minimum of Level 5)
Deputy Principal District High School (Primary)(> 200 primary students)
Deputy Principal—Distance Education
Head of School—Senior College

	Minimum Salary $ Per Annum	Safety Net Adjustment $ per annum	Total Salary $ per annum
Level 5	51,589	3131	54720
	53,318	3131	56449
	55,052	3131	58183

Principal of Primary School (301 to 700 students)
Principal of District High School (150 to 450 students)
Principal of Agricultural College (> 80 students)
Principal of Education Support School (> 80 students)
Vice Principal—Distance Education
Deputy Principal—Senior College

	Minimum Salary $ Per Annum	Safety Net Adjustment $ per annum	Total Salary $ per annum
Level 6	57,946	3131	61077
	59,680	3131	62811
	61,409	3131	64540

Principal High and Senior High School
Principal of Primary School (> 700 students)
Principal—Distance Education Centre
Principal of Senior College

TABLE II—EDUCATION OFFICERS

	Minimum Salary $ Per Annum	Safety Net Adjustment $ per annum	Total Salary $ per annum
Level 1			
Education Officer	31,651	3131	34782
School Support Officer	33,462	3131	36593
	35,269	3131	38400
	37,080	3131	40211
	38,887	3131	42018
	40,695	3131	43826
	42,035	3131	45166
Level 2			
Education Officer	43,379	3131	46510
	45,003	3131	48134
	46,841	3131	49972
Level 3			
Senior Education Officer	48,859	3131	51990
Consultant	50,120	3131	53251
	51,383	3131	54514

TABLE III—SCHOOL DEVELOPMENT OFFICERS

The following salary scale shall be paid to employees employed as School Development Officers—

	Minimum Salary $ Per Annum	Safety Net Adjustment $ per annum	Total Salary $ per annum
Level 1	30,599	3131	33730
	32,411	3131	35542
	34,218	3131	37349
	36,029	3131	39160
	37,832	3131	40963
	39,640	3131	42771
	40,984	3131	44115

TABLE IV—COUNSELLING ASSISTANTS

	Minimum Salary $ Per Annum	Safety Net Adjustment $ per annum	Total Salary $ per annum
Level	21,830	3026	24856
	23,150	3026	26176
	24,446	3131	27577
	25,756	3027	28783
	27,297	3027	30324
	28,883	3131	32014
	30,513	3131	33644
	32,151	3131	35282
	33,563	3131	36694
	34,969	3131	38100
	36,395	3131	39526

No new appointments will be made to this salary table from 1 July 1990.

TABLE V—GUIDANCE OFFICERS

The following salary scale shall be paid to employees employed as Guidance Officers—

	Minimum Salary $ Per Annum	Safety Net Adjustment $ per annum	Total Salary $ per annum
Guidance Officer, Grade II	24,031	3131	27162
	25,360	3131	28491
	26,666	3027	29693
	27,969	3027	30996
	29,575	3131	32706
	31,207	3131	34338
	32,846	3131	35977
	34,482	3131	37613
	35,898	3131	39029
	37,317	3131	40448
	38,742	3131	41873
Guidance Officer, Grade I	38,863	3131	41994
	39,577	3131	42708
	40,295	3131	43426
	41,009	3131	44140
	41,728	3131	44859

No new appointments will be made to this salary table from 1 July 1990.

TABLE VI—SCHOOL PSYCHOLOGISTS

The following salary scale shall be paid to employees employed as School Psychologists—

	Minimum Salary $ Per Annum	Safety Net Adjustment $ per annum	Total Salary $ per annum
Level 1			
School Psychologist (Provisional)	29,087	3131	32218
School Psychologist	30,896	3131	34027
	32,707	3131	35838
	34,514	3131	37645
	36,321	3131	39452
Level 2			
School Psychologist	38,128	3131	41259
	39,939	3131	43070
	41,564	3131	44695
	43,191	3131	46322
Senior School Psychologist	45,790	3131	48921
	46,829	3131	49960
	47,870	3131	51001
Level 4			
Principal School Psychologist	49,315	3131	52446
	50,339	3131	53470
	51,383	3131	54514

(1) School Psychologists, Level 1 shall progress to School Psychologist, Level 2 on having met the following—

(a) Full registration status with the Psychologists Board of Western Australia; and

(b) Having served twelve months on the maximum of School Psychologist, Level 1.

(2) An employee on Table I wishing to transfer to the School Psychology Service shall transfer to the closest salary higher, plus one increment, to the maximum of Level 2 of Table VI. An employee who transfers to a salary in Level 2, Table VI shall be deemed to be Level 1, Table VI for all purposes other than salary.

(3) Employees shall be entitled to the following allowances while carrying out the duties specified—

(a)

	ALLOWANCE $ PER ANNUM
Band 1 Responsible for school bus services (1-5 buses). Teacher of mentally/physically handicapped in Education Support Units. Special Responsibility Allowance 1.	572

(b)

	ALLOWANCE $ PER ANNUM
Band 2 Responsible for school bus services (6-10 buses). Teacher of mentally/physically handicapped in Education Support Centres and Schools. Teacher at Remote Community Schools, as determined by the Chief Executive officer. Teacher at Distance Education Centre. Special Responsibility Allowance 2.	1 144

(c)

	ALLOWANCE $ PER ANNUM
Band 3 Responsible for school bus services (11-15 buses). Employees engaged in supervisory duties at residential wings. Special Responsibility Allowance 3.	1716

(d)

	ALLOWANCE $ PER ANNUM
Band 4 Responsible for school bus services (16 or more buses). Youth Education Officer. District Youth Officer. Principal of a school with residential wing. Special Responsibility Allowance 4.	2288

(e)

	ALLOWANCE $ PER ANNUM
Advanced Skills Teacher Senior Teacher Key Teacher	1200

(4) The allowances provided for in subclause (3) are not mutually exclusive, provided that an employee shall only be entitled to receive one Special Responsibility Allowance.

(5) The responsibility for school bus services shall be vested in the school Principal provided that this may be delegated to a Deputy Principal who shall then be entitled to payment of the appropriate allowance in lieu of the Principal.

Internal Relief

(6) (a) An employee who is directed to undertake internal relief work during the minimum time set aside for release from face-to-face teaching shall be paid the following rates (calculated as annual salary divided by 1673.45, except that Level 1 rates shall equal at least the hourly rate for Level 1 Point 8)—

Salary Grade		Hourly Rate
Level 1,	Point 4	20.67
	Point 5	20.67
	Point 6	20.67
	Point 7	20.67
	Point 8	20.67
	Point 9	22.01
Level 2,	Point 1	22.64
	Point 2	23.51
	Point 3	25.15

(b) Payments for such work shall be made four times per year.

(7) 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.

TEACHERS (PUBLIC SECTOR TECHNICAL AND FURTHER EDUCATION) AWARD 1993

NO. TA 1/1/ OF 1992

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 $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(3) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(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 $413.40 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 2001 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.

PART I—SALARY AND ADDITIONAL PAYMENTS

8.—SALARY SCALE

(1) Employees shall be paid salaries and additional payments in accordance with the provisions of this clause. The pay rates set out in this clause were last varied on and from the 13th day of December 1994.

(2) LECTURERS/COUNSELLORS

(a) The following salary scale shall apply to Lecturers and Counsellors.

	Minimum Salary $ Per Annum	Safety Net Adjustment $ per annum	Total Salary $ per annum
Grade 1	28188	3026.00	31214.00
Grade 2	29611	3130.00	32741.00
Grade 3	31035	3130.00	34165.00
Grade 4	32459	3130.00	35589.00
Grade 5	33882	3130.00	37012.00
Grade 6	35306	3130.00	38436.00
Grade 7	36730	3130.00	39860.00
Grade 8	38154	3130.00	41284.00
Grade 9	39577	3130.00	42707.00
Grade 10	41000	3130.00	44130.00

(b) Except as otherwise provided in this award, progression along the salary scale shall be by annual increments and shall be dependent upon satisfactory service.

(c) A lecturer/counsellor who has not had a satisfactory report may not advance further than 3 annual increments from grade of appointment.

(d) Progression beyond two increments from grade of appointment is dependent on attaining an approved teaching qualification.

(e) An individual's commencement salary grade shall meet the following minimum conditions:—

(i) Grade 1:- Certificate, plus 5 years trade experience or basic qualification and/or criteria necessary to perform the position.

(ii) Grade 2:- The attainment of 3 years trained status as defined or equivalent to UG2 status.

(iii) Grade 3:- The attainment of 4 years trained status as defined or equivalent to UG1 status.

(iv) Grade 4:- The attainment of 5 years trained status as defined or equivalent to PG1 status.

(f) A Counsellor must be a 'Registered Psychologist' in accordance with the provisions of the Psychologists Registration Act 1976.

(3) ADVANCED SKILLS LECTURER 1 (ASL1)
ADVANCED SKILLS COUNSELLOR 1 (ASC1)

Point	Minimum Salary $ Per Annum	Safety Net Adjustment $ per annum	Total Salary $ per annum
1	42538	3130.00	45668.00
2	44075	3130.00	47205.00
3	45612	3130.00	48742.00

Progression to ASL1 and ASC1 will be contingent upon meeting the specified criteria, in Appendices 1 and 2 respectively.

(4)

	Minimum Salary $ per annum	Safety Net Adjustment $ per annum	Total Salary $ per annum
ADVANCED SKILLS LECTURER 2 (ASL 2) ADVANCED SKILLS COUNSELLOR 2 (ASC 2) CURRICULUM OFFICER LEVEL 2 (CO 2)	47150	3130.00	50280.00

Progression to ASL2 or ASC2 or Curriculum Officer Level 2 will be available to, in the case of Lecturer ASL1's, Counsellors ASC1's and Curriculum Officer Level 1's subject to meeting the specified criteria, in Appendices 3, 4 and 5 respectively.

(5) PROMOTIONAL POSITIONS

(a) Curriculum Officer Level 1 (CO 1)
Regional Co-Ordinator

Point	Minimum Salary $ Per Annum	Safety Net Adjustment $ per annum	Total Salary $ per annum
1	42538	3130.00	45668.00
2	44075	3130.00	47205.00
3	45612	3130.00	48742.00

Selection for CO1 will be based on the specified criteria in Appendix 6.

Regional Co-ordinator positions are currently classified as Education Officer 1 for which criteria, duties and roles are already established. They are Education Act promotional positions.

(b)

		Minimum Salary $ Per Annum	Safety Net Adjustment $ per annum	Total Salary $ per annum
Head of Program	>	47150	3130.00	50280.00
Centre Manager 1	>			

Selection for Head of Program and Centre Manager 1 will be based on the specified criteria in Appendices 7 and 8 respectively.

(c)

		Minimum Salary $ Per Annum	Safety Net Adjustment $ per annum	Total Salary $ per annum
Principal Lecturer	>	49200	3130.00	52330.00
Centre Manager 2	>			
Senior Counsellor	>			
Senior Curriculum Officer	>			

Selection for Principal Lecturer, Senior Counsellor and Senior Curriculum Officer will be based on the specified criteria in Appendices 9, 10 and 11 respectively.

Selection Criteria for Centre Manager 2 are subject to further negotiation between the parties.

(d) Associate Director

Point	Minimum Salary $ Per Annum	Safety Net Adjustment $ per annum	Total Salary $ per annum
1	49200	3130.00	52330.00
2	52275	3130.00	55405.00

(6) ALLOWANCES AND ADDITIONAL PAYMENTS

(a) Lecturers approved to undertake special projects or administrative duties determined by the Executive Director shall have their annual salary increased by—

	Allowance $ Per Annum
Special Projects	2050
Administrative Duties:	
- 4 year trained	1141
- Other	939

(b) Lecturers may be transferred to undertake special projects for a period up to two years with an option for a further 12 months. These officers will progress on the lecturing scale as provided in this clause. At the completion of the project the lecturer will revert to his or her new substantive salary on the lecturing scale.

(7) HOLIDAY LOADING

(a) Employees shall be paid a loading of 17-1/2 percent of current salary when proceeding on annual leave. The loading shall be calculated with respect to a maximum of four weeks annual leave provided that the amount of such loading shall not exceed the amount set out in the Australian Bureau of Statistics publication for average weekly earnings per male employed unit in Western Australia for the September quarter in the year immediately proceeding the date leave is taken.

(b) For the purposes of this clause there shall be no distinction between permanent and temporary employees.

(c) Any employee employed for not less than one continuous month shall be entitled to a holiday loading on a pro-rata basis for each continuous month's service.

(d) Any employee who works for a period within the school year which extends over term or semester vacations will be credited with service for such vacation period or periods.

(8) ARBITRATED SAFETY NET ADJUSTMENT

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.

(9) PART TIME EMPLOYEES

(a) A part-time employee shall receive salaries and allowances on a pro rata basis in the proportion that the working time worked bears to that of a full time employee.

(b) A part-time employee shall work for such period of time as is in inverse proportion to the part-time hours before being eligible for an increment in basic salary or additional payment.

(c) A part time employee shall accrue entitlement to all leave provided for in this award, at the same rate as a full time employee but shall be paid on a pro rata basis in the proportion that the time worked bears to full time.

9.—ADDITIONAL-TIME TEACHING AND CASUAL TEACHING

(1) The additional-time hourly rates applicable to all employees full time or fractional, shall be calculated as follows—

Base annual salary divided by 1117.84, provided that the maximum rate shall be that payable to an ASL 1, point 3.

(2) Rates of Payment—Casual Work—

Rates of payment for people employed to teach on an hourly casual basis shall be based on level of subjects taught—

Teaching		Rates (Per Class Hour) $	A.S.N.A. $	TOTAL HOURLY RATE
Adult Education	Level 1	22.80	2.63	25.43
Certificate or Labour Markets Programs	Level 2	32.60	2.72	35.32
Associate Diploma/Advanced Certificate Small Business Management	Level 3	40.30	2.72	43.02

(EDIT NOTE: The A.S.N.A. amount is divided by 22 refer 75 WAIG 1736.)

TELFER GOLD MINE FLY IN/FLY OUT AWARD

NO. A 9 OF 1987

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 $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(3) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(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 $413.40 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 2001 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.

5.—ANNUALISED WAGES

The annualised wages payable under the provisions of this Award for an employee shall be the total of the annual wage for that employee's classification set out in subclause (1) below, plus the annual service payment applicable to the individual employee set out in subclause (2) below plus the Telfer allowance set out in subclause (6) below.

The annual wage covers all payments for the performance of all duties in accordance with the roster and the employee's classification and includes consideration for all allowances, other than those specifically referred to in subclauses (4) and (6) below, including all previously applicable allowances and disabilities associated with cycle work and the periods of duty, all the circumstances related to Telfer, isolation, heat, dust, the absence of the amenities normally found in a town or city environment, the lack of normal home amenities, compensation and penalty payments related to all hours worked in accordance with the roster and work on Saturdays and Sundays, public holidays and annual leave loading.

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.

	Classification		Annual Wage	ASNA	Total Salary
				$	$
(1)	(a)	Mine Employees			
		Level 1	50136	2713.00	52849.00
		Level 2	52391	2713.00	55104.00
		Level 3	53706	2713.00	56419.00
		Level 4	54261	2713.00	56974.00
		Level 5	55364	2713.00	58077.00
		Level 6	56692	2713.00	59405.00
	(b)	Mill Employees			
		Level 1	50664	2713.00	53377.00
		Level 2	52919	2713.00	55632.00
		Level 3	53969	2713.00	56682.00
		Level 4	54525	2713.00	57238.00
		Level 5	55628	2713.00	58341.00
		Level 6	56956	2713.00	59669.00
	(c)	Laboratory Employees			
		Level 1	50664	2713.00	53377.00
		Level 2	52919	2713.00	55632.00
		Level 3	53969	2713.00	56682.00
		Level 4	54525	2713.00	57238.00
	(d)	Metallurgical Laboratory Employees			
		Level 1	53424	2713.00	56137.00
		Level 2	53967	2713.00	56680.00
	(e)	Warehouse Employees			
		Level 1	50664	2713.00	53377.00
		Level 2	52919	2713.00	55632.00
		Level 3	53969	2713.00	56682.00
	(f)	Metal Employees			
		Grade M0	51439	2713.00	54152.00
		Grade M1	53086	2713.00	55799.00
		Grade M2	54744	2713.00	57457.00
	(g)	Metal Tradespersons			
		Level 1	57730	2713.00	60443.00
		Level 2	59975	2713.00	62688.00
		Level 3	62220	2713.00	64933.00
		Level 4	64465	2713.00	67178.00
	(h)	Electrical Employees			
		Grade E0	51439	2713.00	54152.00
		Grade E1	53086	2713.00	55799.00
		Grade E2	54744	2713.00	57457.00
	(i)	Electrical Tradespersons			
		Level 1	61061	2713.00	63774.00
		Level 2	63305	2713.00	66018.00
		Level 3	65550	2713.00	68263.00
		Level 4	67795	2713.00	70508.00
	(j)	Crane Driver			
		Level 1			
		Lifting capacity up to and including 15 tonnes	53969	2713.00	56682.00
		Level 2			
		Lifting capacity over 15 tonnes and up to but not including 50 tonnes	54525	2713.00	57238.00

Classification	Annual Wage	ASNA	Total Salary
		$	$
Level 3			
Lifting capacity over 50 tonnes and up to 120 tonnes	55628	2713.00	58341.00
Level 4			
Lifting capacity over 50 tonnes and up to 120 tonnes and has passed the Skills and Applications Techniques as in documentation recorded in Commission File 964/93	56956	2713.00	59669.00
(k) Geology Field Assistants			
Level 1	50664	2713.00	53377.00
Level 2	52919	2713.00	55632.00
Level 3	53969	2713.00	56682.00
Level 4	54525	2713.00	57238.00

(2) Employees shall be paid a service payment at the rate of the following amounts per year.

Six to nine months service	1103
Nine to twelve months service	1677
One to two years service	2299
Two to three years service	2780
Three to four years service	3178
Four to five years service	3637
Five to six years service	4041
Six to seven years service	4527
Seven years and thereafter	5095

(3) Apprentices: (annual wage expressed as a percentage rate shown for a metal or electrical tradesperson's level 1).

Five Year Term	%
First year	40
Second year	48
Third year	55
Fourth year	75
Fifth year	88
Four Year Term	%
First year	42
Second year	55
Third year	75
Fourth year	88
Three and a Half Year Term	%
First six months	42
Next year	55
Next year	75
Final year	88
Three Year Term	%
First year	55
Second year	75
Third year	88

(4) Leading Hands—

(a) Leading Hands shall be paid the following allowances per rostered cycle or pro-rata for part thereof in addition to the prescribed annualised wage.

If placed in charge of:	$
not less than 2 but not more than 5 employees	83.17
not less than 6 but not more than 10 employees	114.29
not less than 11 but not more than 20 employees	149.93
more than 20 employees	194.07

(b) Marking off/or Template Marking Allowance

Metal tradespersons, the greater part of whose time is occupied in marking off/or template marking shall be paid an additional amount of $23.76 per cycle on the normal annualised wage rate prescribed in subclause (1)(g) of this Clause.

(5) Reclassifications

(a) In the event that there is a claim for reclassification by an existing employee to a higher level under the new structure on the ground that the employee possesses equivalent skill and knowledge gained through on-the-job experience or on any other ground, the parties agree that the grievance and disputes procedure set out in Clause 18.—Grievance and Disputes Procedure, of this Award will be followed.

(b) In the event the employer claims an employee does not possess the necessary skill and knowledge to be reclassified to a higher level, the parties agree the Award grievance and dispute procedure set out in Clause 18 of this Award will be followed.

(6) Telfer Allowance

Employees shall be paid an allowance of $1000 per annum to cover all site conditions pertaining to employment by Newcrest Mining Limited not otherwise provided for in this Award and all matters associated with cycle work on a fly in/fly out basis.

(7) The annualised wages referred to in the preamble of this clause, include the 4.5% wage increase granted by the employer pursuant to the Telfer Gold Mine Enterprise Agreement 1993 which was registered by the Western Australian Industrial Relations Commission on 21 February 1994.

THEATRICAL EMPLOYEES (PERTH THEATRE TRUST) AWARD

NO. 9 OF 1983

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 $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(3) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(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 $413.40 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 2001 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.

5.—RATES OF PAY

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.

The minimum weekly award rate of pay to be paid to an employee shall be as follows—

		MINIMUM RATE	SUPPLE—MENTARY PAYMENT	ASNA	TOTAL MINIMUM AWARD RATE
(1)	Stage Management Section	$	$	$	$
(a)	Technical Stage Manager	500.40	8.00	50.00	558.40
(b)	Stage Manager	472.40	8.00	52.00	532.40
(c)	Assistant Stage Manager	390.00	8.00	50.00	448.00

		MINIMUM RATE	SUPPLE— MENTARY PAYMENT	ASNA	TOTAL MINIMUM AWARD RATE
(2)	Mechanical Department	$	$	$	
(a)	Workshop				
(i)	Head carpenter	460.40	8.00	52.00	520.40
(ii)	Carpenter	406.30	8.00	50.00	464.30
(iii)	Carpenter's assistant	357.50	8.00	50.00	415.50
(b)	Stage				
(i)	Head mechanist/head road manager	460.40	8.00	52.00	520.40
(ii)	Mechanist/head flyman/road manager	406.30	8.00	50.00	464.30
(iii)	Stage hand/flyman	357.50	8.00	50.00	415.50
Loading for stage hands in charge of side/revolve truck: 8 per cent.					
(3)	Electrical/Lighting Department	$	$		$
(a)	Head electrician	460.40	8.00	52.00	520.40
(b)	Electrician/main switchboard operator	406.30	8.00	50.00	464.30
(c)	Electrical hand	357.50	8.00	50.00	415.50
Loading for electrical hand who is required to operate spots/auxiliary switchboard/visual effects: 8 per cent.					
(4)	Audio Department	$	$		$
(a)	Head audio technician	460.40	8.00	52.00	520.40
(b)	Audio operator	406.30	8.00	50.00	464.30
(c)	Audio hand	357.50	8.00	50.00	415.50
N.B. Where there is no separate audio department the audio operator/hand shall be classified under (3) Electrical/Lighting Department.					
(5)	Wardrobe Section				
(a)	Workshop	$	$		$
(i)	Head of wardrobe	460.40	8.00	52.00	520.40
(ii)	Cutter/tailor/wigmaker/milliner	406.30	8.00	50.00	464.30
(iii)	Seamstress/maintenance hand/ buyer/costume jeweller	357.50	8.00	50.00	415.50
(b)	Stage				
(i)	Head of department	460.40	8.00	52.00	520.40
(ii)	Wardrobe hand/dresser/valet	406.30	8.00	50.00	464.30
(6)	Property Department	$	$		$
(a)	Workshop				
(i)	Property master/mistress	460.40	8.00	52.00	520.40
(ii)	Property maker	406.30	8.00	50.00	464.30
(iii)	Property hand	357.50	8.00	50.00	415.50
(b)	Stage				
(i)	Property master/mistress	460.40	8.00	52.00	520.40
(ii)	Property hand	357.50	8.00	50.00	415.50
(7)	Art Department		$	$	$
(a)	Scenic Artist	460.40	8.00	52.00	520.40
(b)	Assistant scenic artist	406.30	8.00	50.00	464.30
		$	$	$	$
(c)	Artist's labourer	357.50	8.00	50.00	415.50
(8)	Services	$	$		$
(a)	Receptionist/telephonist (enquiry clerk)	348.30	8.00	50.00	406.30
(b)	Firefighter	342.10	8.00	50.00	400.10
(c)	Utility person	349.40	8.00	50.00	407.40
(d)	Stage Door Keeper	342.10	8.00	50.00	400.10
(9)	Cleaners	$	$		$
(a)	Head cleaner	371.50	8.00	50.00	429.50
(b)	Cleaner	364.10	8.00	50.00	422.10

Engaged by the hour (with a minimum payment as of three and a half hours).

		$
	8.00 a.m. to 6.00 p.m.	12.52
	6.00 p.m. to midnight	18.53
	midnight to 8.00 a.m.	24.45

(10)	Skilled labour not classified elsewhere	460.40	8.00	52.00	520.40
(11)	Unskilled labour not classified elsewhere	342.10	8.00	50.00	400.10

(12) Additional Rates

Persons employed as casuals in the following classifications shall be paid the specified hourly amounts in addition to the wage provided elsewhere:

		MINIMUM RATE	SUPPLE-MENTARY PAYMENT		TOTAL MINIMUM AWARD RATE
		$	$		$
	Main switchboard operator	1.70			
	Head flyman	1.52			
	Person in charge of side	0.70			
(13)	Front of House	$	$	ASNA	$
	(a) Senior Booking Office Supervisor	498.80	8.00	52.00	556.80
	(b) Head Booking Clerk (i.e. one who supervises the staff)	467.00	8.00	52.00	527.00
	(c) Booking Clerk (including party bookings)	438.90	8.00	50.00	496.90
	(d) Ticket Seller	384.30	8.00	50.00	442.30
	(e) Programme/concession sellers/ushers/ ticket takers/cloakroom attendant	348.30	8.00	50.00	406.30

Booking clerks and ticket sellers shall not be held responsible for cash shortages when they are instructed to allow another employee (including the manager of the venue) access to their cash or tickets during a selling period.

7.—CONTRACT OF SERVICE

(1) All employees on a permanent staff shall be engaged by the week unless a longer period of engagement be agreed to between the parties concerned.

(2) Notwithstanding anything contained elsewhere in this award, employees employed as stage managers, other than at the Concert Hall, who work four full days or more each week, must be employed by the week, except in the case of an emergency, such as the illness of an employee.

(3) When an employee is engaged by the week the employment shall be terminated on either side by a week's notice which may be given at any time during the week, and the employee shall only be entitled to payment up to the time of the expiration of the notice. If an employee or the employer fails to give the required notice, one week's wages shall be forfeited or paid as the case may be.

(4) Nothing in the award shall affect the legal right of the employer to dismiss without notice any employee for whatever period engaged and whether on tour or not for malingering, inefficiency, neglect of duty or misconduct; and in the case of such dismissal wages shall be payable for the employment up to but not after the time of dismissal.

(5) Notwithstanding anything contained in the award, the employer may deduct payment of wages for any day on which an employee cannot be usefully employed because of—

(a) any strike;

(b) any breakdown of machinery; or

(c) any stoppage of work for which the employer is not responsible.

(6) The appropriate per hour rate for casual employees is calculated by dividing the total per week rate (as specified in Clause 5.—Rates of Pay) for the relevant classification by the total number of ordinary hours required to be worked by a weekly employee in that classification and adding a 20 per cent loading on such hourly rates so calculated.

(7) Casual employees shall be engaged for a minimum period of three and a half hours which may include more than one performance.

(8) The employment of a casual employee may be terminated without notice by either side subject to the payment of any prescribed minimum amount of wages and subject to the employee working the time covered by such a minimum amount if required to do so.

(9) (a) A casual employee who works more than eight hours on any day shall be paid overtime at the rate of time and a half for the first two hours and double time thereafter.

(b) A casual employee who works more than 40 hours (excluding overtime worked on a daily basis) in any one week shall be paid for all hours in excess of forty, time and a half for the first four hours and double time thereafter.

(c) A casual employee working between midnight and 8 a.m. on any week day (Monday—Friday) in connection with a performance shall be paid at double the rate prescribed in subclause (6) above for those hours between midnight and 8 a.m.

(d) The provisions of this subclause do not apply when a casual employee is engaged in accordance with subclause (10).

(10) Casual employees not engaged to work a performance shall be paid at the following hourly rates which include loading for casual work, with a minimum payment for three and one half hours—

	$
8.00 a.m. to 6.00 p.m.	13.37
6.00 p.m. to midnight	19.31
midnight to 8.00 a.m.	25.25

(Edit Note: ASNA added to above rates: ASNA calculated by dividing ASNA increase by 40 hrs then adding 20%)

(11) Casual back stage employees engaged for a performance when required for bumping out work between the conclusion of the performance on Saturday night and 8 a.m. Sunday shall be paid $30.77 per hour with a minimum payment of three and a half hours.

(a) If engaged for a performance, additional work associated with that performance shall be paid in accordance with subclause (6). Such engagement shall be continuous.

(b) Casual employees engaged for work not associated with a performance who work in excess of three and a half hours and then work a performance shall continue to be paid as prescribed in subclause (10) for all work on that day.

THEATRICAL EMPLOYEES ENTERTAINMENT, SPORTING AND AMUSEMENT FACILITIES (WESTERN AUSTRALIAN GOVERNMENT) AWARD 1987

NO. A28 OF 1987

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 $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(3) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(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 $413.40 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 2001 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.

SCHEDULE A

Classification		Hourly Rate of Pay			
		Column A	Column B	ASNA	TOTAL
		$			
(1)	Attendant—General Duties— Cloakroom Attendant Gate Attendant Parking Attendant Turnstile Attendant Usher	6.64	6.89	1.25	8.14

Classification		Hourly Rate of Pay			
		Column A	Column B	ASNA	TOTAL
		$			
(2)	Barrier Attendant (Racing) Change Room Attendant Curtain Attendant Door Attendant Fence Attendant Kennel Attendant/Dog Leader Ride Operator Stalls Attendant (Racing) Ticket Collector/Examiner Track Attendant	6.91	7.16	1.25	8.41
(3)	Scoreboard Operator Scratching Board Operator/ Writer (Racing)	7.06	7.31	1.25	8.56
(4)	Parking Fee Collector Kennel Supervisor Programme Seller	7.14	7.39	1.25	8.64
(5)	Change Cashier Gate Keeper Ticket/Token Seller Turnstile Operator	7.51	7.76	1.25	9.01
(6)	Scales—Assistant Starter (Racing)	7.60	7.85	1.25	9.10
(7)	Supervisor of less than 10 employees	7.93	8.18	1.25	9.43
(8)	Supervisor of 10 or more employees	8.89	9.14	1.25	10.39

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.

THERMAL INSULATION CONTRACTING INDUSTRY AWARD

NO. 1 OF 1978

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 $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(3) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(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 $413.40 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 2001 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.

6.—WAGES

(1) (a) Subject to Clause 7.—Special Rates and Provisions of this Award, the ordinary weekly wage shall be as set out hereunder and shall be inclusive of all special rates and allowances and be paid as an "all purpose" rate.

(b) The ordinary weekly wage of an employee (other than an apprentice) shall consist of the base rate, the special payment and the Safety Net Adjustment, as set out in subclause (2) of this clause.

(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.

(2) Wage Rates:

		Base Rate $	Special Payment $	Safety Net Adjustments $	Total Wage Per Week $
(a)	Sheetmetal Employee -				
	1st Class	362.80	80.00	76.00	518.80
(b)	Sheetmetal Employee -				
	2nd Class	327.20	66.80	74.00	468.00
(c)	Lagger -				
	1st six months' experience	310.20	63.40	74.00	447.60
	2nd & 3rd six months' experience	311.70	65.40	74.00	451.10
	4th & 5th six months' experience	315.90	65.60	74.00	455.50
	Thereafter	317.40	66.60	74.00	458.00

TICKETWRITERS' AWARD

NO. 29 OF 1958

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 $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(3) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(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 $413.40 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 2001 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.

6.—WAGES

An employer on whom this award (or industrial agreement) is binding shall not increase the rate of wage payable to an employee on the 5th February, 1988 or otherwise vary the conditions of employment applicable to an employee on that date so as to increase that employer's labour costs except to the extent that any such increase has been authorised by the Commission after that date.

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.

(1) An adult worker shall be paid per week the appropriate wage shown hereunder—

		$	ASNA	Total Weekly Wage
(a)	if engaged in the production of a price ticket by the use of water colours the dimensions of which do not necessitate its being cut out of a board which exceeds in size an imperial sheet and/or employed on Silk Screen work other than designing and setting	282.20	50.00	332.20
(b)	if engaged in the production of a showcard by the use of water colours and/or designing and/or setting Silk Screen work the dimensions of which do not exceed an an imperial sheet	291.50	50.00	341.50
(c)	if engaged in operating a "Printasign" machine	282.20	50.00	332.20

(d) if engaged in the production of tickets and/or showcards to which paragraphs (a) and (b) of this subclause do not apply, a worker shall be paid not less than the total wage prescribed from time to time for signwriters under the Building Trades Award No. 31 of 1966.

(2) For the purpose of subclause (1) of this clause, a price ticket which is a combination of a price ticket and a showcard shall be deemed to be a showcard.

(3) Junior Workers—

(Per cent of total rate prescribed in subclause (1)(a) of this clause)

	%
Under 16 years of age	40
16 to 17 years of age	50
17 to 18 years of age	60
18 to 19 years of age	70
19 to 20 years of age	80
20 to 21 years of age	90

(4) Casual Workers—

Any worker dismissed through no fault of his own before the expiration of one week of his employment shall be considered casual and shall receive fifteen per cent above the rate specified for the work performed.

(5) Leading Hands—

Any worker placed by the employer for not less than one day in charge of three or more other workers, shall be paid $17.30 per week in addition to the wages prescribed herein.

(6) A Junior Worker aged 19 to 20 who has less than twelve months' experience, shall be paid five per cent less than the rate prescribed in subclause (3) of this clause until he or she completes such twelve months' experience. For the purpose of this subclause, "experience" means experience in any class of work to which this award applies.

TIMBER WORKERS AWARD

NO. 36 OF 1950

52.—RATES OF PAY

(1) Classifications

(a) (i) Upon engagement all employees shall be classified in the group in which they are engaged to work.

(ii) An employee will only be classified into a higher group where that employee has been trained and has met the assessment and competence criteria established for the higher group and a vacancy exists. Such reclassification will only be made where the employee is trained and capable of

performing the relevant duties of the higher group to the required standard. The grouping of employees is provisional on the employee remaining willing and able to perform the duties required in the group in which he/she is classified.

(iii) (aa) The assessment of employees will be carried out by an employee nominated by the Works Manager who will normally be a supervisor but may be an employee suitably qualified in that trade or calling.

(bb) At the employee's request re-examination will be carried out by a panel consisting of the supervisor, the employee's representative and a suitably qualified employee of the employee's choice with knowledge of the area of work and the Manager or the Manager's delegate.

(cc) Should the re-examiners reach a tied decision, then this matter may be referred to a Board of Reference for determination.

(iv) An employee classified to a higher group will have his/her performance subject to review and the employer may, should the employee's performance be unsatisfactory, revert the employee's classification to the previous level.

(v) At the employee's request, the demotion will be re-examined by a panel consisting of the Supervisor, the employee's representative, a suitably qualified employee of the employee's choice with knowledge of the area of work and the Manager or the Manager's delegate.

(vi) Provided that no employee is to be prejudiced by acting or failing to act in a manner provided for in this paragraph (a).

(b) Employees will be classified into groups as follows—

(i) Timber Industry Employee—Group 1

(Relativity to Group 5—78%)

Timber Industry Group 1 employee shall mean an employee classified as such who is engaged on work in connection with or incidental to the production, maintenance and distribution operations of the employer. The Timber Industry Group 1 employee may be required by the employer to perform any, but not necessarily all of the duties listed in subclause (2) hereof, and for training purposes, the duties of higher classifications of employees. After a period of three months the employer and employee shall review the employee's classification of work.

(ii) Timber Industry Employee—Group 2

(Relativity to Group 5—82%)

Timber Industry Group 2 employee shall mean an employee classified as such who is engaged on work in connection with or incidental to the production, maintenance and distribution operations of the employer. The Timber Industry Group 2 employee may be required by the employer to perform any, but not necessarily all of the duties listed in subclause (2) hereof.

In addition, the Timber Industry Group 2 employee will perform those duties of a lower classification related to the duties listed in subclause (2) hereof, and for training purposes, the duties of higher classifications of employees.

(iii) Timber Industry Employee—Group 3

(Relativity to Group 5—87.4%)

Timber Industry Group 3 employee shall mean an employee classified as such who is engaged on work in connection with or incidental to the production, maintenance and distribution operations of the employer. The Timber Industry Group 3 employee may be required by the employer to perform any, but not necessarily all of the duties of the positions listed in subclause (2) hereof.

In addition, the Timber Industry Group 3 employee will perform those duties of a lower classification related to the duties listed in subclause (2) hereof, and for training purposes, the duties of higher classifications of employees.

(iv) Timber Industry Employee—Group 4

(Relativity to Group 5—92.4%)

Timber Industry Group 4 employee shall mean an employee classified as such who is engaged on work in connection with or incidental to the production, maintenance and distribution operations of the employer. The Timber Industry Group 4 employee may be required by the employer to perform any, but not necessarily all of the duties of the positions listed in subclause (2) hereof.

In addition, the Timber Industry Group 4 employee will perform those duties of a lower classification related to the duties listed in subclause (2) hereof, and for training purposes, the duties of higher classifications of employees.

(v) Timber Industry Employee—Group 5

Classification in this group shall be dependent upon an employee holding the appropriate trade qualifications or an employee qualified and/or engaged to perform any of the duties of a Timber Industry Group 5 Employee.

The Timber Industry Group 5 employee shall mean an employee classified as such who is engaged on work in connection with or incidental to the production, and distribution operations of the employer. The Timber Industry Group 5 employee may be required by the employer to perform any, but not necessarily all of the duties of the positions listed in subclause (2) hereof.

In addition, the Timber Industry Group 5 employee will perform those duties of a lower classification related to the duties listed in subclause (2) hereof, and for training purposes, the duties of higher classifications of employees.

(vi) Timber Industry Employee—Group 6

(Relativity to Group 5—105%)

Classification in this group shall be dependent upon an employee holding the appropriate advanced trade qualifications or an employee qualified and/or engaged to perform any of the duties of a Timber Industry Group 6 employee.

Timber Industry Group 6 employee shall mean an employee classified as such who is engaged on work in connection with or incidental to the production, and distribution operations of the employer. The Timber Industry Group 6 employee may be required by the employer to perform any, but not necessarily all of the duties of the positions listed in subclause (2) hereof.

In addition, the Timber Industry Group 6 employee will perform those duties of a lower classification related to the duties listed in subclause (2) hereof, and for training purposes, the duties of higher classifications of employees.

(vii) Provided that a holder of a Certificate in Timber Technology who is engaged in groups one to five shall be paid at one level higher than the level at which he/she would otherwise be paid.

(2) Duties

			Group
(a)	Breaking Down Saws:		
	(i)	Sawyers planking out and/or flitching to size with fully mechanised unit	
	(ii)	Specialist scribe saw operator	6
	(iii)	Sawyers other than (i) or (ii)	4
	(iv)	Assistants including hookperson other than item (v)	
	(v)	Hookperson who in addition operates chain or other power driven saw	
	(vi)	Log measurer	2
(b)	Benchmen:		
	(i)	No. 1	5
	(ii)	No. 2	4
	(iii)	No. 3	3
	(iv)	No. 4	2
(c)	Stub Edger		5
(d)	Dockers—Log Sawmilling Section:		
	(i)	Responsible person at main docker	3
	(ii)	Tallyperson at main docker	3
	(iii)	Dockerperson at main docker	2
	(iv)	Responsible person at No. 2 Bench Docker	3
	(v)	Tallyperson at No. 2 Bench Docker	3
	(vi)	Dockerperson No. 2 Bench Docker	2
	(vii)	Responsible person other dockers	2
	(viii)	Tallyperson other dockers	2
	(ix)	Dockerperson other dockers	2

For the purpose of this paragraph where the only timber fed to the No. 2 bench is from the No. 1 bench and that timber is not equal in amount to that handled by the No. 1 bench then "No. 2 Bench Docker" shall be deemed to be "other docker".

(e)	Pullers-out and/or assistants on No. 1 Bench:		
	(i)	Single handed on dead or hand propelled roller	3
	(ii)	Double handed as in (i)	3
	(iii)	Friction Feed	3
(f)	Pullers-out and/or assistants on No. 2 and 3 Bench		2
(g)	Power driven cross sawyer other than docking saw		3
(h)	Mill or Yard Hand		1
(i)	Kiln Attendant		3
(j)	(i)	Kiln Operator	4
	(ii)	Kiln Controller	5
(k)	Rosser Head Debarker Operator (at sawmill)		3
(l)	(i)	Saw Doctor	5
	(ii)	Specialist Saw Doctor	6
(m)	Saw Filer or Sharpener		4
(n)	Stackers:		
	(i)	Block stacker of timber, plywood or veneer	2
	(ii)	For seasoning by means of stripping or other recognised method	
	(iii)	Pulling off sleepers or sawn timber with a cross section greater than 25000 square millimetres	
	(iv)	Pulling off sawn timber—other	2

				Group
(o)	Tallyperson (other than Docker):			
	(i)	Responsible for making up orders		4
	(ii)	Others		3
(p)	Watchperson			2
(q)	Dockerperson—Machining Section:			
	(i)	Computerised optimizer		4
	(ii)	Who grades or selects timber for joinery or machining		
	(iii)	Other		2
(r)	Wood-Machining Section:			
	(i)	Shaper		5
	(ii)	Flooring machinist—fast feed		5
	(iii)	Fast feed sizer		5
	(iv)	Grinder whose principal duties include grinding knives and cutters		
	(v)	Moulding Machinist or two, three or four-sided Planer:		
		(aa)	who is required to set up the machine	5
		(bb)	who is not required to set up the machine	3
	(vi)	Buzzer:		
		(aa)	who is required to do other than planing one face and squaring edge and who is required to set up his/her own machine	5
		(bb)	other	3
	(vii)	Tenoner:		
		(aa)	who is required to set up his/her machine	5
		(bb)	other	3
	(viii)	Thicknesser:		
		(aa)	who is required to set up his/her own machine and grind his/her knives and cutters	5
		(bb)	who is required to set up his/her own machine but not required to grind his/her knives and cutters	3
	(ix)	Chain Morticer/Morticer Finger Jointer:		
		(aa)	required to set up his/her machine	5
		(bb)	other	3
	(x)	Grader and Feeder, Fastfeed or Mosaic Flooring Machine		
		(aa)	who is required to set up his/her machine	5
		(bb)	other	3
	(xi)	Grader behind Fastfeed Flooring Machine		3
	(xii)	Tailer-out Four-Sider Planner		2
	(xiii)	Floor Sanding Machine		3
	(ivx)	End Matcher:		
		(aa)	required to set up his/her own machine	3
		(bb)	other	2
(s)	(i)	Mill Waste Chipper Attendant		2
	(ii)	Mill Waste Chipper Attendant who sets up and changes knives		
(t)	Belt repairers whilst so engaged other than machinist or sawyer repairing his/her own belts			2
(u)	(i)	Specialist Carpenter and/or Joiner		6
	(ii)	Carpenters and/or Joiners		5
	(iii)	Bush Carpenter		4
	(iv)	Tradespersons Assistant		3
(v)	Faller:			
	(i)	Hardwood/Softwood Restricted Ticket		3
	(ii)	Hardwood/Softwood Open Ticket		4
	(iii)	Hardwood Open Ticket and more than one year's experience		
(w)	Sleeper loader or turner loading sleepers over 1.52 metres from truck level or lower			
(x)	Boom Arm Loader Operator:			
	(i)	Trainee		2
	(ii)	Appointed		5
(y)	Mill Cleaner			2

			Group
(z)	Mill Greaser		3
(ab)	(i)	Millwright	5
	(ii)	Specialist Millwright	6
(ac)	Timber Treatment Plant:		
	(i)	Pine Pole Debarking Machine Operator	4
	(ii)	Pine Pole Debarking Machine Puller-out who is required to grade and tally logs and then only from such time as he/she is required to so act	
	(iii)	Pine Pole Treatment Plant Operator	5
	(iv)	Tractor Driver (on rails)	4
(ad)	Sanitary Person		4
(ae)	Splicer		3
(af)	Spotters:		
	(i)	Circular Saw	4
	(ii)	Vertical Saw	2
(ag)	Swamper (logging with loader/tractor)		2
(ah)	Mechanised transfer operator		3
(ai)	Operator electrical overhead traverser		3
(aj)	(i)	Driver of front end loader in bush	5
	(ii)	Driver of front end loader in mill	4
(ak)	Crane or Fork Lift assistant		2
(al)	Chain Saw Operator (Bush):		
	(i)	Other than faller	3
	(ii)	Engaged on salvage operation	5
(am)	Crawler Tractor Operators:		
	(i)	Up to and including Class 3 without power operated attachments	
		Up to Class 2 with power operated attachments	
	(ii)	Class 4 and 5 without power operated attachments.	
		Class 3 and 4 with power operated attachments	5
	(iii)	Above Class 5 without power operated attachments.	
		Class 5 and 6 with power operated attachments	5
	(iv)	Above Class 6 with power operated attachments	5
	Note: Crawler Tractors are classified in accordance with Australian Standard D4-1964 "classification of Crawler Tractor by weight" as follows		
	Class:	1 Shipping weight (lbs) up to 3000 2 over 3000 up to 6000	
		3 over 6000 up to 10000	
		4 over 10000 up to 15000	
		5 over 15000 up to 25000	
		6 over 25000 up to 40000	
		7 over 40000 up to 60000	
		8 over 60000 up to 80000	
		9 over 80000	
(an)	Tractor using power operated attachments		3
(ao)	Power Grader Operators:		
	(i)	Under 50 net engine horse power	3
	(ii)	Between 50 and 100 net engine horse-power	3
	(iii)	Over 100 net engine horse-power	4
(ap)	Diamond Mill		
	(i)	Conveyor Operator (Woodchip)	4
	(ii)	Chipper on Feed Operator	5
	(iii)	Rail Truck Loader Attendant	4
	(iv)	Chip Screen Attendant	3
	(v)	Chip Tester	3
	(vi)	Debarker Operator (Woodchip)	5
	(vii)	Log Washer	2
	(viii)	Pulpwood Cutter and/or Splitter	2
	(ix)	Splitting Machine, Log Operator	3
	(x)	Weighbridge Attendant	4
	(xi)	Twin Saw Operator	5
	(xii)	Grinder whose principal duty is grinding chipper knives	

		Group
(xiii)	Security Train Unloader	4
(aa)	Small Log Line Operator	4
(bb)	Mobile Log Line Controller	6
(aq)	Trainee in all positions up to first 3 months of employment	
(ar)	Forwarder Driver	5
(as)	Harvester	5
(at)	Processor (Bell Logger)	5
(au)	Delimber	4
(av)	Skidder	5
(aw)	Truck Mechanic	5

(3) Wages

The minimum rate of wage for employees covered by this award, excluding those employees provided for in subclause (4) hereof, shall be—

(a) Timber Industry Employee—

	RATE	ASNA	TOTAL RATE
	$	$	$
Group 1	349.40	64.00	413.40
Group 2	366.10	64.00	430.10
Group 3	388.60	64.00	452.60
Group 4	409.50	64.00	473.50
Group 5	441.20	66.00	507.20
Group 6	462.10	66.00	528.10

(b) 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.

(4) Transport—Employee Groups

The minimum rate of wage for employees covered by this award, as defined below shall be—

(a) Timber Industry Transport Employee—

	RATE	ASNA	TOTAL RATE
	$	$	$
Group 1	406.20	64.00	470.20
Group 2	417.70	64.00	481.70
Group 3	425.30	64.00	489.30
Group 4	433.00	64.00	497.00
Group 5	440.70	66.00	506.70
Group 6	459.70	66.00	525.70
Group 7	471.20	66.00	537.20
Group 8	490.30	66.00	554.30

(b) 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.

(c) Employees under this subclause shall be defined as follows—

Group 1

(i) Driver, rigid vehicle from 4.5 to 13.9 tonnes GVM or GCM (Gross Vehicle Mass) (Gross Combination Mass)

(ii) Driver, fork lift up to and including 5 tonnes lifting capacity

(iii) Driver, tractor without power operated attachments

Group 2

(i) Driver Rigid Vehicle over 13.9 tonnes GVM or GCM and up to 13 tonnes capacity

(ii) Straddle carrier driver

(iii) Driver of dump truck (unlicensed)

(iv) Driver of fork lift over 5 and up to 10 tonnes lifting capacity

Group 3

(i) Driver articulated vehicle to 22.4 tonnes GCM

(ii) Driver rigid vehicle and heavy trailer to 22.4 tonnes GCM

(iii) Driver rigid vehicle 4 or more axles over 13.9 tonnes GVM or GCM

(iv) Driver of fork lift over 10 and up to 34 tonnes lifting capacity

Group 4

(i) Driver low loader to 43 tonnes GCM

(ii) Driver articulated vehicle over 22.4 tonnes GCM and up to 39 tonnes capacity

(iii) Driver mobile crane up to 25 tonnes lifting capacity

(iv) Driver rigid vehicle and heavy trailer over 22.4 tonnes GCM

(v) Driver of fork lift over 34 tonnes lifting capacity

Group 5

(i) Driver articulated vehicle over 22.4 tonnes GCM over 39 and up to 60 tonnes capacity

(ii) Driver multiple articulated vehicle up to 53.4 tonnes GCM

(iii) Driver low loader over 43 tonnes GCM (for each additional complete tonne over 43 an extra 79 cents as part of the weekly wage rate for all purposes shall be payable)

Group 6

(i) Driver mobile crane over 25 and up to 50 tonnes lifting capacity

(ii) Driver multiple articulated vehicle over 53.4 tonnes up to 94 tonnes GCM up to 65 tonnes capacity

Group 7

(i) Driver multiple articulated vehicle over 94 tonnes GCM up to 75 tonnes capacity

(ii) Driver of mobile crane over 50 tonnes lifting capacity

Group 8

(i) Driver multiple articulated vehicle over 94 tonnes GCM over 75 and up to 95 tonnes capacity (for each additional complete tonne over 95 an extra 79 cents as part of the weekly wage rate for all purposes shall be payable)

(5) Junior Employees

In addition to such amounts as may be prescribed by subclause (2) of Clause 9.—Junior Employees, junior employees shall receive the following percentage of a Timber Industry Employee Group 1 wage rate inclusive of supplementary payment—

Under 17 years of age	45%
Between 17 & 18 years of age	55%
Between 18 & 19 years of age	80%
Over 19 years of age	100%

(6) Apprentices

Apprentices shall receive the following percentage of a Timber Industry Employee Group 5 wage rate inclusive of supplementary payment—

Four Year Term -	
First Year	50%
Second Year	60%
Third Year	75%
Fourth Year	90%

(7) Leading Hand

In charge of 3—10 employees—an extra $17.00 per week.

In charge of 11—20 employees—an extra $25.60 per week

In charge of over 20 employees—an extra $33.20 per week.

(8) Award Rate of Pay Maintenance

An employee who was receiving an award rate of pay which was in excess of the rate prescribed in the order of the Western Australian Industrial Relations Commission in matter No. 768 of 1993, shall have his or her rate preserved until agreement is reached between the parties, or the Commission determines that the differential is to be absorbed.

(9) Minimum Adult Wage

Notwithstanding the terms of this clause (or subclause) no adult employee shall be paid less than the Minimum Adult Award Wage unless otherwise provided in this clause.

(i) The Minimum Adult Award Wage for full time adult employees is $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(ii) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(iii) Unless otherwise provided for in this subclause, adults employed as casual or part time employees shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.

(iv) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision to the Minimum Adult Award Wage of $413.40 per week.

(v) (aa) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on traineeships, or Jobskills traineeships or to other categories of employees who by prescription are paid less than the minimum award rate.

(bb) Liberty to apply is reserved in relation to employees excluded under (aa) above and any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.

(vi) Subject to this subclause the Minimum Adult Award Wage shall—

(aa) apply to all work in ordinary hours.

(bb) apply to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave and for all other purposes of this award.

(vii) Nothing in this clause (or subclause) shall operate to reduce the rate of pay fixed by the award for an adult apprentice in force on 13th November 1997.

TIMBER YARD WORKERS AWARD

NO. 11 OF 1951

29.—WAGES

(1) The minimum rates of wages payable to employees employed in classifications contained in subclause (2) of this clause shall be as follows—

Broadbanded Groups	Base Rate	Supplementary Payment	Arbitrated Safety Net Adjustment	Total Minimum Weekly Rate (38 Hours)
	$	$	$	$
1	284.80	40.60	88.00	413.40
2	299.50	42.50	88.00	430.00
3	319.20	45.40	88.00	452.60
4	337.40	48.10	88.00	473.50
5	365.20	52.00	90.00	507.20
6	383.50	54.60	90.00	528.10

(3) The minimum rates of wages payable to employees employed in classifications contained in this subclause shall be as follows—

Broadbanded Groups	Base Rate	Supplementary Payment	Arbitrated Safety Net Adjustments	Total Minimum Weekly Rate (38 Hours)
	$	$	$	$
1	327.70	46.80	88.00	462.50
2	334.40	47.80	88.00	470.20
3	344.50	49.20	88.00	481.70
4	351.10	50.20	88.00	489.30
5	357.90	51.10	88.00	497.00

Grade 1

(i) Driver, rigid vehicle to 4.5 tonnes GVM (Gross Vehicle Mass)

(ii) Driver of tow motor

Grade 2

(i) Driver Rigid Vehicle from 4.5 tonnes to 13.9 tonnes GVM or GCM (Gross Combination Mass)

(ii) Driver, fork lift up to and including 5 tonnes lifting capacity

Grade 3

(i) Driver rigid vehicle over 13.9 tonnes GVM or GCM and up to 13 tonnes capacity

(ii) Straddle Carrier Driver

(iii) Driver of fork lift over 5 and up to 10 tonnes lifting capacity

Grade 4

(i) Driver, articulated vehicle to 22.4 tonnes GCM

(ii) Driver, rigid vehicle and heavy trailer to 22.4 tonnes GCM

(iii) Driver, rigid vehicle 4 or more axles over 13.9 tonnes GVM or GCM

(iv) Driver of fork lift over 10 and up to 34 tonnes lifting capacity

Grade 5

(i) Driver, articulated vehicle over 22.4 tonnes GCM and up to 39 tonnes capacity

(ii) Driver, rigid vehicle and heavy trailer to 22.4 tonnes GCM

(iii) Driver of fork lift over 34 tonnes lifting capacity

An employee who, in the course of his/her employment, drives a vehicle with self loading equipment which requires the possession of a certificate of competency shall be paid an extra $9.91 per week.

(4) Apprentices: Apprentices shall be paid a percentage of the total minimum award rate as prescribed for Group 5A of subclause (1) of this clause as follows—

	Rate
Four Year Term	%
First Year	50
Second Year	60
Third Year	75
Fourth Year	90

(5) Junior Employees: Employees less than 19 years of age who are not apprentices shall be paid a percentage of the total minimum award rate for Group 1 of subclause (1) of this clause as follows—

Under 17 years of age	45
17 years of age	55
18 years of age	70

(6) Leading Hands—

In charge of 3—10 employees—extra	$17.20
In charge of 11—20 employees—extra	$25.87
In charge of over 20 employees—extra	$33.59

(7) 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.

30.—MINIMUM WAGE—ADULT MALES AND FEMALES

Notwithstanding the terms of this clause (or subclause) no adult employee shall be paid less than the Minimum Adult Award Wage unless otherwise provided in this clause.

(i) The Minimum Adult Award Wage for full time adult employees is $413.40 per week payable from the beginning of the first pay period on or after 1st August 2001.

(ii) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(iii) Unless otherwise provided in this subclause adults employed as casual or part time employees shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.

(iv) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision to the Minimum Adult Award Wage of $413.40 per week.

(v) (aa) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on traineeships, or Jobskills traineeships or to other categories of employees who by prescription are paid less than the minimum award rate.

(bb) Liberty to apply is reserved in relation to employees excluded under (aa) above and any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.

(vi) Subject to this subclause the Minimum Adult Award Wage shall —

(aa) apply to all work in ordinary hours.

(bb) apply to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave and for all other purposes of this award.

(vii) Nothing in this clause (or subclause) shall operate to reduce the rate of pay fixed by the award for an adult apprentice in force on 13th November 1997.

(viii) The rates of pay in this award include the minimum weekly wage for adult employees payable under the 2001 State Wage Case Decision. Any increase arising from the insertion of the adult minimum wage will be offset against any equivalent amounts 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 this award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements are not to be used to offset the adult minimum wage.

(Note: A notation will be made in each relevant award by the Registrar where the adult apprentice rate requires specific mention as at 13th November 1997

TIN AND ASSOCIATED MINERALS MINING AND PROCESSING INDUSTRY AWARD NO. 14 OF 1971

26.—WAGE RATES

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.

An employer on whom this award (or industrial agreement) is binding shall not increase the rate of wage payable to an employee on the 5th February, 1988 or otherwise vary the conditions of employment applicable to an employee on that date so as to increase that employer's labour costs except to the extent that any such increase has been authorised by the Commission after that date.

The following shall be the minimum rates of wages per week payable to workers covered by this award—

			Rate Per Week			
			Column A 06/10/88	Column B 06/04/89	ASNA	Total
			$	$	$	$
(1)	(a)	Surface Section:				
		Pit Controllers	314.20	324.20	50.00	374.20
		General Hand	267.00	277.00	50.00	327.00
		Plant Operators—				
		Primary Metallurgical Plants				
		Grade (1)	289.90	299.90	50.00	349.90
		Grade (2)	283.50	293.50	50.00	343.50
		Grade (3)	277.40	287.40	50.00	337.40
		Plant Operators -				
		Secondary Metallurgical Plants				
		Grade (1)	296.40	306.40	50.00	356.40
		Grade (2)	289.90	299.90	50.00	349.90
		Grade (3)	283.50	293.50	50.00	343.50
		Laboratory Assistants				
		Grade (1)	296.40	306.40	50.00	356.40
		Grade (2)	289.90	299.90	50.00	349.90
		Grade (3)	283.50	293.50	50.00	343.50
		Field Operators				
		Grade (1)				
		Operators of equipment in excess of 375 kw	310.00	320.00	50.00	370.00
		Grade (2)				
		(i) Operators of Equipment 225-375 kw	305.70	315.70	50.00	365.70
		(ii) Operators of Semi-Trailer Ore Truck				
		(iii) Grader Operators				
		Grade (3)				
		(i) Operators of Equipment 95-225 kw	300.30	310.30	50.00	360.30
		(ii) Motor Truck Drivers				
		(iii) Water Truck Drivers				
		Grade (4)				
		Operators of Equipment 50-95 kw	291.90	301.90	50.00	351.90
		Grade (5)				
		Operators of Mechanical Drilling Rig	283.50	293.50	50.00	343.50
		Grade (6)				
		Drillers Assistant	276.20	286.20	50.00	336.20
		Field and Survey Hand				
		Storeman				
	Note:	The classification of Operators of Equipment includes Front End Loader Driver, Bulldozer Driver and similar types of mobile plant.				
		Rehabilitation Hands				
		Grade (1)	289.90	299.90	50.00	349.90
		Grade (2)	283.50	293.50	50.00	343.50
		Grade (3)	277.40	287.40	50.00	337.40
	(b)	Underground Section				
		Trucker	270.20	280.20	50.00	330.20
		Tool Carrier	270.20	280.20	50.00	330.20
		Shoveller	270.20	280.20	50.00	330.20
		Diamond Drillers Assistant	279.50	289.50	50.00	339.50
		Pipe Assembler	279.50	289.50	50.00	339.50
		Sampler	279.50	289.50	50.00	339.50

Hydraulic Drill Operator	279.50	289.50	50.00	339.50
Popper Machine Man	279.50	289.50	50.00	339.50
Air Hoist Operator	279.50	289.50	50.00	339.50
Electric Hoist Operator	279.50	289.50	50.00	339.50
Pump Attendant	279.50	289.50	50.00	339.50
Ventilation Man	279.50	289.50	50.00	339.50
Platelayer	283.60	293.60	50.00	343.60
Train Crew	283.60	293.60	50.00	343.60
Mechanical Loader Operator	283.60	293.60	50.00	343.60
Scraper Hauler Operator	283.60	293.60	50.00	343.60
Braceman	283.60	293.60	50.00	343.60
Platman	283.60	293.60	50.00	343.60
Skipman	283.60	293.60	50.00	343.60
Scalers	283.60	293.60	50.00	343.60
Rock Drillman in all other places	288.60	298.60	50.00	348.60
Rock Drill man in all other places including open-cut	296.20	306.20	50.00	356.20
Sanitary Man	296.50	306.50	50.00	356.50
Timberman—Other	301.10	311.10	50.00	361.10
Rock Drillman in rises	304.90	314.90	50.00	364.90
Rock Drillman in winzes	304.90	314.90	50.00	364.90
Diamond Driller —				
(a) Up to 20 h.p.	304.90	314.90	50.00	364.90
(b) Over 20 h.p.	304.90	314.90	50.00	364.90
Timberman—Shaft	312.90	322.90	50.00	372.90
Rock Drill man in Shaft	312.90	322.90	50.00	372.90
Hauler Operator	318.90	328.90	50.00	378.90
Hydraulic Twin and Treble Boom—Jumbo Operator	326.30	336.30	50.00	386.30

(2) Leading Hands: Workers appointed by the employer as leading hands shall be paid the following amounts in addition to the ordinary rates of pay—

		$
(a)	If placed in charge of not less than three and not more than ten other workers	14.30
(b)	If placed in charge of more than ten and not more than twenty other workers	21.80
(c)	If placed in charge of more than twenty other workers	28.50

(3) Industry Allowance: In addition to the rates of wages specified in subclause (1) of this clause and subclause (1) of Clause 29, workers shall receive as compensation for all the disabilities associated with the industry an amount of $7.00 per week for forty hours.

(4) Junior Workers: (percentage of General Hand rate)

	%
Under 17 years of age	55
At 17 years of age	65
At 18 years of age	80
At 19 years of age	Appropriate Adult Rate

(5) Casual Workers: A casual worker shall be paid 15 percent in addition to the ordinary rate for his class of work.

29.—MESS PERSONNEL

(1) The minimum rate of wages per week payable to mess personnel shall be as follows—

	Rate Per Week Column A 06/10/88 $	Rate Per Week Column B 06/04/89 $	ASNA	TOTAL WAGE
Head Cook	287.40	297.40	50.00	347.40
Cook	279.50	289.50	50.00	339.50
Mess Attendant	242.10	252.10	50.00	302.10

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) All time worked by workers in the mess outside the daily spread of twelve hours or in excess of forty hours in any one week shall be deemed overtime and be paid for at the rate of time and one half. Provided that overtime in excess of four hours in any one week shall be paid for at the rate of double time.

(3) All time worked during ordinary hours on a Saturday shall be paid for at the rate of time and one half, on a Sunday at the rate of time and three quarters and on a holiday at the rate of double time.

(4) The provisions of clauses—

8. Hours
9. Overtime
10. Shift Work
11. Saturday Work
12. Sunday and Holiday Work

shall not apply to mess personnel.

31.—MINIMUM WAGE

Notwithstanding the terms of this clause (or subclause) no adult employee shall be paid less than the Minimum Adult Award Wage unless otherwise provided in this clause.

(i) The Minimum Adult Award Wage for full time adult employees is $413.40 per week payable from the beginning of the first pay period on or after 1st August 2001.

(ii) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(iii) Unless otherwise provided in this subclause adults employed as casual or part time employees shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.

(iv) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision to the Minimum Adult Award Wage of $413.40 per week.

(v) (aa) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on traineeships, or Jobskills traineeships or to other categories of employees who by prescription are paid less than the minimum award rate.

(bb) Liberty to apply is reserved in relation to employees excluded under (aa) above and any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.

(vi) Subject to this subclause the Minimum Adult Award Wage shall —

(aa) apply to all work in ordinary hours.

(bb) apply to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave and for all other purposes of this award.

(vii) Nothing in this clause (or subclause) shall operate to reduce the rate of pay fixed by the award for an adult apprentice in force on 13th November 1997.

(Note: A notation will be made in each relevant award by the Registrar where the adult apprentice rate requires specific mention as at 13th November 1997.)

TITANIUM OXIDE MANUFACTURING AWARD 1975

NO. 8 OF 1975

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 $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(3) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(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 $413.40 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 2001 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.

21.—WAGES

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.

(1) The minimum weekly rates of wage payable to employees covered by this award shall be—

		$ PER WEEK	ASNA	TOTAL
(a)	General Hand:			
	First Year	298.10	50.00	348.10
	Thereafter	301.80	50.00	351.80
(b)	Plant Operators:			
	First Year	298.10	50.00	348.10
	Thereafter	301.80	50.00	351.80
(c)	Mobile Plant Operator:	311.10	50.00	361.10
(d)	Senior Plant Operator:	317.10	50.00	367.10
(e)	Leading Hand Plant Operator:	329.60	50.00	379.60
(f)	Senior Leading Hand:	343.80	50.00	393.80

TRAINING ASSISTANTS' AND COMMUNITY SUPPORT STAFF (CEREBRAL PALSY ASSOCIATION) AWARD 1987

NO. A 16 OF 1986

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 $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(3) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(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 $413.40 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 2001 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.

14.—WAGES

(1) (a) TRAINING ASSISTANTS AND SUPPORT STAFF—

	Base Rate Per Week	- Arbitrated Safety Net Adjustments Per Week	Total Rate Per Week
	$	$	$
1st year of employment	395.90	88.00	483.90
2nd year of employment	407.30	88.00	495.30
3rd year of employment	422.20	90.00	512.20
4th year of employment	434.50	90.00	524.50

(b) 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) Senior Community Support Staff—

Employees who are required to co-ordinate the activities of Community Support Staff shall be designated as Senior Community Support Staff and they shall be paid an in-charge allowance of $748.10 per annum in addition to the rates of pay specified in subclause (1) of this clause.

(3) Junior Training Assistants and Community Support Staff—

A Junior Training Assistant or Community Support Assistant shall be paid the following percentage of the rate prescribed for a Training Assistant in their first year of employment.

	%
At or under 17 years of age	70
At 18 years of age	80
At 19 years of age	90
At 20 years of age	Adult Rates

(4) An employee who has had previous experience relevant to employment covered by this award may have that experience taken into account in determining the year of employment at which an employee is appointed and paid.

(5) A casual employee shall be paid 20% in addition to the rates prescribed in this clause.

(6) Where the term "year of employment" is used in this clause, it shall mean all service whether full-time or part-time and regardless of the class of work with that employer. Such service shall be calculated in periods of calendar years from the date of commencement of work with the employer and by automatic progression subject to satisfactory service. Provided that in determining the rate of wage of an employee 19 years of age and over, service prior to attaining the age of 19 years shall not be counted in determining the total service of an employee for the purpose of this clause.

(7) The hourly rate for an employee working an average of 38 hours per week shall be calculated by dividing the weekly rate herein expressed by 40.

(8) The hourly rate for an employee actually working 38 hours shall be calculated by dividing the weekly rate herein expressed by 38.

THE TRANSPORT TRUST SALARIED OFFICERS'AWARD

NO. 3 OF 1977

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 $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(3) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(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 $413.40 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 2001 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.

SCHEDULE D

SALARIES

Annual salaries applicable to officers covered by this Award.

Level	Salary Per Annum $ pa	1st, 2nd & 3rd Arbitrated Safety Net Adjustment $ pa	$10 Arbitrated Safety net Adjustment $ pa	ASNA 1999, 2000 & 2001	Total $ pa
Level 1					
Under 17 years	10,445	642	268	1,072	12,427
17 years	12,207	750	313	1,253	14,523
18 years	14,238	876	366	1,461	16,941
19 years	16,481	1,014	423	1,692	19,610
20 years	18,507	1,140	475	1,900	22,022
1.1	20,331	1,251	522	2,087	24,191
1.2	20,983	1,251	522	2,087	24,843
1.3	21,634	1,251	522	2,087	25,494
1.4	22,281	1,251	522	2,087	26,141
1.5	22,932	1,251	522	2,192	26,897
1.6	23,583	1,251	522	2,192	27,548
1.7	24,332	1,251	522	2,192	28,297
1.8	24,850	1,251	522	2,088	28,711
1.9	25,616	1,251	522	2,088	29,477
Level 2					
2.1	26,533	1,251	522	2,088	30,394
2.2	27,236	1,251	522	2,088	31,097
2.3	27,975	1,251	522	2,192	31,940
2.4	28,756	1,251	522	2,192	32,721
2.5	29,573	1,251	522	2,192	33,538
Level 3					
3.1	30,696	1,251	522	2,192	34,661
3.2	31,571	1,251	522	2,192	35,536
3.3	32,473	1,251	522	2,192	36,438
3.4	33,399	1,251	522	2,192	37,364
Level 4					
4.1	34,669	1,251	522	2,192	38,634
4.2	35,664	1,251	522	2,192	39,629
4.3	36,688	1,251	522	2,192	40,653
Level 5					
5.1	38,660	1,251	522	2,192	42,625
5.2	39,993	1,251	522	2,192	43,958
5.3	41,378	1,251	522	2,192	45,343
5.4	42,815	1,251	522	2,192	46,780
Level 6					
6.1	45,126	1,251	522	2,192	49,091
6.2	46,697	1,251	522	2,192	50,662
6.3	48,323	1,251	522	2,192	52,288
6.4	50,059	1,251	522	2,192	54,024

SCHEDULE E

SALARIES—SPECIFIED CALLINGS

Officers, who possess a relevant tertiary level qualification, or equivalent determined by the employer and who are employed in the callings of Agricultural Scientist, Architect, Dental Officer, Education Officer, Engineer, Geologist, Laboratory Technologist, Land Surveyor, Legal Officer, Librarian, Medical Officer, Planning Officer, Probation and Parole Officer, Psychiatrist, Clinical Psychologist, Psychologist, Quantity Surveyor, Scientific Officer, Social Worker, Superintendent of

Education, Therapist (Occupational, Physio or Speech), Veterinary Scientist, or any other professional calling determined by the employer, shall be entitled to annual salaries as follows—

Level	Salary Per Annum $ pa	1st, 2nd & 3rd Arbitrated Safety Net Adjustments $ pa	$10 Arbitrated Safety Net Adjustment $ pa	ASNA 1999, 2000 & 2001	Total $ pa
Level 2/4					
1st year	26,533	1,251	522	2,088	30,394
2nd year	27,975	1,251	522	2,192	31,940
3rd year	29,573	1,251	522	2,192	33,538
4th year	31,571	1,251	522	2,192	35,536
5th year	34,669	1,251	522	2,192	38,634
6th year	36,688	1,251	522	2,192	40,653
Level 5					
1st year	38,660	1,251	522	2,192	42,625
2nd year	39,993	1,251	522	2,192	43,958
3rd year	41,378	1,251	522	2,192	45,343
4th year	42,815	1,251	522	2,192	46,780
Level 6					
1st year	45,126	1,251	522	2,192	49,091
2nd year	46,697	1,251	522	2,192	50,662
3rd year	48,323	1,251	522	2,192	52,288
4th year	50,059	1,251	522	2,192	54,024

TRANSPORT WORKERS (GOVERNMENT) AWARD, 1952

NO. 2A OF 1952

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 $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(3) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(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 $413.40 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 2001 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.

5A.—SPECIAL PAYMENT AND SAFETY NET ADJUSTMENT

(1) The special payment contained in subclause (1) of Clause 5.—Wages of this Award shall form part of the total wage and is included in the Total Weekly Wage.

(2) 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.

5.—WAGES

(1) Adult employees—

An adult employee shall be paid the following total weekly wage which is comprised of the components for base rate and supplementary payment. All components of the total weekly wage are payable for all purposes of this award.

	Total Weekly Wage	Base Rate	Safety Net Adjustment	Supplementary Payment	Special Payment
	$	$	$	$	$
Group 1	466.60	324.50	88.00	46.30	7.80
Motor driver's assistant					
Loader					
Driver of mechanical horse with or without trailer					
Group 2	485.90	327.80	88.00	46.80	23.30
Driver rigid vehicle to 4.5 tonnes GVM (Gross Vehicle Mass) or GCM (Gross Combination Mass)					
Employee riding a motorcycle in the course of employment					
Driver of tow motor					
Group 3	489.70	334.60	88.00	47.80	19.30
Driver rigid vehicle 4.5 to 13.9 tonnes GVM or GCM					
Driver of fork lift up to and including 4500 kg lifting capacity					
Driver of tractor without power operated attachments					
Group 4	501.10	344.60	88.00	49.20	19.30
Driver rigid vehicle over 13.9 tonnes GVM or GCM					
Straddle carrier driver					
Driver of fork lift over 4500 kg and up to 9000 kg lifting capacity					
Group 5	510.80	351.30	90.00	50.20	19.30
Driver articulated vehicle up to 22.4 tonnes GCM					
Driver rigid vehicle and heavy trailer up to 22.4 tonnes GCM					
Driver rigid vehicle 4 axles over 13.9 tonnes GVM					
Driver of fork lift over 9000 kg lifting capacity					
Group 6	540.00	358.90	90.00	51.20	39.90
Driver low loader up to 43 tonnes GCM					
Driver articulated vehicle over 22.4 tonnes GCM					
Driver rigid vehicle and heavy trailer over 22.4 tonnes					
Group 7	551.60	364.70	88.00	52.10	46.80
Driver low loader over 43 tonnes GCM (for each additional complete tonne over 43 an extra 81 cents as part of the weekly wage rate of all purposes shall be payable)					

(2) Service Increments: Adult employees shall be paid service increments for all purposes of the Award as follows—

after one year of service	$3.98 per year
after two years of service	$7.85 per year

(3) 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 10 other employees, shall be paid $20.28 per week extra.

(b) more than 10 and not more than 20 other employees, shall be paid $30.46 per week extra.

(c) more than 20 other employees, shall be paid $38.67 per week extra.

(4) Junior Employees

(a) Rates of pay (per cent of the total wage payable to an adult employee for the class of work performed)

	%
Under 19 years of age	70
Under 20 years of age	80
20 years of age	100

(b) No junior under 17 years of age shall be permitted to have sole charge of a motor vehicle.

(5) Casual Employees

Casual employees, being employees who are dismissed through no fault of their own before the expiration of one week of employment shall be paid twenty per cent in addition to the ordinary rate.

(6) Self-loading Equipment—

An employee who, in the course of his/her employment, drives a vehicle equipped with self loading equipment which requires the possession of a certificate of competency shall be paid an extra $7.90 per week.

TRANSPORT WORKERS (MOBILE FOOD VENDERS) AWARD 1987

NO. A3 OF 1986

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 $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(3) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(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 $413.40 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 2001 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.

7.—WAGES

The total minimum weekly wage payable to an employee shall be the amount specified in the "Total Weekly Wage" column in this clause for the appropriate grade.

	Base Rate	Supplementary Payment	Safety Net Adjustment	Total Wage Per Week
	$	$	$	$
(1) Classification				
Mobile Canteen Operators				
Grade 1 Driver of Rigid Vehicle to 4.5 tonnes GVM or GCM	327.70	46.80	88.00	462.50
Grade 2 Driver of Rigid Vehicle to 4.5 to 13.9 tonnes GVM or GCM	334.40	47.80	88.00	470.20

(2) 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 employees shall be paid $19.28 per week extra.

(b) More than ten and not more than twenty other employees shall be paid $28.75 per week extra.

(c) More than twenty other employees shall be paid $36.45 per week extra.

(3) Junior Employees

(a) Rates of pay (per cent of the total wage payable to an adult employee for the class of work performed)

	%
Under 19 years of age	70
Under 20 years of age	80
20 years of age	100

(b) No person under seventeen years of age shall be permitted to have sole charge of a motor vehicle.

(c) A junior employee who is required to have a B Class Motor Drivers Licence shall be paid the Full Adult Rate.

(4) Casual employees: Casual employees, being employees who are dismissed through no fault of their own before the expiration of one week of employment shall be paid twenty per cent in addition to the relevant ordinary rate of wage prescribed in this clause.

(5) 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.

TRANSPORT WORKERS (BURSWOOD ISLAND RESORT) AWARD 1987

NO. A 2 OF 1987

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 $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(3) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(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 $413.40 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 2001 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.

8.—WAGES

(1) Adult Employee

Bus Drivers (including Service, Tour, Charter Bus Drivers) driving a passenger vehicle having seating capacity for—

		Base Rate	Safety Net Adjustment	Total Wage Per Fortnight
		$	$	$
(i)	under 25 adult persons	750.90	160.00	910.90
(ii)	25 adult persons or more	765.30	160.00	925.30
(iii)	Car/Limousine Driver	721.00	160.00	881.00

(2) 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.

TRANSPORT WORKERS' (EASTERN GOLDFIELDS TRANSPORT BOARD) AWARD 1976

NO. 23 OF 1976

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 $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(3) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(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 $413.40 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 2001 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.

34.—WAGES

The following shall be the minimum rates of wages payable to employees covered by this award—

(1)

Adult Omnibus Driver -	Base Rate $	Safety Net Adjustment $	Total Wage Per Week $
First year of service	441.37	90.00	531.37
Second year of service	446.18	90.00	536.18
Third year of service	452.74	90.00	542.74

(2) Leading hands shall be paid at a rate exceeding the highest rate of employees he/she supervises by an amount of $17.66 per week.

(3) 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.

TRANSPORT WORKERS (GENERAL) AWARD

NO. 10 OF 1961

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 $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(3) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(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 $413.40 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 2001 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.

7.—WAGES

The following shall be the rates of wages payable to employees covered by this Award. The total minimum weekly wage rate shall be the amount specified in the "Total Per Week" column in this clause for the appropriate grade or sub-grade.

PART 1

	Grade	Base Rate $	Supplementary Payment $	Safety Net Adjustment $	Total Per Week $
(1)	Grade 1 Motor Driver's Assistant Washers (except can and night washers) Driver of mechanical horse with or without trailer Loaders Yardsperson	314.30	44.90	88.00	447.20
(2)	Grade 2 Driver, rigid vehicle to 4.5 tonnes GVM (Gross Vehicle Mass) Employee riding a motorcycle in the course of employment Night Washer Driver of tow motor	327.70	46.80	88.00	462.50
(3)	Grade 3 Driver, rigid vehicle from 4.5 to 13.9 tonnes GVM or GCM (Gross Combination Mass) Driver, fork lift up to and including 5 tonnes lifting capacity Driver, tractor without power operated attachments	334.40	47.80	88.00	470.20

	Grade	Base Rate $	Supplementary Payment $	Safety Net Adjustment $	Total Per Week $
(4)	Grade 4 Driver, rigid vehicle over 13.9 tonnes GVM or GCM and up to 13 tonnes capacity Straddle carrier driver Driver of dump truck (unlicensed) Driver of fork lift over 5 and up to 10 tonnes lifting capacity	344.50	49.20	88.00	481.70
(5)	Grade 5 Driver, articulated vehicle to 22.4 tonnes GCM Driver, rigid vehicle and heavy trailer to 22.4 tonnes GCM Driver, rigid vehicle 4 or more axles over 13.9 tonnes GVM or GCM Driver of fork lift over 10 and up to 34 tonnes lifting capacity	351.10	50.20	88.00	489.30
(6)	Grade 6 Driver low loader to 43 tonnes GCM Driver articulated vehicle over 22.4 tonnes GCM and up to 39 tonnes capacity Driver mobile crane up to 25 tonnes lifting capacity Driver rigid vehicle and heavy trailer over 22.4 tonnes GCM Driver of fork lift over 34 tonnes lifting capacity	357.90	51.10	88.00	497.00
(7)	Grade 7 Driver articulated vehicle over 22.4 tonnes GCM over 39 and up to 60 tonnes capacity Driver multiple articulated vehicle up to 53.4 tonnes GCM Driver low loader over 43 tonnes GCM (For each additional complete tonne over 43 an extra 79 cents as part of the weekly wage rate for all purposes shall be payable)	364.60	52.10	90.00	506.70
(8)	Grade 8 Driver mobile crane over 25 and up to 50 tonnes lifting capacity Driver multiple articulated vehicle over 53.4 tonnes up to 94 tonnes GCM up to 65 tonnes capacity	381.20	54.50	90.00	525.70
(9)	Grade 9 Driver multiple articulated vehicle over 94 tonnes GCM up to 75 tonnes capacity Driver of mobile crane over 50 tonnes lifting capacity	391.30	55.90	90.00	537.20

(11) Van Driver—Salesperson (as defined) shall be paid $7.40 per week extra.

PART 2

(1) 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 employees shall be paid $19.20 per week extra.

(b) more than ten and not more than 20 other employees shall be paid $28.63 per week extra.

(c) more than 20 other employees shall be paid $36.36 per week extra.

(2) Junior Employees—

(a) Rates of pay (per cent of the total wage payable to an adult employee for the class of work performed)

	%
Under 19 years of age	70
Under 20 years of age.....	80
20 years of age	100

(b) No junior under 17 years of age shall be permitted to have sole charge of a motor vehicle.

(3) Industry Allowance—

In addition to the rates prescribed in this clause an amount of $15.98 per week shall be paid to employees engaged under this award in rock quarries and sand pits to compensate for dust and climatic conditions when working in the open and for deficiencies in general amenities and facilities. Provided that employees in limestone quarries of Cockburn Cement limited shall be paid an amount of 41 cents per hour in lieu of the $15.98 per week referred to in this subclause.

(4) Ready Mixed Concrete Industry—

In addition to the rates prescribed in this clause an amount of $9.45 per week shall be paid to drivers and/or operators of ready mixed concrete trucks.

7A.—SUPPLEMENTARY PAYMENTS AND SAFETY NET ADJUSTMENTS

(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 payments prescribed in Clause 7.—Wages of this award are in substitution for over-award payments as defined to the extent of any award wage increase arising out of minimum rates adjustments and broad banding increases arising out of the September 1989 State Wage Decision.

(3) "Over-award payment" is defined as the amount (whether it be termed over-award 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.

(4) Supplementary payments set out in Clause 7.—Wages of this award represents 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.

TRANSPORT WORKERS' (NORTH WEST PASSENGER VEHICLES) AWARD, 1988

NO. A 19 OF 1987

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 $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(3) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(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 $413.40 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 2001 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.

6.—WAGES

The total minimum weekly wage payable to an employee shall be the amount specified in the "Total Wage" column in this clause for the appropriate grade or sub-grade.

(1) Bus Driver (including Service, Tour, Charter and School Bus Drivers) driving a passenger vehicle having seating capacity for—

		Base Rate	Supplementary Payment	Safety Net Adjustment	Total Wage
		$	$	$	$
(a)	Under 25 adult persons	323.90	46.30	88.00	458.20
(b)	25 adult persons or more	334.80	47.90	88.00	470.70

(2) A leading hand shall be paid a rate exceeding the highest rate of the workers he/she supervises by an amount of $19.26 per week.

6A.—SUPPLEMENTARY PAYMENTS AND SAFETY NET ADJUSTMENTS

(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) Supplementary payments set out in Clause 6.—Wages of this award 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.

TRANSPORT WORKERS' (PASSENGER VEHICLES) AWARD

NO. R 47 OF 1978

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 $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(3) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(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 $413.40 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 2001 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.

10.—WAGES

The total minimum weekly wage payable to an employee shall be the amount specified in the "Total Wage" column in this clause for the appropriate grade or sub-grade and is payable for all purposes of the award.

(1) Bus Driver (including Service, Tour, Charter and School Bus Drivers) driving a passenger vehicle having seating capacity for—

		Base Rate	Supplementary Payment	Safety Net Adjustment	Total Wage
		$	$	$	$
(a)	Under 25 adult persons	329.75	47.05	88.00	464.80
(b)	25 adult persons or more	340.50	48.70	88.00	477.20

(2) A leading hand shall be paid a rate exceeding the highest rate of the workers he/she supervises by an amount of $19.26 per week.

UNIVERSITY, COLLEGES AND SWANLEIGH AWARD, 1980

NO. 7B OF 1979

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 $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(3) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(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 $413.40 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 2001 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.

31.—WAGES

(1) (a) The minimum weekly rates of wage payable shall be—

	Minimum Award Rate $
Level 1	
Cleaner	$452.60
Level 2	
Domestic employees including -	
Kitchen Attendant	
House Attendant	
Dining Attendant	
Laundry Attendant	
Sewing Attendant	$459.30
Level 3	
Cooks (Other)	$463.50

	Minimum Award Rate $
Level 4	
Gardener/Groundsperson Grade 1	$471.80
Level 5	
First Cook (Grade 1), or Cook working alone	
Gardener/Groundsperson, Grade 2	
Sewing Supervisor	$480.20
Level 6	
Senior Gardener/Groundsperson, Grade 1	
First Cook, Grade 2	$488.50
Level 7	
Senior Gardener/Groundsperson, Grade 2	
Tradesperson Cook	$507.20
Level 8	
Head Groundsperson	$588.60

(b) 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) Junior Employees—

Junior employees shall receive the following percentages of the adult rate for the class of work on which they are engaged.

	%
Under 16 years of age	60
16 to 17 years of age	70
17 to 18 years of age	80

(3) General Conditions—

(a) Junior employees may be employed in the proportion of one junior to every two or fraction of two not being less than one adult employee employed in the same occupation, provided that this ratio may be altered by written agreement between the Union and the employee concerned.

(b) Senior employees other than the Head Groundsperson and leading hands appointed as such by the employer to be in charge of three or more other employees shall be paid $19.40 per week in addition to the rates prescribed herein.

(4) For all work done on any day after a break referred to in subclause (3) of Clause 7.—Hours of this award, the employee shall be paid an allowance of $1.20 per hour for each such hour worked.

(5) On and from 12 August 1992 the wage rates set out in subclause (1) of this clause include the first, second, third and fourth instalments of the Minimum Rates Adjustment Principle. Relativities have been established at 87.4% of the tradesperson's rate at Level 1 and 100% of the tradesperson's rate for a trade trained Senior Cook at Level 7.

VEHICLE BUILDERS' AWARD 1971

NO. 9 OF 1971

9.—WAGES AND SUPPLEMENTARY PAYMENTS

(1) The minimum award rate payable weekly to adult employees (other than apprentices) classified under a defined level as specified in Clause 6.—Definitions of this Award, shall be made up of a base rate, plus a supplementary payment and safety net adjustment, giving a total weekly award rate as follows—

CLASSIFICATION Adult Employees (expressed as a percentage of the Vehicle Building Tradesperson Level I Rate):	Base Rate	Supplementary Payment	Safety Net Adjustment	Total Rate Per Week	Vehicle Building Tradesperson Level 1
	$	$	$	$	$
Advanced Tradesperson/Production Technician					
Vehicle Building	471.70	70.60	$88.00	$630.30	130.0
Vehicle Building Tradesperson—Level IV	417.30	62.50	$88.00	$567.80	115.0

CLASSIFICATION Adult Employees (expressed as a percentage of the Vehicle Building Tradesperson Level I Rate):	Base Rate	Supplementary Payment	Safety Net Adjustment	Total Rate Per Week	Vehicle Building Tradesperson Level 1
	$	$	$	$	$
Vehicle Building Tradesperson—Level III	399.10	59.80	$90.00	$548.90	110.0
Vehicle Building Tradesperson—Level II	381.00	57.10	$90.00	$528.10	105.0
Vehicle Building Tradesperson—Level I	362.90	54.30	$90.00	$507.20	100.0
Vehicle Builder—Level IV	335.30	50.20	$88.00	$473.50	92.4
Vehicle Builder—Level III	317.10	47.50	$88.00	$452.60	87.4
Vehicle Builder—Level II	297.60	44.50	$88.00	$430.10	82.0
Vehicle Builder—Level I	283.00	42.40	$88.00	$413.40	78.0

(2) Supplementary Payments

(a) Where an employee is in receipt of a rate of pay which exceeds the Award Rate Per Week prescribed in sub-clause (1) above, whether such payment is being made by virtue of any order, industrial agreement or other agreement or arrangement, then such rate will be deemed to be inclusive of the Supplementary Payment.

(b) Overtime, shift allowances, penalty rates, disability allowances, special rates, fare and travelling time allowances and any other work related allowances prescribed by this award shall not be offset against Supplementary Payments.

(3) 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.

(4) Apprentices—(Wage per week expressed as a percentage of the Vehicle Building Tradesperson—Level I rate)—

	%
Four Year Term	
First Year	42
Second Year	55
Third year	75
Fourth Year	88
Three and a Half Year Term	
First six Months	42
Next Year	55
Next Year	75
Final Year	88
Three Year Term	
First Year	55
Second Year	75
Third Year	88

(5) Leading Hand—An employee placed in charge of—

		$
(a)	Not less than three and not more than 10 other employees shall be paid per week extra	18.00
(b)	More than 10 and not more than 20 other employees shall be paid per week extra	27.60
(c)	More than 20 other employees shall be paid per week extra	35.70

(6) Tool Allowance—

(a) Where an employer does not provide a tradesperson or an apprentice with the tools ordinarily required by that tradesperson or apprentice in the performance of work as a tradesperson or as an apprentice the employer shall pay a tool allowance of—

(i) $10.00 per week to such tradesperson, or

(ii) in the case of an apprentice a percentage of $10.00, being the percentage which appears against his/her year of apprenticeship in subclause (3) of this clause,

for the purpose of such tradesperson or apprentice supplying and maintaining tools ordinarily required in the performance of work as a tradesperson or as an apprentice.

(b) Any tool allowance paid pursuant to paragraph (a) of this subclause shall be included in, and form part of, the ordinary weekly wage prescribed in this clause.

(c) An employer shall provide for the use of tradespersons or apprentices all necessary power tools, special purpose tools and precision measuring instruments.

(d) A tradesperson or apprentice shall replace or pay for any tools supplied by his/her employer if lost through his/her negligence.

(7) A casual employee shall be paid twenty per cent of the ordinary rate in addition to the ordinary rate for the calling in which he/she is employed.

(8) Junior Employees (Wage per week expressed as a percentage of the Vehicle Builder Level 1 rate)—

	%
Under 16 years of age	35
16 years of age	45
17 years of age	55
18 years of age	65
19 years of age	78.5
20 years of age	93

(9) Minimum Adult Award Wage

(a) No adult employee shall be paid less than the Minimum Adult Wage unless otherwise provided by this clause.

(b) The Minimum Adult Award Wage for full time adult employees is $413.40 per week payable from the beginning of the first pay period commencing on or after 1 August 2001.

(c) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(d) Unless otherwise provided in this clause adults employed as casual or part time employees shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.

(e) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision of the Minimum Adult Award Wage of $413.40 per week.

(f) (i) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on Traineeships or Jobskills placements, or to other categories of employees who by prescription are paid less than the minimum award rate.

(ii) Liberty to apply is reserved in relation to any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.

(g) Subject to this clause the Minimum Adult Award Wage shall—

(i) apply to all work in ordinary hours

(ii) apply to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave and for all other purposes of this award.

(h) (i) The rates of pay in this award include the minimum weekly wage for adult employees payable under the 2001 State Wage Case Decision. Any increase arising from the insertion of the adult minimum wage will be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award agreements. Absorption which is contrary to the terms of an agreement is not required.

(ii) Increases under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset the adult minimum wage.

(10) Structural Efficiency

(a) Arising out of the decision of the State Wage Case on 8 September 1989 and in consideration of the wage increases resulting from the structural efficiency adjustments to this Award, employees are to perform a wider range of duties, including work which is incidental or peripheral to their main tasks or functions.

(b) The parties to this Award are committed to co-operating positively to increase the efficiency, productivity and international competitiveness of the vehicle building industry and to enhance the career opportunities and job security of employees in the industry.

(c) At each plant or enterprise a consultative mechanism may be established by the employer, or shall be established upon request by the employees or the union. The consultative mechanism and procedure shall be appropriate to the size, structure and needs of the workplace or enterprise. Measures raised by the employer, employees or union or unions for consideration consistent with the objectives of paragraph (a) hereof shall be processed through that consultative mechanism and procedures.

(d) Measures raised for consideration consistent with paragraph (c) hereof shall be related to implementation of a new classification structure, the facilitative provisions contained in this Award and, subject to Clause 37.—Training, matters concerning training and subject to paragraph (e) hereof, any other measures consistent with the objectives of paragraph (b) of this subclause.

(e) Without limiting the rights of either the employer or a union to arbitration, any other measure designed to increase flexibility at the plant or enterprise and sought by any party shall be notified to the Commission if the initiative varies and Award provision and by agreement of the parties involved shall be subject to the following requirements—

(i) the changes sought shall not affect provisions reflecting national standards recognised by the Western Australian Industrial Relations Commission;

(ii) the majority of employees affected by the change at the plant or enterprise must genuinely agree to such change;

(iii) no employee shall lose income as a result of the change;

(iv) the union must be a party to the agreement;

(v) the union shall not unreasonably oppose any agreement;

(vi) any agreement shall be subject to the 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.

(f) Any disputes arising in relation to the implementation of paragraphs (c) and (d) hereof shall be subject to the provisions of Clause 29.—Avoidance of Industrial Disputes of this award.

WARD ASSISTANTS (MENTAL HEALTH SERVICES) AWARD 1966

NO. 35 OF 1966

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 $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(3) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(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 $413.40 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 2001 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.

26.—WAGES

(1) The minimum weekly rate of wage payable to employees covered by this award shall be the base Rate plus the Arbitrated Safety Net Adjustment (ASNA) Payment expressed hereunder—

		Base Rate	Arbitrated Safety Net Adjustments	Minimum Weekly Rate
		$	$	$
	Ward Assistants			
(a)	At 19 years of age and over			
	1st year of employment	377.40	88.00	$465.40
	2nd year of employment	387.80	88.00	$475.80
	3rd year of employment and thereafter	398.30	88.00	$486.30

(b) Under 19 years of age (percentage of the total wage prescribed for a ward assistant in his/her first year of service in paragraph (1)(a) hereof per week).

	%
1st year of employment	73
2nd year of employment	81
3rd year of employment	87

(2) Wages shall be paid by direct funds transfer to the credit of an account nominated by the employee at such bank, building society or credit union approved by the employer. Provided that where such form of payment is impractical or where some exceptional circumstances exist and by agreement between the employer and the Union, payment by cheque may be made.

(3) Payment for higher duties shall not apply to an employee required to act in another position whilst the permanent employee is on a single accrued day off as prescribed by subclause (3) of Clause 5.—Hours of this award.

(4) An employee who regularly performs shift or weekend work shall be paid for accrued days off, including shift or weekend penalties, when those days are taken as leave and at the rate which applied when they were accumulated.

(5) An employee who performs shift or weekend work irregularly may be paid shift or weekend penalties during the pay period in which the work is performed.

(6) No deductions shall be made from an employee's wage unless the employee has authorised such deduction in writing.

(7) 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.

WATCHMAKER'S AND JEWELLERS' AWARD 1970

NO. 10 OF 1970

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 1st day of August 2001.

		Base Rate	Supplementary Payment	Arbitrated Safety Net Adjustments	Minimum Rates
(a)	Watchmaker, Clockmaker watch and clock repairer	365.20	52.00	$90.00	$507.20
(b)	Jeweller, setter, general jeweller's tradesman and engraver	365.20	52.00	$90.00	$507.20
(c)	Process Worker % of trade				
	78	284.86	35.28	$88.00	$408.14
	80	292.16	36.80	$88.00	$416.96
	85	310.42	40.60	$88.00	$439.02

(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.

(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 $19.40 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 $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(3) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(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 $413.40 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 2001 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.

WESTERN AUSTRALIAN COLLEGE OF ADVANCED EDUCATION NON-ACADEMIC SALARIED STAFF AWARD 1981

NO. R 3 OF 1979

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 $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(3) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(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 $413.40 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 2001 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.

SCHEDULE A

SALARY RATES

(a) The annual salaries applicable to employees covered by the Award shall be:—

Level	Column A Salary Per Annum $	Column B Salary Per Annum $	ASNA	TOTAL
Level 1				
Under 17 years	9118	9386	1340.00	10458.00
17 years	10656	10969	1566.00	12222.00
18 years	12429	12795	1825.00	14254.00
19 years	14386	14809	2114.00	16500.00
20 years	16155	16630	2374.00	18529.00
21 years or 1st year of adult service	17747	18269	2608.00	20877.00
22 years or 2nd year of adult service	18383	18905	2608.00	21513.00
23 years or 3rd year of adult service	19018	19540	2608.00	22148.00
24 years or 4th year of adult service	19650	20172	2608.00	22780.00
25 years or 5th year of adult service	20285	20807	2608.00	23415.00
26 years or 5th year of adult service	20920	21442	2608.00	24050.00
27 years or 7th year of adult service	21651	22173	2608.00	24781.00
28 years or 8th year of adult service	22156	22678	2608.00	25286.00
29 years or 9th year of adult service	22903	23425	2608.00	26033.00
Level 2	23798	24320	2713.00	27033.00
	24484	25006	2713.00	27719.00
	25193	25715	2713.00	28428.00
	25923	26445	2609.00	29054.00
	26674	27196	2609.00	29805.00
Level 3	27706	28228	2609.00	30837.00
	28511	29033	2713.00	31746.00
	29340	29862	2713.00	32575.00
	30192	30714	2713.00	33427.00
Level 4	31360	31882	2713.00	34595.00
	32275	32797	2713.00	35510.00
	33216	33738	2713.00	36451.00
Level 5	35029	35551	2713.00	38264.00
	36257	36779	2713.00	39492.00
	37529	38051	2713.00	40764.00
	38851	39373	2713.00	42086.00
Level 6	40976	41498	2713.00	44211.00
	42421	42943	2713.00	45656.00
	43916	44438	2713.00	47151.00
	45513	46035	2713.00	48748.00
Level 7	47961	48483	2713.00	51196.00
	49655	50177	2713.00	52890.00
	51497	52019	2713.00	54732.00
Level 8	54493	55015	2713.00	57728.00
	56638	57160	2713.00	59873.00
	59298	59820	2713.00	62533.00
Level 9	62621	63143	2713.00	65856.00
	64866	65388	2713.00	68101.00
	67426	67948	2713.00	70661.00

NOTE: Salary rates in Column A shall have effect on and from the 13th day of October, 1988.
Salary rates in Column B shall have effect on and from the 13th day of April, 1989.

(b) Pursuant to Section 80X(1)(a) of the Industrial Relations Act 1979, the General Division shall consist of the following Classification and Annual Salary—

Classification	Column A Salary Per Annum $	Column B Salary Per Annum $	ASNA	TOTAL
G-II-13	45513	46035	2713.00	48748.00

NOTE: Salary rates in Column A shall have effect on and from the 13th day of October, 1988.
Salary rates in Column B shall have effect on and from the 13th day of April, 1989.

(c) Employees appointed or promoted to a level 1 position shall not be entitled to progress beyond the 24 year old or fourth (4th) year of adult service rate of salary, unless the employee is deemed to be qualified for promotion as determined by the Council.

(d) An employee who is 21 years of age or older on appointment to level 1 may be appointed at the minimum rate of pay based on years of service and not on age.

(e) Salaries—Professional Callings

(i) Employees who possess a relevant tertiary level qualification or equivalent, determined by the Council and who are employed in a professional calling determined by the Council shall be entitled to annual salaries as follows—

Level	Column A Salary Per Annum $	Column B Salary Per Annum $	ASNA	TOTAL
Level 2/4	23798	24320	2713.00	27033.00
	25193	25715	2713.00	28428.00
	26674	27196	2609.00	29805.00
	28511	29033	2713.00	31746.00
	31360	31882	2713.00	34595.00
	33216	33738	2713.00	36451.00
Level 5	35029	35551	2713.00	38264.00
	36257	36779	2713.00	39492.00
	37529	38051	2713.00	40764.00
	38851	39373	2713.00	42086.00
Level 6	40976	41498	2713.00	44211.00
	42421	42943	2713.00	45656.00
	43916	44438	2713.00	47151.00
	45513	46035	2713.00	48748.00
Level 7	47961	48483	2713.00	51196.00
	49655	50177	2713.00	52890.00
	51497	52019	2713.00	54732.00
Level 8	54493	55015	2713.00	57728.00
	56638	57160	2713.00	59873.00
	59298	59820	2713.00	62533.00
Level 9	62621	63143	2713.00	65856.00
	64866	65388	2713.00	68101.00
	67426	67948	2713.00	70661.00

Note: Salary rates in Column A shall have effect on and from the 13th day of October, 1988.

Salary rates in Column B shall have effect on and from the 13th day of April, 1989.

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.

(f) Employees on appointment or promotion to the level 2/4 under this clause—

(i) Employees who have completed an approved three year tertiary qualification, relevant to their calling, shall commence at the first year increment.

(ii) Employees who have completed an approved four year tertiary qualification, relevant to their calling, shall commence at the second year increment.

(iii) Employees who have completed an approved Masters of 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.

(g) The Council 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.

(h) The Council in allocating levels pursuant to subclause (a) of this Clause may determine a commencing salary above level 2/4 for a particular calling/callings.

(i) Service Allowances

Employees classified C-IV and C-II-1 prior to the operation of this Award shall be entitled to progress to the first two points of Level 2 under this Award in accordance with the provisions of Clauses 7(b), 9(d), (e) and (f) of the Public Service Administrative and Clerical Divisions Salaries Award 1982 No. 1 of 1982.

(j) Efficiency and Personal Allowances

Employees in receipt of efficiency and personal allowances at the date of operation of this Award shall have the allowances included as salary when determining placement under this Award.

(k) Qualifications Allowance

(i) Employees in receipt of a qualifications allowance at the date of operation of this Award or who would have become entitled to such allowance, or increase in such allowance as a result of studies completed in

the 1985 calendar year, shall continue to receive or be granted such allowance, or increase in such allowance provided that such allowance shall be reduced or ceased in accordance with the following—

	Allowance Diplomates	Annual Allowance Graduates and Associates
Up to and including Level 3, min	$200	$300
Level 3, 2nd and 3rd increments	$100	$200
Level 3 max	Nil	$100
Level 4 and above	Nil	Nil

(ii) Employees who are not entitled to a qualifications allowance pursuant to paragraph (i) of this subclause or who attain a higher qualification subsequently shall not be entitled to receive an allowance or increase in the allowance.

(l) Employee Supporting Dependents Allowance

(i) Employees previously classified C-IV, G-VII or G-X who were in receipt of an allowance of one increment for wholly supporting a spouse and/or dependent relatives prior to the date of operation of this Award shall, if classified Level 1 under this Award, continue to receive such allowance of one increment whilst wholly or substantially supporting a spouse and/or dependent relative. Provided that the maximum remuneration inclusive of such allowance shall be the rate of pay at age 29 or ninth year of adult service in respect of an officer who is deemed qualified for promotion by the Council or, age 24 or fourth year of adult service in respect of officers not deemed qualified for promotion.

(ii) Payment of the Employee Supporting Dependents Allowance shall cease should an employee be promoted or reclassified above Level 1.

(iii) This provision shall not apply to any employee who was not in receipt of the Employee Supporting Dependents Allowance at the operative date of this Award.

(m) Higher Duties

(i) Employees classified C-IV, who were acting in a C-II-1 position immediately prior to the date of operation of this Award and who had been so acting for in excess of twelve (12) months in the preceding eighteen (18) months, shall be deemed appointed to that level, provided that the position has not been advertised and/or is the subject of a Promotion Appeal.

(ii) Where an employee was acting in a position classified higher than his/her substantive position prior to the introduction of this Award, the officer shall receive higher duties allowance equivalent to the salary that would have been payable to the permanent occupant.

Provided that should the employee cease to act in that higher classified position, any future periods of acting in the same position or other positions classified higher than the employee's substantive classification shall be paid a higher duties allowance in accordance with Clause 12.—Higher Duties Allowance.

(n) Incremental Dates

(i) Where an employee is in receipt of a salary that equates to a salary under this Award and the employee is classified at that level, the employee will remain on that salary and retain his/her current incremental date.

(ii) An employee in receipt of a salary which does not equate to a salary under this Award shall be placed on the nearest salary point higher at the date of operation of this Award, which date shall become the employee's new incremental date.

WESTERN AUSTRALIAN MINT SECURITY OFFICERS AWARD 1988

NO. A 5 OF 1988

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 $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(3) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(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 $413.40 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 2001 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.

14.—WAGES AND ALLOWANCES

(1) (a) The minimum and maximum of the wage range for qualified security officers shall be as follows, paid fortnightly—

		Per Week $	Arbitrated Safety Net Adjustments $	Per Week $
Senior Security Officer	Min	438.80	90.00	528.80
	Max	454.70	90.00	544.70
Security Officer	Min	410.50	88.00	498.50
	Max	426.40	90.00	516.40

(b) The actual wage of each officer referred to in paragraph (a) hereof shall be a sum determined by the Mint in relation to the officer's merit, diligence and good conduct, which shall first be reviewed six months after appointment as senior security officer or security officer as the case may be, and six-monthly thereafter. On review, an officer's wage may be increased by 10% or 20% of the difference between the relevant minimum and maximum rates prescribed in paragraph (a) hereof. An officer who, upon review, does not receive the maximum 20% increment may apply for a review after a further three months.

(c) The rate of pay of an unqualified security officer shall be $384.30 per week plus the $88.00 arbitrated safety net adjustment, paid fortnightly inclusive of the arbitrated safety net adjustment.

(d) The rate of pay of a Commissionaire shall be as follows, paid fortnightly—

	Per Week $	Arbitrated Safety Net Adjustments $	Per Week $
1st year of employment	384.30	88.00	472.30
2nd year of employment	389.60	88.00	477.60
3rd year of employment	394.80	88.00	482.80

(e) 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) (a) An allowance for shift work of 15% of an officer's base rate of pay shall be paid fortnightly to officers in respect of work performed during the ordinary hours of weekday shifts as defined in subclauses (5) and (6) of Clause 5.—Definitions of this Award other than public holidays. The allowance is not payable during long service leave or periods of leave without pay of any kind.

(b) An officer who, in accordance with the provisions of subclause (4) of Clause 7.—Hours, works an eleventh shift shall be paid the overtime rates prescribed in this Award for the whole of the shift.

(3) (a) A senior security officer or security officer who has been trained to render first aid and who is a current holder of appropriate first aid qualifications, such as a Senior First Aid Certificate from the St John Ambulance Association, will be paid a first aid allowance of $1.37 per shift with a maximum payment of $6.65 per week.

(b) The allowance is paid on a fortnightly basis and is payable only when the officer is at work.

(4) (a) Where an officer is required to carry a firearm that officer shall be paid an allowance of $1.47 per shift with a maximum payment of $7.18 per week.

(b) The allowance is payable on a fortnightly basis and is payable only when the officer is at work.

(c) Where an officer is required to carry a firearm the Mint shall—

(i) provide and maintain the firearm;

(ii) pay the licensing fee;

(iii) provide initial training with such time counted as time worked; and

(iv) provide refresher courses at quarterly intervals, with such courses counted as time worked.

(5) The allowances referred to in subclauses (3) and (4) of this clause shall not form part of the calculation of any other entitlement either under this Award or for the purpose of the calculation of the officer's base rate and are not payable during any period of leave.

WESTERN AUSTRALIAN STATE PUBLIC HOSPITALS MEDICAL PRACTITIONERS' AWARD 1987

NO. A 19 OF 1986

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 $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(3) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(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 $413.40 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 2001 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.

7.—SALARIES AND SALARY RANGES

(1) Salaries or salary ranges applicable to medical practitioners covered by this Award shall be—

(a) Full Time Medical Practitioners

			$ per annum	ASNA	TOTAL
(i) Medical Specialists					
Specialists, Level 1	Point 1		68242	2714.00	70956.00
	Point 2		71345	2714.00	74059.00
	Point 3		74457	2714.00	77171.00
	Point 4		77582	2714.00	80296.00
	Point 5		81523	2714.00	84237.00
	Point 6		83646	2714.00	86360.00
Senior Specialists, Level 2	Point 1		85769	2714.00	88483.00
	Point 2		90400	2714.00	93114.00
(ii) General Practitioners	Point 1		68242	2714.00	70956.00
	Point 2		71345	2714.00	74059.00
	Point 3		74457	2714.00	77171.00

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.

An Assistant Medical Superintendent shall be appointed within the Specialist, Level 1 range provided that an Assistant Medical Superintendent who does not possess a recognised qualification of a University or College shall not progress beyond Point 3 in that range.

A Deputy Medical Superintendent shall be appointed within the Specialist, Level 1 and Senior Specialist, Level 2 ranges at not less than Specialist, Level 1, Point 5, provided that a Deputy Medical Superintendent who does not possess a recognised higher qualification of a University or College shall not progress beyond Specialist, Level 1, Point 6.

(b) Sessional Appointees

			$ per session
(i)	Medical Specialists		
	Specialist, Level 1	Point 1	181.24
		Point 2	189.04
		Point 3	193.79
		Point 4	204.59
		Point 5	214.45
		Point 6	219.77
	Senior Specialist, Level 2	Point 1	225.07
		Point 2	236.64
(ii)	General Practitioners	Point 1	181.24
		Point 2	189.04
		Point 3	196.79

(EDIT NOTE: A session is approximately 10 periods over a fortnight)

(2) A Medical Practitioner, other than a Radiologist who is remunerated in accordance with Clause 16(10)(h) who is required to perform administrative duties appropriate to a Head of Department in a hospital, shall be paid an allowance calculated in accordance with the following formula—

No. of Staff Under Direct Supervision and control	$ per annum
0— 4	nil
5— 9	1155
10—20	2310
Over 20	3466

(3) The rates expressed in this Clause shall be varied to the extent necessary to give effect to any decision of the Western Australian Industrial Relations Commission in a State Wage Case made during the currency of the Award and expressed to be on general economic grounds and which has general application.

(4) It is a term of this Award that the Association undertakes for the duration of the Principles determined by the Commission in Court Session in Application No. 704 of 1991 not to pursue any extra claims, award or over award except when consistent with the State Wage principles.

THE WESTERN AUSTRALIA SURVEYING (PRIVATE PRACTICE) INDUSTRY AWARD, 1989

NO. A 2 OF 1988

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 $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(3) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(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 $413.40 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 2001 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.

8. – SALARIES

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.

		Rate Per Annum $	Arbitrated Safety Net Adjustments $	Total Annual Salary $
(1)	Surveyors			
(a)	Specialist Professional (Corporate Membership) or Post Graduate Qualification:			
	First Year	27694	4695.00	32389.00
	Second Year	29808	4591.00	34399.00
	Third Year	31976	4591.00	36567.00
	Fourth Year	34315	4591.00	38906.00
	Fifth Year	36815	4486.00	41301.00
(b)	Professional:			
	Qualification—Post Graduate Diploma			
	First Year	27545	4695.00	32240.00
	Second Year	29285	4591.00	33876.00
	Qualification—Degree			
	First Year	24528	4591.00	29119.00
	Second Year	25956	4591.00	30547.00
	Third Year	27545	4695.00	32240.00
	Fourth Year	29285	4591.00	33876.00
	Fifth Year	31131	4591.00	35722.00
	Qualification—Degree, Articled Surveyor			
	First Year	23353	4695.00	28048.00
	Second Year	24764	4591.00	29355.00
(c)	Professional Support:			
	Qualification—Diploma			
	First Year	23348	4695.00	28043.00
	Second Year	24690	4591.00	29281.00
	Third Year	26256	4591.00	30847.00
	Fourth Year	27864	4695.00	32559.00
	Fifth Year	29627	4695.00	34322.00
	Qualification—Certificate			
	First Year	22192	4695.00	26887.00
	Second Year	23348	4695.00	28043.00
(d)	Technical Assistant:			
	First Year (*)	18710	4590.00	23300.00
	Second Year	19788	4590.00	24378.00
	Third Year	20917	4590.00	25507.00
(2)	Clerical Personnel:			
(a)	Clerical Administrator:			
	First Year	27183	4695.00	31878.00
	Second Year	27724	4695.00	32419.00
	Third Year	28273	4591.00	32864.00
(b)	Senior Clerical Officer:			
	First Year	25584	4591.00	30175.00
	Second year	26117	4591.00	30708.00
	Third Year	26650	4591.00	31241.00
(c)	Clerical Officer:			
	First Year	23985	4695.00	28680.00
	Second Year	24518	4591.00	29109.00
	Third Year	25051	4591.00	29642.00
(d)	General Clerk:			
	First Year	22120	4695.00	26815.00
	Second Year	22652	4695.00	27347.00
	Third Year	23186	4695.00	27881.00
(e)	Filing Clerk:			
	First Year	20787	4590.00	25377.00
	Second Year	21453	4590.00	26043.00
	Third Year	21986	4695.00	26681.00

WINERIES AWARD 1969

NO. 31 OF 1969

7.—WAGES

The minimum rates of wages payable to employees are prescribed as

(1) Adult (Total Wage per Week)

		$	ASNA	TOTAL
(a)	Head Cellarperson or Head Storeperson having charge of more than four employees	337.30	50.00	387.30
(b)	Head Cellarperson or Head Storeperson having charge of four or less employees	333.40	50.00	383.40
(c)	Leading Hand in any department exercising supervision over the work of any other employee or employees	327.50	50.00	377.50
(d)	Driver of fork lift with lifting capacity of -			
	(i) Up to and including 5000 kilos	331.10	50.00	381.10
	(ii) Over 5000 kilos	339.20	50.00	389.20
(e)	All others	317.80	50.00	367.80

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) Junior Employees (Percentage of Adult "All others" Rate per week)

	%
Under 16 years of age	50
16 to 17 years of age	60
17 to 18 years of age	70
18 to 19 years of age	80
19 to 20 years of age	90
At 20 years of age	Adult Rate

(3) Casual Employees

(a) Casual employees shall be paid 20% in addition to the rates prescribed for weekly employment.

(b) A casual employee is a person who is engaged and paid as such.

(c) Provided that this shall not apply to an employee who severs his/her contract of service or who is dismissed for misconduct.

(4) Employees engaged in burning and/or waxing closed vats shall be paid 37.5 cents per hour in addition to the abovementioned rates.

(5) Minimum Wage—

Minimum Wage—Adult Males and Females—

Notwithstanding the terms of this clause (or subclause) no adult employee shall be paid less than the Minimum Adult Award Wage unless otherwise provided in this clause.

(i) The Minimum Adult Award Wage for full time adult employees is $413.40 per week payable from the beginning of the first pay period on or after 1st August 2001.

(ii) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(iii) Unless otherwise provided in this subclause adults employed as casual or part time employees shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.

(iv) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision to the Minimum Adult Award Wage of $413.40 per week.

(v) (aa) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on traineeships, or Jobskills traineeships or to other categories of employees who by prescription are paid less than the minimum award rate.

(bb) Liberty to apply is reserved in relation to employees excluded under (aa) above and any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.

(vi) Subject to this subclause the Minimum Adult Award Wage shall —

(aa) apply to all work in ordinary hours.

(bb) apply to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave and for all other purposes of this award.

(vii) Nothing in this clause (or subclause) shall operate to reduce the rate of pay fixed by the award for an adult apprentice in force on 13th November 1997.

(Note: A notation will be made in each relevant award by the Registrar where the adult apprentice rate requires specific mention as at 13th November 1997.)

WIRE MANUFACTURING (AUSTRALIAN WIRE INDUSTRIES PTY. LTD.) AWARD NO. 24 OF 1970

24.—SUPPLEMENTARY PAYMENTS

(1) (a) In addition to the rates payable under the provisions of Clause 25.—Wages, of this award, an employee, other than an apprentice or junior employee, employed in the classifications listed shall be paid the supplementary payment prescribed in Column (A) from the first pay period commencing on after 2 July 1991, and that prescribed in Column (B) from the first pay period commencing on or after 17 October 1991.

Classification	Supplementary Payment Per Week $	
	(A)	(B)
Non Trades		
Learner	34.65	35.50
Wire Employee Grade 1	36.30	37.20
Wire Employee Grade 2	39.30	40.30
Wire Employee Grade 3	40.20	41.20
Wire Employee Grade 4	42.75	43.80
Wire Employee Grade 5	45.60	46.70
Trades		
Tradesperson Grade 1	38.10	39.00
Tradesperson Grade 2	41.10	42.10
Tradesperson Grade 3	44.70	45.80
Tradesperson Grade 4	48.45	49.70

(b) In addition to the rates payable under the provisions of this award, other than this provision—

(i) an apprentice shall be paid per week a percentage of $39.00, being the percentage which appears against his/her year of apprenticeship in subclause (5) of Clause 25.—Wages, of this award, and

(ii) a junior employee shall be paid per week a percentage of $39.10 being the percentage which appears against his/her age in subclause (4) of Clause 25.—Wages, of this award.

(c) The amount payable to any employee pursuant to the provisions of this subclause—

(i) shall be for all purposes of this Award;

(ii) shall be reduced by the amount of any payment being made to that employee in addition to the said rates otherwise than pursuant to the provisions of this subclause, whether such payment is being made by virtue of any order, industrial agreement or other agreement or arrangement.

(2) The rate prescribed in this Award for any classification is not amended by this clause and shall not, for the purpose of any other award, order, industrial agreement or other agreement or arrangement, be deemed to have been so amended.

25.—WAGES

(1) (a) The rates of pay prescribed in paragraph (b) of this subclause shall operate from the first pay period commencing on or after 17 October 1991.

(b) Classifications—

Non-Trades

	Base Rate $	ASNA	TOTAL
Learner	314.60	50.00	364.60
Wire Employee Grade 1	325.00	50.00	375.00
Wire Employee Grade 2	346.80	50.00	396.80
Wire Employee Grade 3	368.00	50.00	418.00
Wire Employee Grade 4	385.50	50.00	435.50
Wire Employee Grade 5	404.90	50.00	454.90
Trades			
Tradesperson Grade 1	365.20	50.00	415.20
Tradesperson Grade 2	374.10	50.00	424.11
Tradesperson Grade 3	398.70	50.00	448.70
Tradesperson Grade 4	424.40	50.00	474.40

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.

(c) The parties agree that wage increases arising from broadbanding and adjustment of minimum rates are subject to absorption into existing overaward payments.

(d) Reclassification to any higher level shall be contingent upon such additional work being available and required to be performed by the employer.

(e) The parties agree that no employee shall lose income as a result of reclassification and implementation of new classification structures.

(2) Tool Allowance

(a) Where an employer does not provide a tradesperson or an apprentice with the tools ordinarily required by that tradesperson or apprentice in the performance of work as a tradesperson or apprentice the employer shall pay a tool allowance of—

(i) $9.20 per week to such tradesperson or

(ii) in the case of an apprentice a percentage of $9.20, being the percentage which appears against the apprentice's year of apprenticeship in subclause (5) of this clause,

for the purpose of such tradesperson or apprentice supplying and maintaining tools ordinarily required in the performance of their work as a tradesperson or apprentice.

(b) Any tool allowance paid pursuant to paragraph (a) of this subclause shall be included in, and form part of, the ordinary weekly wage prescribed in this clause.

(c) An employer shall provide for the use of tradespersons or apprentices all necessary power tools, special purpose tools and precision measuring instruments.

(d) A tradesperson or an apprentice shall replace or pay for any tools supplied by the employer, if lost through the employee's negligence.

(3) Junior Employees—(Percentage of weekly wage prescribed for the classification "Learner")

		Rate Per Week	ASNA	TOTAL
	%	$		
Under 16 years of age	25.7	90.36	12.85	103.21
Between 16 and 17 years	39.8	129.38	19.90	149.28
Between 17 and 18 years	51.9	182.48	25.95	208.43
Between 18 and 19 years	65.9	231.70	32.95	264.65
Between 19 and 20 years	78.2	274.95	39.10	314.05
Between 20 and 21 years	94.1	330.85	47.05	377.90

(4) Apprentices—(Wage per week expressed as a percentage of the rate for "Tradesperson Grade 1").

Five Year Term	%
First year	40
Second year	48
Third year	55
Fourth year	75
Fifth year	88
Four Year Term	%
First year	42
Second year	55
Third year	75
Fourth year	88
Three and a Half Year Term	
First Six Months	42
Next Year	55
Following year	75
Final Year	88
Three Year Term	%
First year	55
Second year	75
Third year	88

(5) Minimum Wage

Notwithstanding the terms of this clause (or subclause) no adult employee shall be paid less than the Minimum Adult Award Wage unless otherwise provided in this clause.

(i) The Minimum Adult Award Wage for full time adult employees is $413.40 per week payable from the beginning of the first pay period on or after 1st August 2001.

(ii) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(iii) Unless otherwise provided in this subclause adults employed as casual or part time employees shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.

(iv) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision to the Minimum Adult Award Wage of $413.40 per week.

(v) (aa) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on traineeships, or Jobskills traineeships or to other categories of employees who by prescription are paid less than the minimum award rate.

(bb) Liberty to apply is reserved in relation to employees excluded under (aa) above and any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.

(vi) Subject to this subclause the Minimum Adult Award Wage shall —

(aa) apply to all work in ordinary hours.

(bb) apply to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave and for all other purposes of this award.

(vii) Nothing in this clause (or subclause) shall operate to reduce the rate of pay fixed by the award for an adult apprentice in force on 13th November 1997.

(Note: A notation will be made in each relevant award by the Registrar where the adult apprentice rate requires specific mention as at 13th November 1997.)

(6) Structural Efficiency

(a) Arising out of the decision of the State Wage Case of 8 September 1989 and in consideration of the wage increases resulting from structural efficiency adjustments employees are to perform a wider range of duties which are incidental or peripheral to their main tasks or functions. This is to continue as one of the fundamental objectives of structural efficiency i.e. to require employees to perform a wider range of duties than those that previously applied.

(b) The parties to this Award are committed to co-operating positively to increase the efficiency, productivity and international competitiveness of the metal/wire manufacturing industry and to enhance the career opportunities and job security of employees in the industry.

(c) Measures raised by the employer, employees or union for consideration consistent with the objectives of paragraph (b) hereof shall be processed through the existing consultative mechanism and procedures.

(d) Measures raised for consideration consistent with paragraph (c) hereof shall be related to implementation and review of a new classification structure, the facilitative provisions contained in this Award and, subject to Clause 29.—Training of this Award, matters concerning training and, subject to paragraph (e) hereof, any other measures consistent with the objectives of paragraph (b) of this subclause.

(e) Without limiting the rights of either the employer or a union to arbitration, any other measure designed to increase flexibility at the plant or enterprise and sought by any party shall be notified to the Commission and by agreement of the parties involved shall be subject to the following requirements—

(i) the changes sought shall not affect provisions reflecting national standards recognised by the Western Australian Industrial Relations Commission;

(ii) the majority of employees affected by the change at the workplace must genuinely agree to such change;

(iii) no employee shall lose income as a result of the change;

(iv) the relevant union or unions must be a party to the agreement;

(v) the relevant union or unions shall not unreasonably oppose any agreement;

(vi) any agreement shall be subject to the 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.

WOODSIDE OFFSHORE PETROLEUM PTY. LTD.LONG SERVICE CONDITIONS AWARD, 1984

NO. A 17 OF 1984

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 $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(3) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case.

(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 $413.40 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 2001 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.

WOOL SCOURING AND FELLMONGERY INDUSTRY AWARD

NO. 32 OF 1959

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 $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(3) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(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 $413.40 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 2001 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.

22.—WAGES

(1) (a) The minimum weekly rate of wage payable to an employee covered by this award shall include the base rate plus the Arbitrated Safety Net adjustment expressed hereunder—

	Base Rate $	Arbitrated Safety Net Adjustments $	Minimum Rate $
Shift Foreman, in charge of wool scouring machine	380.00	88.00	468.00
Leading Hand in charge of presses	360.50	88.00	448.50
Grease Separator Operator	360.50	88.00	448.50
Centre Hand	360.50	88.00	448.50
General Hand	357.20	88.00	445.20
Picking over scoured wool and sewing blades	337.30	88.00	425.30

(b) Junior Employees shall be paid the following percentage of the rate of pay for the class of work on which they are engaged—

	%
Under 16 years of age	50
16 to 17 years of age	60
17 to 18 years of age	80
18 to 19 years of age	90
19 years of age and over	Adult Rates

(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.

WOOL, HIDE AND SKIN STORE EMPLOYEES' AWARD

NO. 8 OF 1966

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 $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(3) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(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 $413.40 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 2001 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.

13.—WAGES AND CLASSIFICATION STRUCTURE

(1) Classification Structure

STOREWORKER LEVEL 1

Relativity: 90%

Pre-requisites—

* Basic interpersonal and communication skills.
* Basic literacy and numeracy skills.

Skills/Duties—

* Familiar with company policies and procedures.
* Responsible for quality of his/her own work subject to detailed direction.
* Obtain knowledge and apply appropriate manual handling skills.
* Able to work in a team environment and/or under routine supervision.
* Able to exercise discretion within the limits of skills and/or training.
* Able to undertake duties in a safe and responsible manner.

The following tasks are indicative of the tasks which an employee at this level may be required to perform.

1. Core sampling (non-mechanical).
2. Feeding wool into blending machines.
3. Head marking or branding of head bale at receival or weighing.
4. Inserting lot plates or dividers.
5. Lobbing.
6. Opening or closing bales (including fadging and boodling).
7. Pushing into or taking from elevators or drops.
8. Sewing.
9. Wheeling baskets.
10. Hand trucking.
11. Use of non-licensed material handling equipment.
12. Operate wool blending machine.
13. Responsible for housekeeping in own work environment.

Promotional Criteria—

An employee remains at this level until he/she is capable of completing the tasks required of this level so as to enable him/her to be considered for promotion to the next level when a position becomes available.

STOREWORKER LEVEL 2

Relativity: 92.4%

Pre-requisites—

* Storeworker Level 1 or equivalent.

Skills/Duties—

In addition to the skills/duties required of Storeworker Level 1 the following skills/duties are required—

* Able to work in a team environment under limited supervision.

* Responsible for quality of his/her own work.
* Appropriate licence to operate required materials handling equipment, (other than crane or fork-lift rated in excess of 20000kg), (as required).

The following tasks are indicative of the tasks which an employee at this level may be required to perform.

1. Breaking out of specified bales for shipping, showing, pooling or blending.
2. Breaking out for rail trucks (including the use of mechanical aids).
3. Breaking down stacks of wool.
4. Port marking and branding of wool for shipping.
5. Operating and in charge of semi-automatic dump press.
6. Operating of all appropriate materials handling equipment (other than crane or fork-lift rated in excess of 20000kg), not requiring ancillary or incidental clerical functions.
7. Sheetman or fossicker.
8. Wool pressing.
9. Weight adjusting.
10. Handling or hanging or drying green skins (including trottering of sheepskins).

Handling hides including staking and unstacking operator and in charge of skin press.

Promotional Criteria—

An employee remains at this level until he/she is capable of completing the tasks required of this level so as to enable him/her to be considered for promotion to the next level when a position becomes available.

STOREWORKER LEVEL 3

Relativity: 94.5%

Pre-requisites—

* Storeworker Level 2 or equivalent.

Skills/Duties—

In addition to the skills/duties required of Storeworker Level 1 the following skills/duties are required—

* Understands and is responsible for quality control standards.
* Advanced level of interpersonal and communication skills.
* Keyboard skills.
* Able to perform work required with minimal supervision.
* Able to operate computerised inventory equipment (as required).

Indicative of the tasks which an employee at this level may perform are the following.

1. Sworn weigher or employee (including fork-lift driver) recording or carrying out clerical functions in receiving, weighing and delivering or shipping of bales including notifying locations of bales by radio or other electronic means.
2. In charge of an out-store.
3. Operation of semi-automatic core line.
4. Responsible for the actual packing of containers with dumped bales.

Promotional Criteria—

An employee remains at this level until he/she is capable of completing the tasks required of this level so as to enable him/her to be considered for promotion to the next level when a position becomes available.

STOREWORKER LEVEL 4

Relativity: 97%

Pre-requisites—

* Storeworker Level 3 or equivalent.

Skills/Duties—

In addition to the skills/duties required of Storeworker Level 4 the following skills/duties are required—

* Appropriate licence to operate required materials handling equipment and/or container handling equipment and/or crane, with capacity rated greater than 20000kg (as required).
* Knowledge of operation of fully automated core line operation.
* Able to operate computerised wool handling equipment (as required).

Indicative of the tasks which an employee at this level may perform are the following—

1. Operator in charge of a fully automated core line operation.
2. Operator in charge of a fully automatic Dump Press (i.e. TriPak).
3. Operator of container handling equipment rated greater than 20000kg.
4. Employee charged by employer with the responsibility of supervising and directing not more than 10 employees (not being a number of employees working as a team).
5. Classing skins, furs or hides.

Promotional Criteria—

An employee remains at this level until he/she is capable of completing the tasks required of this level so as to enable him/her to be considered for promotion to the next level when a position becomes available.

STOREWORKER LEVEL 5—WOOL CLASSER

Relativity: 100%

Pre-requisites—

* Storeworker Level 4 or equivalent.
* Appropriate Certification.

Skills/Duties—

In addition to the skills/duties required of a Storeworker Level 4 the following skills/duties are required—

* Able to sort all types of wool to desired graded lines.
* Able to allocate bin types and calculate bin weights and percentages.

* Responsible for sorting wool to Industry Quality Control Standards.
* Understanding of operation of a Wool Re-handling Department.

Indicative of the tasks which an employee at this level may perform are the following—

1. Classing or sorting wool with or without mechanical aids.
2. Undertake appropriate recording functions.

Promotional Criteria—

An employee remains at this level until he/she is capable of completing the tasks required of this level so as to enable him/her to be considered for promotion to the next level when a position becomes available.

STOREWORKER LEVEL 6—OVERLOOKER

Relativity: 105%

Pre-requisites—

* Wool Classer or equivalent.

Skills/Duties—

In addition to the skills/duties required of Wool Classer the following skills/duties are required—

* Proven ability to train and supervise.
* Competent to train wool classers.
* Proficient in the accurate allocation of types and component percentages and weights of all wool bales.
* Must ensure quality control standards are met by all wool re-handling personnel.
* Must ensure the efficient operation of a wool re-handling department.

Indicative of the tasks which an employee at this level may perform are the following—

Control and co-ordinate all relevant functions of a wool re-handling operation.

(2) Deleted

(3) Deleted

(4) Total Wage Rates (Adults)

The total wage rate per week for adult employees performing the work described by the classifications detailed in subclause (1) of this clause shall be as detailed in column 5 of the table below. The rates of pay in this subclause take effect from the beginning of the first pay period commencing on or after 1 August 2001.

Column 1 CLASSIFICATION	Column 2 BASE RATE	Column 3 SUPPLEMENTARY PAYMENT	Column 4 ARBITRATED SAFETY NET ADJUSTMENTS	Column 5 TOTAL RATE
STOREWORKER LEVEL 1	328.70	46.80	88.00	463.50
STOREWORKER LEVEL 2	337.50	48.00	88.00	473.50
STOREWORKER LEVEL 3	345.10	49.10	88.00	482.20
STOREWORKER LEVEL 4	354.30	50.40	88.00	492.70
STOREWORKER LEVEL 5 – WOOL CLASSER	365.20	52.00	90.00	507.20
STOREWORKER LEVEL 6—OVERLOOKER	383.50	54.60	90.00	528.10

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.

(5) Transitional Provisions

(a) The provisions of subclauses (1), (2), (3) and (4) of this clause shall be trialled for a period of 12 months from the date of operation in order to assess the suitability of such a classification structure.

(b) Any dispute arising from the introduction of the provisions of subclauses (1), (2), (3) and (4) of this clause shall be discussed between the employee, employer and failing agreement, with a duly accredited union official. If the matter is not resolved at the workplace it shall be referred to the Western Australian Industrial Relations Commission.

(c) The following translation table shall be used to determine an employee classification as at the date of the introduction of this variation.

GRADING UNDER OLD CLASSIFICATION STRUCTURE	GRADING UNDER NEW CLASSIFICATION STRUCTURE (See exceptions below)
Storeman Grade (a)	Storeworker Level 1
Storeman Grade (b)	Storeworker Level 2
Storeman Grade (c)	Storeworker Level 2
Storeman Grade (d)	Storeworker Level 3
Storeman Grade (e)	Storeworker Level 3

GRADING UNDER OLD CLASSIFICATION STRUCTURE	GRADING UNDER NEW CLASSIFICATION STRUCTURE (See exceptions below)
Storeman Grade (f)	Storeworker Level 4
Wool Classer (g)	Storeworker Level 5—Wool Classer
Overlooker—2-5 employees (h)	Storeworker Level 6—Overlooker
Overlooker—6+ employees (h)	Storeworker Level 6—Overlooker

Exceptions

1. Weighing Adjusting which under the old classification structure was Grade (a) translates to Level 2 under the new structure.
2. Operator in charge of a fully automatic dump press (i.e. TriPak) which under the old classification structure was Grade (b) translates to Level 4 under the new classification structure.
3. Employee in charge of out store which under the old classification structure was Grade (e) translates to Level 4 under the new classification structure.

(d) The rates described herein include the 1st Minimum Rate Adjustment.

(e) It is agreed that the total amount of the supplementary payment described in subclause (3) of this clause shall be absorbed from any component of the weekly wage in excess of the base rate described in subclause (2) of this clause.

(f) It is agreed that no employee shall suffer a reduction in actual weekly total wage rates as a consequence of the introduction of the new classification structure.

(g) It is agreed that the parties shall aim to complete the Minimum Rates Adjustment process no later than 1 November 1993.

(h) It is agreed that each employer shall provide each employee, within three (3) months of the date of operation of this order, advice concerning that employee's new classification as described by subclause (1) of this clause.

(6) An allowance of five percent on so much of his/her average earnings per week exclusive of overtime as does not exceed the amount fixed from time to time for workers covered by the provisions of paragraph (a) of subclause (2) and paragraph (a) of subclause (3) of this clause shall be paid to a weekly worker if he/she is employed in a wool store for any period of less than six successive calendar months unless such employment has been terminated voluntarily or on account of malingering, inefficiency, neglect of duty or misconduct.

Provided that in the event of any such worker being dismissed (except for malingering, inefficiency, neglect of duty or misconduct) within fourteen days prior to Christmas Day, he shall receive not less than one half week's wages by way of such allowance. That is to say, if the five percent allowance on wages earned up to the time of dismissal is not equal to one half week's wages, then the half week's wage shall be paid, but if the five percent allowance on wages earned up to the time of dismissal is in excess of one half week's wages, then the said five percent allowance shall be paid but not the half week's wages.

(7) Thirty four cents per hour in addition to the above rates shall be paid to any worker who actually handles "dead" wool.

(8) If a worker is required by his/her employer to act as a first aid attendant in any store, for so acting he shall be paid in addition to his/her ordinary rate of pay the sum of 76 cents per day.

(9) (a) The weekly wage rates for junior employees shall be calculated by multiplying the relevant percentage determined by the employee's age as detailed below and the total rate of pay for the classification of Storeworker Level 1 as provided for in subclause 4 of this clause.

Age	Percentage
At 17 years of age or under	70
At 18 years of age	80
At 19 years of age	90
At 20 years of age	100

The total wage shall be calculated to the nearest 10 cents, with any amount of five cents or greater rounded up, any amount less than 5 cents being disregarded.

(b) The provisions of subclause (5) of this clause mutatis mutandis (the necessary changes being made) shall apply to Junior Employees.

(10) Casual Employees: Casual employees shall be paid at the rate of twenty percent in addition to the rates prescribed by this award for the appropriate classification.

WUNDOWIE FOUNDRY AWARD 1986

NO. A 8 OF 1986

23.— WAGES

(1) (a) An employee other than an apprentice shall be paid the rate per week assigned to his/her class of work.

CLASSIFICATION	GROUP	AMOUNT $
C 9	B	380.10
C10	D	365.20
C11	E	345.70
	G	334.70

CLASSIFICATION	GROUP	AMOUNT $
C12	H	327.20
	J	317.40
	K	315.90
C13	L	311.70
	M	310.20
C14	N	291.60

(b) Any tradesperson moulder employed in a foundry where no other jobbing moulder is employed shall be paid at the rate prescribed for leading hands in charge of not less than three and not more than ten other employees.

(2) Leading Hand Allowances—

An employee placed in charge of three or more other employees, or otherwise classified by the employer as a leading hand, shall be paid the additional margin set out hereunder—

		$
(a)	If placed in charge of not less than three and not more than ten other employees	16.60
(b)	If placed in charge of more than ten and not more than twenty other employees	25.40
(c)	If placed in charge of more than twenty other employees	32.80

(3) Tool Allowance—

(a) Where the employer does not provide a tradesperson or an apprentice with the tools ordinarily required by that tradesperson or apprentice in the performance of his/her work as a tradesperson or as an apprentice the employer shall pay a tool allowance of—

(i) $9.20 per week to such tradesperson, or

(ii) In the case of an apprentice a percentage of $9.20 being the percentage which appears against his/her year of apprenticeship in subclause (4) of this clause, for the purpose of such tradesperson or apprentice supplying and maintaining tools ordinarily required in the performance of his/her work as a tradesperson or apprentice.

(b) Any tool allowance paid pursuant to paragraph (a) of this subclause shall be included in, and form part of, the ordinary weekly wage prescribed in this clause.

(c) An employer shall provide for the use of tradespersons or apprentices all necessary power tools, special purpose tools and precision measuring instruments.

(d) A tradesperson or apprentice shall replace or pay for any tools supplied by his/her employer if lost through his/her negligence.

(e) Any employee in receipt of a tool allowance in accordance with this clause shall maintain an adequate tool kit located at the place of work to enable work to be carried out safely and efficiently. Such tool kit shall, at all times, contain the tools agreed by the Company and the union as the minimum for the respective occupation.

(4) Casual Employees—

An employee who is engaged to work less than five consecutive days shall be paid 20% of the ordinary rate in addition to the ordinary rate for his/her class of work.

(5) Apprentices—

(a) The rate per week shall be the percentage shown of the tradesperson's moulder rate—

Five Year Term	Percentage
First Year	40
Second Year	48
Third Year	55
Fourth Year	75
Fifth Year	88
Four Year Term	
First Year	42
Second Year	55
Third Year	75
Fourth Year	88
Three and Half Year Term	
First Six months	42
Next Year	55
Next following year	75
Final Year	88
Three Year Term	
First Year	55
Second Year	75
Third Year	88

(b) For the purpose of this subclause "tradesperson's rate" means the rate per week of the classification C10 contained in paragraph (a) of subclause (1) of this clause.

(6) Minimum Wage—

Notwithstanding the terms of this clause (or subclause) no adult employee shall be paid less than the Minimum Adult Award Wage unless otherwise provided in this clause.

(i) The Minimum Adult Award Wage for full time adult employees is $413.40 per week payable from the beginning of the first pay period on or after 1st August 2001.

(ii) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(iii) Unless otherwise provided in this subclause adults employed as casual or part time employees shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.

(iv) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision to the Minimum Adult Award Wage of $413.40 per week.

(v) (aa) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on traineeships, or Jobskills traineeships or to other categories of employees who by prescription are paid less than the minimum award rate.

(bb) Liberty to apply is reserved in relation to employees excluded under (aa) above and any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.

(vi) Subject to this subclause the Minimum Adult Award Wage shall —

(aa) apply to all work in ordinary hours.

(bb) apply to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave and for all other purposes of this award.

(vii) Nothing in this clause (or subclause) shall operate to reduce the rate of pay fixed by the award for an adult apprentice in force on 13th November 1997.

Note: A notation will be made in each relevant award by the Registrar where the adult apprentice rate requires specific mention as at 13th November 1997.)

(7) Structural Efficiency—

(a) Arising out of the decision of the State Wage Case on 8 September 1989 and in consideration of the wage increases resulting from structural efficiency adjustments, employees are to perform a wider range of duties including work which is incidental or peripheral to their main tasks or functions.

(b) The parties to this award are committed to co-operating positively to increase the efficiency, productivity and international competitiveness of the metal and engineering industry and to enhance the career opportunities and job security of employees in the industry.

(c) At the enterprise a consultative mechanism may be established by the employer, or shall be established upon request by the employees or their relevant union. The consultative mechanism and procedure shall be appropriate to the size, structure and needs of Wundowie Foundry. Measures raised by the employer, employees or union for consideration consistent with the objective of subclause (a) hereof shall be processed through that consultative mechanism.

(d) Measures raised for consideration consistent with subclause (b) hereof shall be related to implementation of the new classification structure, the facilitative provisions contained in this award and, subject to Clause 29.—Training of this award, matters concerning training and, subject to paragraph (d) hereof, any other measures consistent with the objective of paragraph (a) of this subclause.

(e) Without limiting the rights of either the employer or the union to arbitration, any other measure designed to increase flexibility at the plant or enterprise and sought by any party shall be notified to the Commission and by agreement of the parties involved shall be subject to the following requirements—

(i) the changes sought shall not affect provisions reflecting National standards recognised by the Western Australian Industrial Relations Commission;

(ii) the majority of employees affected by the change at the plant or enterprise must genuinely agree to the change;

(iii) no employee shall lose income as a result of the change;

(iv) the union must be a party to the agreement;

(v) the union shall not unreasonably oppose any agreement; and

(vi) any agreement shall be subject to approval by the Western Australian Industrial Relations Commission and, if approved, shall operate as a schedule to this award and take precedence over any provision of this award to the extent of any inconsistency.

(f) Transition/Implementation Period and Arrangements

An agreed new wage and classification structure forms Appendix Two—New Classification Structure and Definitions of this award.

(i) Duration

It is agreed between the parties that a transition/implementation period shall operate from the first pay period to commence on or after 23 July 1991 until the first pay period beginning on or after 23 December 1991.

(ii) Objectives

The objective of this transition/implementation period is—

(aa) to enable all parties to the award to familiarise themselves with the new wage classification and definition structure; and

(bb) for each plant or establishment to apply (subject to the transitional arrangements below) the new wage, classification and definition structure set out in Appendix One—Memorandum of Understanding of this award in place of existing arrangements as defined in Clause 5.—Definitions and subclause (1) of Clause 23.—Wages of this award.

(iii) Transitional Arrangements

In order to assist an orderly transition, the following arrangements shall apply—

(aa) From the first pay period commencing on or after 23 July 1991 an employee's new wage group shall be determined in accordance with subclause (1) of Clause 23.—Wages of this award.

(bb) Transfer to the new classification structure and definitions shall be subject to the availability of the Implementation Manual. In the interim the existing definitions in Clause 5.—Definitions of this award will apply.

(cc) The parties shall undertake appropriate consultation in accordance with paragraph (b) of this subclause.

(dd) Upon transition to the new classification structure employees, subject to placitum (cc) hereof will perform work in accordance with the new classification and definition as set out in Appendix Two—New Classification Structure and Definitions of this award, in lieu of definitions currently set out in Clause 5.—Definitions of this award.

(ee) Any disputes in relation to the transition/implementation of the new wage, classification and definition structure shall be referred in the normal manner for determination by the Western Australian Industrial Relations Commission.

(ff) The parties shall re-affirm that wage increases arising from broad-banding and adjustment of minimum rates are subject to absorption into existing over-award payments.

(iv) Reclassification will be according to the following principles—

(aa) Employees will transfer to the new classification structure without loss of pay in accordance with a schedule agreed between the parties which will "line-up" the old classification with the new levels.

(bb) Reclassification to any higher level shall be contingent upon such additional work being available and required to be performed by the employer.

(cc) In the event that there is a claim for reclassification by an existing employee to a higher level under the new structure on the ground that the employee possesses equivalent skill and knowledge gained through on-the-job experience or on any other ground the following principles apply—

The parties agree that the existing award disputes avoidance procedure shall be followed.

Agreed competency standards shall be established by the parties in conjunction with T.A.F.E (and S.E.S.D.A. when operative) for all levels in the new classification structure before any claims for reclassification are processed and shall be incorporated in the Implementation Manual as they become available.

The Implementation Manual shall lay down procedures for testing the validity of an employee's claim for reclassification. These procedures shall be undertaken by an independent third party recognised by the National Training Board—eg. T.A.F.E.

(v) Review

(aa) Prior to the expiration of the six month period, the parties will consult and make any changes to the classification structure as agreed are appropriate.

(bb) At the expiration of the six month period, employers will be required to have completed the transitional phase.

(cc) The parties are committed to modernising the terms of the award and to addressing the issues associated with training with a view to finalising these matters by 1 December 1991 and 1 January 1992 respectively.

(dd) The parties are also committed to finalising the Implementation Manual.

24.—SUPPLEMENTARY PAYMENTS

(1) (a) In addition to the rates payable under the provisions of Clause 23.—Wages of this award, an employee other than an apprentice, employed in classifications to which the following wage groups apply or in the classifications listed shall be paid the supplementary payment prescribed—

Wage Classification	Group/	Supplementary Payment Per Week $	Safety Net Adjustment Payment $	Total Supplementary Payment Per Week $
C 9	Group B	58.00	58.00	116.00
C10	Group D	52.00	58.00	110.00
C11	Group E	39.80	58.00	97.80
	Group G	39.80	58.00	97.80
C12	Group H	36.60	58.00	94.60
	Group J	36.60	58.00	94.60
	Group K	36.60	58.00	94.60
C13	Group L	30.30	58.00	88.30
	Group M	30.30	58.00	88.30
C14	Group N	33.80	58.00	91.80

(b) Safety Net Adjustment payments set out in this clause represent a payment which shall be absorbed into overaward payments.

An "overaward payment" is defined as the amount (whether it be termed "overaward payment", "attendance bonus", "service increment" or any term whatsoever) which an employee would receive in

excess of the "award wage" which applied immediately prior to the decision of the Western Australian Industrial Relations Commission dated 24 December 1993 (Application No. 1457 of 1993) for the classification in which such employee is engaged. Provided that such payment shall exclude overtime, shift allowances, penalty rates, disability allowances, fares and travelling time allowances and any other ancillary payments of a like nature prescribed by the award.

The 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.

(c) In addition to the rates payable under the provisions of this award an apprentice shall be paid a percentage of Wage Group C10, being the percentage in accordance with the provisions of subclause (5) of Clause 23.—Wages, of this award.

(d) The amount payable to any employee pursuant to the provisions of this subclause—

(i) shall be for all purposes of this award; and

(ii) shall be reduced by the amount of any payment being made to the employee in addition to the said rates otherwise than pursuant to the provisions of this award, whether such payment is being made by virtue of any Order, industrial agreement or other agreement or arrangement.

(2) The rate prescribed in this award for any classification is not amended by this clause and shall not, for the purpose of any other award, Order, industrial agreement or other agreement or arrangement, be deemed to have been so amended.

ZOOLOGICAL GARDENS EMPLOYEES AWARD 1969

NO. 29 OF 1969

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 $413.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2001.

(3) The Minimum Adult Award Wage of $413.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.

(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 $413.40 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 2001 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.

10.—WAGES

(1) (a) The minimum total rate of wage payable under this award shall be as follows

	Rate	Arbitrated Safety Net Adjustments	Minimum Total Rate
	$	$	$
KEEPER			
Year One	400.00	88.00	488.00
Year Two	410.00	88.00	498.00
Year Three	420.00	90.00	510.00
SPECIALIST KEEPER—GRADE I			
Year One	432.70	90.00	522.70
Year Two	444.40	90.00	534.40
Year Three	456.30	90.00	546.30
Year Four	468.20	88.00	556.20
SPECIALIST KEEPER—GRADE II			
Year One	480.10	88.00	568.10
Year Two	492.00	88.00	580.00
Year Three	503.90	88.00	591.90
Year Four	516.00	88.00	604.00
SENIOR SPECIALIST KEEPER			
Year One	536.30	88.00	624.30
Year Two	551.10	88.00	639.10
Year Three	566.90	88.00	654.90

(b) 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.

FULL BENCH— Appeals against decision of Commission—

2001 WAIRC 03434

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	IAN WILLIAM CANNON, APPELLANT
	v.
	LINFOX TRANSPORT (AUSTRALIA) PTY LTD, RESPONDENT
CORAM	FULL BENCH
	HIS HONOUR THE PRESIDENT P J SHARKEY
	COMMISSIONER A R BEECH
	COMMISSIONER S J KENNER
DELIVERED	TUESDAY, 7 AUGUST 2001
FILE NO/S	FBA 16 OF 2001
CITATION NO.	2001 WAIRC 03434

Decision	Appeal dismissed.
Appearances	
Appellant	Mr G McCorry, as agent
Respondent	Mr T H F Caspersz (of Counsel), by leave

Reasons for Decision.

THE PRESIDENT AND COMMISSIONER A R BEECH—

1 These are the joint reasons of the President and Commissioner Beech.

2 This is an appeal brought pursuant to s.49 of the *Industrial Relations Act* 1979 (as amended) (hereinafter referred to as "the Act") against the decision of a single Commissioner made on 21 March 2001. By that decision, the Commissioner dismissed an application made by the abovenamed appellant employee, Mr Ian William Cannon, whereby he claimed, pursuant to s.29(1)(b)(i) of the Act, such application being filed in the Commission on 30 November 1999, that he was harshly, oppressively and unfairly dismissed by the respondent company.

3 By the same application, Mr Cannon claimed, pursuant to s.29(1)(b)(ii) of the Act, that he had been denied a benefit to which he was entitled under his contract of employment, not being a benefit under an award or order, in that he was entitled to be paid a sum of money as payment in lieu of reasonable notice.

GROUNDS OF APPEAL

4 It is against that decision that Mr Cannon now appeals on the following grounds—

"**1.** The learned Commissioner erred in fact and in law in finding that the terms of the Appellant's contract of employment as *Regional Manager, Western Australia with the Coca Cola Business Stream* survived the loss of Coca Cola contract by the Respondent and applied to the Appellant in his capacity as Regional Development Manager in that—

1) the expression in the contract *"Linfox may at its reasonable discretion change your work location, duties, title or reporting relationships at any time to meet its business needs"*—

a) was not part of the contract but merely a preamble to it and did not have any binding effect; or alternatively,

b) was limited in its application to the Appellant's role as *Regional Manager, Western Australia with the Coca Cola Business Stream* and did not and was not intended to give the Respondent the right to the Appellant's services in any capacity;

2) there was uncontradicted evidence that some of the express terms of the contract were not complied with, namely that any variations had to be in writing and signed by both parties and that the Appellant would be paid a vehicle allowance;

3) there was no evidence that the change in terms and conditions of the Appellant's employment in December 1998 (from the provision of a vehicle to the Appellant to the payment of a vehicle allowance) amounted to a rectification of a breach of the initial contract rather than a variation of a new oral contract;

4) there was uncontradicted evidence that the terms of the contract were not objectively appropriate to the new relationship created after the Respondent's loss of the Coca Cola contract;

5) in the absence of any evidence about discussions or lack of discussion relating to changes to the Appellant's annual rate of salary or other benefits, no conclusions can be drawn about the significance or notability of there being no change in them.

2 The learned Commissioner erred in fact and in law in finding that the notice period given to the Appellant was in fact, or conceded by the Appellant to be, in excess of the requirements of section 170CM(2), in that on a proper construction of the Act, section 170CM(2) requires reasonable notice of termination [which can not be less than the amounts specified in section 170CM(2)] but it does not give an employer the right to terminate by giving just the prescribed minimum.

3 The learned Commissioner erred in law in finding that Article 11 of the Termination of Employment Convention has not been incorporated into the Workplace Relations Act 1996 in that—

a) Subdivision C of Division 3 of Part VIA of the Act is in *pari materia* with, replaced and is in substantially the same terms as, Subdivision B of Division 3 of Part VIA (the "1993 Reform Act provisions") of the Act as it existed prior to 1 January 1996;

b) The 1993 Reform Act provisions were expressly enacted to give effect to the termination of Employment Convention and Subdivision C was enacted for the purpose of "assisting in giving effect to the Termination of Employment Convention"; and

c) The Commonwealth's power to validly legislate to give effect to or assist in giving effect to the Termination of Employment Convention requires section 170CM(2) to be interpreted in such a way as to give full and proper effect to Article 11 of the Termination of Employment Convention.

4) The learned Commissioner erred in fact and law in not finding that the notice period in the initial contract of employment was rendered void and severable by the operation of section 170 CM of the *Workplace Relations Act 1996* and replaced by a common law implied term that reasonable notice would be given, in that—

a) there was ample evidence that the period of notice given was not reasonable in all the circumstances and thus contravened section 170CM;

and

b) there was no impediment to severing from the contract the provision rendered void;

5) The learned Commissioner erred in fact and in law in failing to consider whether, if the period of notice given was lawful in all the circumstances, it was harsh, oppressive and unfair for the Respondent to rely on that period of notice in circumstances where the person initiating and responsible for terminating the Appellant's employment, considered that a longer period of notice and more generous termination benefits should have been given and attempted to obtain them for the Appellant.

6) The learned Commissioner erred in law in finding that section 41 of the Minimum Conditions of Employment Act 1993 did not apply to the Appellant's termination, in that section 41 relates to actions by an employer having significant effect on an employee and significant effect is defined to include elimination of job tenure without reference to the reasons for the elimination of the job tenure.

7) The learned Commissioner erred in law in not considering whether, independent of any obligation imposed by section 41 of the Minimum Conditions of Employment Act 1993, the Respondent as a responsible employer should have discussed with the Appellant the significant effect the termination would have on the Appellant and what might be done to ameliorate the effects of that termination.

8) The learned Commissioner erred in fact and in law in finding that the Appellant had not made out his case that there had beep an abuse of the Respondent's right to terminate his employment on the grounds of poor performance in that—

   a) the evidence established that the avowed reason for the Appellant's termination was that he had not generated sufficient revenue for the Respondent;

   b) there was no evidence or no reliable evidence that the Appellant had ever been made aware of the priority placed on generating sufficient revenue;

   c) the evidence of the principal witness for the Respondent was that immediate results were not expected from the Appellant, that it would take some time to find suitable customers and build up a presence in the market place and that there had been no answer provided when the Appellant specifically asked what was the time scale for achieving success;

   d) the prior complaints about the Appellant's performance did not relate to the Appellant failing to achieve the objective of generating sufficient revenue but to the Appellant's failure to follow the processes the Respondent required;

   e) there is a palpable inconsistency between the written evidence of the Respondent's witnesses and the avowed parole evidence of the reason for termination sufficient to indicate that the Appellant was never made aware that his employment was in jeopardy because of a failure to achieve unstated revenue goals but only for failure to follow the Respondent's desired processes."

BACKGROUND

5 Mr Cannon was employed by the respondent, which is a national and large scale transport company. He was engaged as Regional Manager for Western Australia to manage the Coca Cola Business Stream of the respondent from 3 August 1998. On 5 August 1998, the respondent lost the Coca Cola contract in Western Australia.

6 As a result, Mr Cannon and the respondent's Managing Director, Mr Michael Brockhoff, had discussions and, following those discussions, Mr Cannon took up the position of Business Development Manager a few days later (see pages 209-211 of the appeal book (hereinafter referred to as "AB")). He worked in that position until his employment was terminated on 10 November 1999.

7 His complaint about his termination and his claim for contractual benefits is set out on page 6(AB) as follows—

"(a) The Respondent harshly oppressively and unfairly terminated the Applicant's employment in that the employment was terminated without there being any valid reason connected with the capacity or conduct of the Applicant or the operational requirements of the employer's business.

(b) In the alternative, if the Respondent had concerns about the conduct or the capacity of the Applicant, it failed to raise these concerns with the Applicant or take any positive steps to ensure that the Applicant was aware of those concerns and the implications of not taking appropriate action to address those concerns.

(c) Further or in the alternative, the Respondent, failed to discuss with the Applicant the significant effect the termination of employment would have upon him and measures that might be taken to minimize that significant effect, contrary to section 41 of the Minimum Conditions of Employment Act 1993, the failure to do so making the termination of the Applicant's employment harsh, oppressive and unfair.

(d) Further or in the alternative, the Respondent failed to give the Applicant reasonable notice or pay in lieu of notice having regard to the Applicant's position, remuneration, age, the nature of his recruitment, his future employment prospects and contemporary human resource management practices, the failure to do so making the termination harsh, oppressive and unfair.

(e) Further, the Applicant was entitled by way of an implied term in his contract of employment, to reasonable notice or pay in lieu of notice, which in all the circumstances would have been 6 months; the terms of the contract of employment entered into on 20 July 1998 lapsing on or about 3 August 1998 when the Respondent lost the Coca-Cola contract and a new contract then being offered and accepted by the Applicant, or in the alternative, if the contract of employment of the 20 July 1998 was merely varied by the circumstances arising out of the loss of the Coca-Cola contract, the express term therein was void and severable by operation of section 170CM of the Workplace Relations Act 1996.

(f) The Applicant claims against the Respondent an order that—

(i) The Respondent harshly oppressively and unfairly dismissed the Applicant from his employment;

(ii) It is not practicable for the Applicant to be reinstated or re-employed by the Respondent;

(iii) The Respondent pay to the Applicant by way of compensation for the harsh, oppressive and unfair dismissal, an amount equal to 6 months remuneration calculated on the basis of the Applicant's total salary package of $105,000; and

(iv) The Respondent pay to the Applicant by way of pay in lieu of notice, an amount equal to 6 months remuneration calculated on the basis of the Applicant's total salary package of $105,000."

8 At the time of the hearing, Mr Cannon was 54 years of age and had extensive experience in the transport industry. Between 1981 and 1990, he was employed by TNT Australia as the Western Australian State Manager for the Kwikasair group of companies, where he became

acquainted with Mr John Dixon, who is the respondent's Chief Operations Officer. Mr Dixon and Mr Cannon worked together when Mr Cannon was employed by TNT Australia. From 1990 to 1996, Mr Cannon and his wife ran a wholesaling business. He sold that business in 1997 and took up a position as Sales Manager of K & S Express Transport.

9 In 1997, Mr Cannon contacted Mr Dixon and said that he wished to return to the transport industry. In May 1998, Mr Dixon told Mr Cannon that the respondent was looking for a senior person to manage the Coca Cola transport contract in Western Australia. The management position was vacant as the previous manager had left the company.

10 Mr Dixon came to Perth in early July 1998 to make a presentation to Coca Cola to re-tender for the contract. Mr Cannon met Mr Dixon and other senior employees of the respondent. Mr Dixon informed Mr Cannon that the respondent was confident of winning the tender for the Coca Cola work. Mr Dixon testified that Mr Cannon asked whether his employment would continue if the Coca Cola contract was lost and Mr Dixon informed him that, if the respondent lost the contract, he, Mr Cannon, would be employed in a similar capacity on the same proposed terms and conditions.

11 A formal offer of employment, in the following relevant terms (see pages 42-45(AB)), was made to Mr Cannon on 15 July 1998, which was accepted by him on 20 July 1998—

> "It is with pleasure that I confirm the offer to employ you in the position of Regional Manager, Western Australia with the Coca-Cola Business Stream of Linfox Transport (Aust) Pty Ltd A.C.N. 004 718 647 ('Linfox') commencing 3 August, 1998. Initially you will be based at the Linfox State Office at Kewdale and report directly to the National Manager of the Coca-Cola Business Stream.
>
> The terms and conditions for this offer of employment are set out below. If you accept this offer, these terms will continue to apply to your employment except to the extent that they are varied, replaced or cancelled by agreement in writing signed by both parties. Linfox may at its reasonable discretion change your work location, duties, title or reporting relationships at any time to meet its business needs.
>
> **SALARY**
>
> Linfox will pay you a salary at an annual rate of $75,000. Annual leave loading is included in the salary and a separate allowance will not be paid at the time leave is taken. Salaries are usually reviewed annually in June of each year at the discretion of Linfox. The next planned review relevant to you will be in June 1999.
>
> …
>
> **LEAVING LINFOX**
>
> Your employment with Linfox may be terminated at any time by either party giving to the other.
>
> • one month's notice in writing; or
>
> • if at the time of termination you have more than five years continuous service with Linfox, two month's notice in writing.
>
> Linfox may at its option commute any period of notice of termination by payment in lieu to you of the salary which would otherwise be payable for the balance of the notice period.
>
> Linfox may terminate your employment without notice or payment in lieu of notice for serious misconduct, including commission of a criminal offence, or if you are precluded by law from performing the duties of your position.
>
> Your rights to compensation or benefits from Linfox relating to the cessation of your employment are restricted to those expressly set out in this letter.
>
> **SEVERABILITY**
>
> Part or all of any provision of this letter that is illegal or unenforceable will be severed from this letter and the remaining provisions will continue in force.
>
> **WAIVER**
>
> The failure of Linfox at any time to insist on performance of any provision of this letter is not a waiver of its right at any later time to insist on performance of that or any other provision of this letter.
>
> **GOVERNING LAW**
>
> This letter is governed by the law applicable in the State in which you are employed and you irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of that State.
>
> **ENTIRE UNDERSTANDING**
>
> This letter sets out the entire understanding and agreement between the parties with respect to the terms and conditions of the employment offered with Linfox. No collateral agreement will be of any force or effect unless it is in writing and signed by both parties. All negotiations, representations, warranties or commitments in relation to your employment are superseded by this document and will be of no force or effect whatever.
>
> The terms and conditions of your employment with Linfox as set out in this letter may subsequently be varied only by an agreement in writing signed by both parties."

12 The agreement was then signed by Mr Cannon and on behalf of the respondent.

13 Mr Cannon commenced work in Perth after the Coca Cola contract was lost. His role was to develop business opportunities for the respondent in the capacity of Business Development Manager. The new duties carried the same salary of $75,000.00 and the same car allowance as the initial position had. He was told that he had to report to Mr Paul Xavier Bennett, who was located in Victoria and who was the General Manager of the Industrial Business Stream. No new contract in writing was entered into and there was certainly no evidence of one.

14 The respondent's office in Western Australia did not have a large number of staff. Mr Cannon worked with Mr Stephen Gerrard Cain who was the Regional Manager and State Representative for Western Australia. He also worked with Mr Kipling Sandercock, a Regional Manager who is also a business analyst and computer specialist.

15 Mr Cannon gave uncontradicted evidence that, when he first commenced work in the Perth office, morale was very low. He said that many of the contracts were losing money and sales revenue was down almost 50% on the previous year.

16 Mr Bennett did not set a budget for Mr Cannon to reach. Mr Bennett gave evidence that the respondent was looking to develop substantial business relationships with particular customers and not small accounts. Mr Bennett said that he advised Mr Cannon that he may spend a year on developing one proposal or he might need to develop half a dozen concepts. When asked what success rate he expected from Mr Cannon, Mr Bennett said that he would expect a success rate of something like 30% of proposals submitted to prospective clients who were serious in their dealings with the respondent.

17 Whilst there was a dispute as to whether Mr Cannon was given sufficient guidance, direction and training to perform the role of Business Development Manager, it was common ground that no issue arose in respect of Mr Cannon's performance until June 1999.

18 From August 1998 until mid 1999, Mr Cannon pursued a number of prospective business proposals without much success. The only account which Mr Cannon won whilst employed by the respondent was a small account with Arlec, which was worth about $1,000.00 per week. Until a tender presentation for a contract with BHP was made on 4 June 1999, Mr Bennett was not dissatisfied with Mr Cannon's efforts to generate new business.

19 The Commissioner found that Mr Cannon was formally warned about his performance on 8 June 1999 and again

on 4 October 1999. Further, the evidence given by Mr Bennett and Mr Cain established that Mr Cannon was also verbally warned on a number of occasions that he was required to improve his performance. It is clear from the evidence that Mr Cannon was aware that his performance was regarded as unsatisfactory from 3 June 1999 and that, after he received a memorandum dated 4 October 1999, he knew his job was at risk.

20 Despite a first formal warning on 8 June 1999 that the BHP data was inadequate, Mr Cannon did not take substantive steps to gather detailed information for the Woolworths contract. Further, he misled Mr Cain, as the Commissioner found, in relation to that contract. It was conceded on behalf of Mr Cannon that he informed Mr Cain on a number of occasions between the end of July 1999 and 24 September 1999 that he was working on obtaining information sought by Mr Cain in relation to the Woolworths tender. Although Mr Cannon testified that he had obtained some of the information referred to in the e-mail from Mr Cain, it is clear from paragraph 8 of his memorandum to Mr Bennett of 8 October 1999 that he had, in fact, done little, if any, work (see pages 52-53(AB)). Further, it is apparent that Mr Cannon did not learn from the BHP tender process that a contractor's data pack cannot always be relied upon.

21 The Commissioner applied the dicta of the Commission in *Bogunovich v Bayside Western Australia Pty Ltd* 79 WAIG 8 (FB) (did not apply *Margio v Fremantle Arts Centre Press* 70 WAIG 2559 (FB)) and held that the respondent had formally warned Mr Cannon about his performance on 8 June 1999 and again on 4 October 1999 and also verbally warned him on a number of occasions that he was required to improve his performance.

22 The Commissioner then held that the circumstances of the case were such that Mr Cannon had not made out a case that the respondent abused its right to terminate his employment on grounds of poor performance.

23 Those findings were not challenged in this appeal.

Reasonable Notice

24 Mr McCorry contended, on behalf of Mr Cannon, that, if the Commission found that his performance was such that his employment should be terminated, his contract of employment was not terminated lawfully and justifiably by the giving of one month's pay in lieu of notice. It was contended on behalf of Mr Cannon that the express period of notice of termination contained in the contract of employment signed by Mr Cannon on 20 June 1998 ceased to apply to his employment when the Coca Cola contract was lost.

25 Alternatively, it was argued on behalf of Mr Cannon that the notice period in the contract was void and was severable by operation of s.170CM of the *Workplace Relations Act* 1996 (Cth) (hereinafter referred to as "the WR Act").

26 The Commissioner referred to the dicta of the Full Bench in *Robowash Pty Ltd v Hart* 78 WAIG 2325 at 2328 (FB) where Sharkey P observed—

> "It is a question of fact as to whether a change of duties amounts to a termination of the contract of employment or, alternatively whether it amounts to a variation of the original contract (see *Real Estate Institute of Western Australian Inc v The Federated Clerks' Union of Australian Industrial Union of Workers, WA Branch* (op cit), *Kenny v Elmerside Pty Ltd* (op cit) and *Quinn v Jack Chia (Australia) Ltd* [1992] 1 VR 567 at 576-579.
>
> Certainly, where an employer and employee agree to an alteration in the employee's duties and responsibilities which is profound, a court should be more ready to hold (unless the original contract provided for that contingency) that a new contract has replaced the old, or at least that the old contract, as named, contained terms objectively appropriate to the new relationship created."

27 The Commissioner then held that, because the employment contract provided "Linfox may at its reasonable discretion change your work location, duties, title or reporting relationships at any time to meet its business needs"; this gave the respondent the right to the services of Mr Cannon in any capacity it chose to direct from time to time. Notably, this clause, according to the Commissioner, did not authorise the respondent to change Mr Cannon's annual rate of salary or other benefits.

28 Whilst Mr Cannon was initially provided with a car and not paid a car allowance in accordance with the terms of his contract, this was rectified before the date of termination of the employment contract, otherwise the terms of the written contract were adhered to.

29 Further, the Commissioner held that the notice period in the contract of employment was not rendered void and severable by operation of s.170CM of the WR Act, which purports to give effect to or incorporate Article 11 of the *Convention Concerning Termination of Employment at the Initiative of the Employer* (hereinafter referred to as "the Termination of Employment Convention") (see page 20(AB)).

30 As the Commissioner held, conventions entered into with the Federal Government do not form part of Australia domestic law, unless they have been incorporated by way of statute (*Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273 per Mason CJ and Deane J at 286-287 and the cases cited therein).

31 The Commissioner held that it was clear that Article 11 of the Termination of Employment Convention has not been incorporated into the provisions of the WR Act. Thus, there was no scope for implying a term into the contract of employment that Mr Cannon's employment could only be terminated by way of reasonable notice because, to do so would contradict an express term of the contract.

32 The Commissioner did not accept that s.41 of the *Minimum Conditions of Employment Act* 1993 (hereinafter referred to as "the MCE Act") applied to Mr Cannon's termination. Accordingly, the Commissioner held also that s.40(2) of the MCE Act, qualifying s.41, meant that s.41 only applied when the employer has decided to take action that is likely to have a significant effect on an employee or to make that employee redundant. It was conceded that Mr Cannon was not made redundant by the respondent. It was also held that, because of the definition of "conduct", which is defined as conduct which has "a significant effect on an employee", as it appears in s.40(2) of the MCE Act, s.41 does not apply to the termination of an employee's employment on grounds of poor performance.

33 The applications were then dismissed.

ISSUES AND CONCLUSIONS

34 This was a discretionary decision, as that term is defined in *Norbis v Norbis* (1986) 161 CLR 513 and *Coal and Allied Operations Pty Ltd v AIRC* (2000) 74 ALJR 1348 (HC). Some of the grounds of appeal challenge the exercise of the discretion at first instance. Some do not. Insofar as the appeal grounds challenge the exercise of discretion, we observe that the Full Bench has no warrant to interfere with the exercise of the discretion at first instance unless the appellant establishes that the Commission at first instance erred in accordance with the well known principles laid down in *House v The King* [1936] 55 CLR 499 (see also *Gromark Packaging v FMWU* 73 WAIG 220 (IAC)).

35 We now deal with the question raised on appeal.

Reasonable Notice

36 It was a major part of the case at first instance that the failure to pay a sum in lieu of reasonable notice constituted an element of unfairness in the dismissal, and the claim for contractual benefits was for a sum which had not been paid in lieu of the giving of reasonable notice.

37 Mr Cannon's case was that he was entitled to reasonable notice because the express period of notice referred to in the written agreement and referred to above, namely one month, did not apply because the written agreement had come to an end.

38 Alternatively, it was submitted that the period of notice of one month prescribed in the agreement was void because of the operation of s.170CM of the WR Act because, in prescribing notice of at least one week, s.170CM(2) of that Act displaces the express contractual prescription of one month's notice and imports into the contract a reasonable requirement to give "reasonable notice" instead.

Was the Written Agreement Terminated?

39 The Commissioner construed the written agreement as containing a term entitling the employer to "redeploy" Mr Cannon in his duties. It therefore followed that there was no termination of that contract until the dismissal, no new or materially varied contract, and the provision prescribing a period of notice of one month to terminate the contract (the period of notice which was in fact given by the respondent to Mr Cannon) was in force and applied at the time of the dismissal.

40 We should observe that the written agreement signed by or on behalf of both parties is expressed in plain terms. It was not submitted that it was ambiguous and it is not. The parties acknowledged in the agreement itself that it set out the entire understanding and agreement between the parties with respect to the terms and conditions of the employment offered by the respondent. It was not contended that it did not.

41 It is quite clear that there was a right in the employer, "at its reasonable discretion", to change the appellant employee's work location, duties, title or reporting relationships. As a matter of fact, all of these were changed except the work location. It was submitted that this provision was part of the preamble and not a term or condition of the contract.

42 On a fair reading of the whole of the written agreement, it was identified as one of the terms and conditions of employment "set out below". Further, the contract confers, in its clear terms, a right in a party to the contract, the employer, to do certain things to which the employee agrees, by his signature to the contract.

43 There is, therefore, and was a clear unambiguous term and condition of the contract empowering the employer to change the work location, duties, title and reporting relationships of the employee. That, on the evidence, is what occurred and, in fact, the exercise of such power was agreed to and the new duties were performed by the appellant employee until his contract of employment was terminated and he was dismissed.

44 What then was the effect at law, if any, on the contract of that change?

45 The only limit upon the ability to change the duties of Mr Cannon was that it must occur within the reasonable discretion of the respondent. There was no contention that the discretion was exercised unreasonably, nor on the evidence could it have been correctly so contended. Mr Cannon was placed in a managerial position without reduction of remuneration, performing duties which, on the evidence, were substantially similar to those of the Coca Cola Regional Manager. The Notice of Appeal does not allege otherwise and, in any event, there is the uncontroverted evidence of Mr Bennett that the selection criteria for the Coca Cola Regional Manager were adaptable to the alternate role of Business Development Manager (see page 250(AB)).

46 Accordingly, it was open and correct to find that the changes in duties, title and reporting relationships were well within the power conferred by the contract on the respondent.

47 In any event, even if the Commissioner's construction were wrong, there was not, as Mr Caspersz submitted for the respondent, such a substantial change of duties as to bring about a termination of the contract of employment and the creation of a new one (see *Robowash Pty Ltd v Hart* (FB)(op cit) and in particular the passage cited by the Commissioner at first instance).

48 Further, such an assertion is not a ground of appeal.

49 It follows that there was no termination of the original contract until Mr Cannon was dismissed, that the Commissioner correctly so found and correctly construed it, and the express provision for notice contained therein applied and was availed of by the employee.

50 That was the express notice prescribed and there was no reasonable notice implied or impliable at law.

51 There was no other evidence or submission with any merit that the agreement had been terminated or had been varied in any material manner. In accordance with the written agreement of employment, the respondent, at its reasonable discretion, changed Mr Cannon's duties, title and reporting relationships. The contract of employment, signed by the parties, remained in force and it was open to so find and correct to so find.

Section 170CM of the *Workplace Relations Act* 1996 (Cth)

52 It was contended for Mr Cannon that the notice provided for under the contract was less than that required by s.170CM of the WR Act and that as a result the terms of the contract prescribing that notice were rendered void and severable by the operation of s.170CM of the WR Act.

53 S.170CM, it was submitted, gives effect to and incorporates Article 11 of the Termination of Employment Convention reproducing as it does in Schedule 10 of the WR Act. Article 11 reads as follows:—

> "A worker whose employment is to be terminated shall be entitled to a reasonable period of notice or compensation in lieu thereof, unless he is guilty of serious misconduct, that is, misconduct of such a nature that it would be unreasonable to require the employer to continue his employment during the notice period."

54 S.170CM(1) and (2) of the WR Act are reproduced at pages 20 and 21(AB) in the Commissioner's reasons for decision. Article 11 of the Convention was not incorporated into the statute and could not be implied into the contract of employment. In our opinion, whether it is or is not does not matter, at least on the submission to the Full Bench on this appeal.

55 The WR Act purports to make certain prescriptions. First, except in a case where an employee is guilty of serious misconduct of such a nature that it would be unreasonable to require the employer to continue the employment of any employee during the required period of notice, an employer must not terminate an employee's employment unless the employee has been given the required period of notice (see s.170CM(2) and (3) of the WR Act) or he/she has been paid the required amount of compensation instead of notice (see s.170CM(4) and (5) of the WR Act).

56 In our opinion, what the Commonwealth Parliament has done in s.170CM(2) of the WR Act is to prescribe certain minimum periods of notice for contracts of employment of certain lengths as the reasonable notice which Article 11 requires.

57 The words of the section are plain and unambiguous. They do not prescribe that reasonable notice be given in broad terms. They prescribe certain minimum periods of notice to achieve reasonableness. The minimum notice provided for continuous service of one year is one week and for one to three years, two weeks, increasing each by one week if the employee is over 45 years of age and completed two years' service (see s.170CM(2) of the WR Act).

58 Thus, insofar as it is applicable, the notice provided for in the contract of one month was more than that prescribed for continuous service up to one year and between one and three years. Thus, it was greater notice than required in this case, which was, at most, two weeks.

59 In any event, we would require a more substantial argument than was presented on this appeal that the provisions of s.170CM of the WR Act should be implied as a term of a contract of employment, when that is not what the statute says. It may be that the doctrine of illegality applies to contracts which contain a provision for notice contrary to the minima contained in s.170CM(2) of the WR Act. However, we would require to be persuaded that that is so and we were not, by authority or otherwise.

60 Further, the better approach is to say that, if the act of giving "unreasonable" notice contrary to that section is given, then the remedy is prosecution or enforcement under the WR Act, because this is a statutory provision which stands apart from the contract (see a similar approach in *Thompson v Gregmaun Farms Pty Ltd* 80 WAIG 1733 (FB)).

61 In any event, whether conceded or not, the notice provided for in the contract and actually given was "reasonable" as prescribed by s.170CM(2) of the WR Act because it was more than the prescribed applicable minimum. The provision in the contract was not illegal or severable.

62 There was no error established by that ground of appeal.

Section 41 of the *Minimum Conditions of Employment Act* 1993 (as amended)

63 Next it was submitted that the Commissioner erred in that she failed to find that the dismissal was contrary to s.41 of the MCE Act. The Commissioner found that s.41 did not apply to the dismissal in this case. Quite correctly, she found that s.41 applies only when an employer has decided to take action which is likely to have a significant effect on an employee, or has decided to make an employee redundant.

64 It was conceded correctly at first instance that Mr Cannon was not made redundant. Further, the definition in s.40(2) of the MCE Act of conduct defined to have a "significant effect on an employee" does not apply to the termination of the employee's employment for poor performance. S.41 of the MCE Act had no application in this case. There was no error in the Commissioner's finding.

65 In any event, there was ample and sustained consultation and counselling in relation to the respondent's complaints of poor performance by Mr Cannon before the dismissal, a fact not challenged.

The Alleged Admission by Paul Xavier Bennett

66 It was submitted to the Full Bench that Mr Bennett, an executive of the respondent, had admitted that the dismissal of Mr Cannon was unfair. That was an ultimate question for determination by the Commission. Hence the admission, if it were made, was irrelevant and could not bind the Commissioner.

67 However a careful reading of Mr Bennett's evidence in cross-examination (see pages 246-247 AB) makes it clear that Mr Bennett made no such admission and ventured no such opinion. All he said was that he considered Mr Cannon's request "for some leniency or some consideration in relation to what he was going to get on termination" and passed the request onto the Human Resources Manager, Mr Michael Altoff, for his decision. In any event, the question for Mr Altoff, on the evidence, was not one of unfairness but whether there was warranted a payment of more than what Mr Cannon was strictly entitled to, in the context of leniency.

68 That ground is simply not made out.

FINALLY

69 No ground of appeal is, in our opinion, made out for those reasons, there was no error of law or fact and no miscarriage of the exercise of discretion established, and therefore we would dismiss the appeal.

COMMISSIONER S J KENNER—

70 I have had the advantage of reading in draft form the joint reasons of the President and Beech C with which I am in general agreement. I add the following observations of my own.

The Contract Issue

71 The appellant argued that the Commission at first instance erred in concluding that the terms of the appellant's contract of employment with the respondent, set out at AB 42, did not survive the respondent's loss of the Coca-Cola contract. Furthermore and any event, it was submitted that the provision in the offer of employment letter prescribing that "Linfox may at its reasonable discretion change your work location, duties, title or reporting relationships at any time to meet its business needs", did not support the appellant's employment in the new position of Business Development Manager.

72 On a fair reading of the evidence and the duties and responsibilities of the original position of Regional Manager and the new position, it appears that the change in duties and responsibilities was far from profound, to support the conclusion that the original contract was terminated and a new contract entered into: *Quinn v Jack Chia (Australia) Pty Ltd* (1992) 1 VR 567; *Robowash Pty Ltd v. Hart* (1998) 78 WAIG 2325.

73 As to the submission of the appellant that the term of the letter of appointment referred to above did not have contractual effect and therefore did not enable the respondent to "transfer" the appellant to the new position, that submission must be rejected. Looking at the terms of the letter of 15 July 1998 in its totality, it is clear that this provision formed part of the contract of employment between the appellant and the respondent. In my opinion, one must look at the entire document to ascertain the intention of the parties to the contract of employment. I do not agree with the agent for the appellant's submission that the first two paragraphs of the letter of 15 July 1998 are merely preambles, with the terms of the contract set out under the heading "salary" and below. If this construction were correct, then for example, the contract would not specify the position to be occupied by the appellant, nor the location of his then employment, both of which in the employment setting, are crucial provisions. I have no doubt that the last sentence of the second paragraph was clearly intended to have contractual effect.

74 I do not consider that this provision conferred as broad a discretion on the respondent to "transfer" the appellant to another position, as the Commissioner at first instance considered that it did, in holding that it gave the respondent the right to the services of the appellant "in any capacity" (AB20). The right to exercise this power was subject to the test of reasonableness. However, the "transfer" effected by the respondent was clearly reasonable in that the duties and responsibilities of the Business Development Manager were reasonably proportionate to the duties and responsibilities of the original position of Regional Manager. Accordingly, there was no error in the Commissioner's conclusions in this regard.

The s 170CM(2) Issue

75 The appellant submitted that on its proper construction, s 170CM of the Workplace Relations Act 1996 (Cth) ("the WR Act") requires an employer to give an employee on termination of employment, reasonable notice or payment in lieu thereof. The argument underpinning this submission was that by s 170CA(1)(e) of the WR Act, the Commonwealth Parliament enacted the termination of employment provisions contained within Division 3 of Part VIA of the WR Act, so as to "assist in giving effect to the Termination of Employment Convention."

76 Article 11 of the Termination of Employment Convention provides that—

> *"A worker whose employment is to be terminated shall be entitled to a reasonable period of notice or compensation in lieu thereof, unless he is guilty of serious misconduct, that is, misconduct of such a nature that it would be unreasonable to require the employer to continue his employment during the notice period."*

77 The thrust of the appellant's submission was that the effect of this provision, when read with s 170CA(1)(e), is to require the conclusion that the reference to "reasonable period of notice or compensation in lieu thereof" in Article 11 should in effect, be incorporated into s 170CM(2), to require reasonable notice to have been afforded to the appellant. The actual notice, as given to the appellant, that being one months' pay in lieu, was not reasonable in all the circumstances and thus should be struck down by reason of s 170CM of the WR Act, as the submission went. What then would be reasonable notice, on the appellant's argument, is to be determined by the application of the common law tests as to the implication of a term of reasonable notice into contracts of employment.

78 Division 3 of Part VIA of the WR Act was enacted by the Workplace Relations and Other Legislation Amendment Act 1996, which effected significant changes to the former Industrial Relations Act 1988 (Cth). In particular, the new Division 3 of Part VIA, no longer relied principally upon the external affairs power but rather, reliance was placed on the corporations power and the trade and commerce power of the Commonwealth Constitution: *Victoria v. Commonwealth of Australia* (1996) 138 ALR 129.

79 The new provisions no longer give effect to the Termination of Employment Convention, as did the provisions in the 1988 Act, but rather, "assist" in giving effect to the Termination of Employment Convention, which does not require the adoption of the Convention in its entirety: *Williams v. Commonwealth of Australia* (2000) AILR 4-352; cf *Konrad v. Victoria Police* (*State of Victoria*) 165 ALR 3.

80 Section 170CM clearly provides for a statutory minimum in terms of notice of termination of employment, or compensation in lieu thereof. There is no suggestion, on a plain reading of the section, that there is any requirement within it to provide "reasonable notice", whatever that might be in a particular circumstance. In other words, what Article 11 of the Termination of Employment Convention requires, is the giving of reasonable notice. Consistent with s 170CA(1)(e) of the WR Act, the Commonwealth has legislated the statutory minimum notice periods in s 170CM(2), as its expression of what the Commonwealth considers reasonable notice as a minimum. This is entirely consistent with the stated object of Division 3 in s 170CA(1)(e), in "assisting in giving effect to" the Termination of Employment Convention.

81 An employer, when terminating the employment of an employee, is therefore required to give, by s 170CM(2), at least the period of notice there set out. Of course, it does not preclude a greater period of notice being given, but it does not require it.

82 A failure by an employer to comply with this minimum statutory obligation may attract the sanctions specified in ss 170CP and 170CR of the WR Act. Not insignificantly in my opinion, s 170CR(4) empowers the court, on being satisfied that an employer has contravened s 170CM, to order the payment of damages equal to the amount that would have been paid by the employer to the employee, resulting in the employer not contravening s 170CM. This tends to suggest, contrary to the submission of the appellant, that there was no intention by the Commonwealth Parliament for s 170CM to be viewed as conferring generally a right upon dismissed employees to be given, or paid in lieu thereof, reasonable notice. Rather, the court may order the payment of damages in respect of the minimum period specified in s 170CM(2).

83 I would therefore also dismiss the appeal.

THE PRESIDENT:

84 For those reasons, the appeal is dismissed.

Order accordingly

2001 WAIRC 03435

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	IAN WILLIAM CANNON, APPELLANT
	v.
	LINFOX TRANSPORT (AUSTRALIA) PTY LTD, RESPONDENT
CORAM	FULL BENCH
	HIS HONOUR THE PRESIDENT P J SHARKEY
	COMMISSIONER A R BEECH
	COMMISSIONER S J KENNER
DELIVERED	TUESDAY, 7 AUGUST 2001
FILE NO/S	FBA 16 OF 2001
CITATION NO.	2001 WAIRC 03435

Decision	Appeal dismissed.
Appearances	
Appellant	Mr G McCorry, as agent
Respondent	Mr T H F Caspersz (of Counsel), by leave

Order.

This matter having come on for hearing before the Full Bench on the 17th day of July 2001, and having heard Mr G McCorry, as agent, on behalf of appellant and Mr T H F Caspersz (of Counsel), by leave, on behalf of the respondent, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 7th day of August 2001 wherein it was found that the appeal should be dismissed, it is this day, the 7th day of August 2001, ordered that appeal No. FBA 16 of 2001 be and is hereby dismissed.

By the Full Bench,

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

FULL BENCH— Appeals against decision of Industrial Magistrate—

2001 WAIRC 03311

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	AUSTRALIAN LIQUOR, HOSPITALITY AND MISCELLANEOUS WORKERS UNION, WESTERN AUSTRALIAN BRANCH, APPELLANT/RESPONDENT
	v.
	FALCON INVESTIGATIONS AND SECURITY PTY LTD, RESPONDENT/APPELLANT
CORAM	FULL BENCH
	HIS HONOUR THE PRESIDENT P J SHARKEY
	COMMISSIONER S J KENNER
	COMMISSIONER J H SMITH
DELIVERED	THURSDAY, 19 JULY 2001
FILE NO/S	FBA 13 OF 2001, FBA 14 OF 2001
CITATION NO.	2001 WAIRC 03311

Decision	Appeal No FBA 13 of 2001 upheld and the decision at first instance varied.
	Appeal No FBA 14 of 2001 dismissed.
Appearances	
ALHMWU	Mr J Rosales-Castaneda (of Counsel), by leave
Falcon Investigations	Mr D Clarke, as agent

Reasons for Decision.

INTRODUCTION

THE PRESIDENT—

1 These are the joint reasons of the President and Commissioner Kenner.

2 These were two appeals, the first of which, FBA 13 of 2001, was brought by the abovenamed appellant organisation of employees (hereinafter referred to as "the ALHMWU") and the second, FBA 14 of 2001, by the defendant employer at first instance, Falcon Investigations and Security Pty Ltd (hereinafter referred to as "Falcon Investigations"). They were heard together by direction of the Full Bench.

3 The appeals were brought pursuant to s.84 of the *Industrial Relations Act* 1979 (as amended) (hereinafter referred to as "the Act") against a decision of the Industrial Magistrates' Court sitting at Perth.

4 At first instance and on these appeals, the ALHMWU was represented by Mr Rosales-Castaneda of Counsel. Falcon Investigations was represented at first instance and on these appeals by Mr Damian Clarke, whose status is not clear, because he is not an "industrial agent" duly registered. The warrant to appear as agent appoints Mr Clarke.

5 How much it is competent, too, for the legislature to prescribe audience in the Commission for a class of persons over whom the Commission cannot properly exercise, whose right to "practise" is not subject to its jurisdiction, is an interesting question which remains open.

APPEAL NO FBA 13 OF 2001

6 This is an appeal by the ALHMWU against the decision of the Industrial Magistrate's Court at Perth, constituted by an Industrial Magistrate, and given on 8 March 2001 in matters Nos CP 105 to 108 of 1998 and, in particular, the following part or parts of that decision, namely His Worship's ex tempore decision to award costs, as that decision is reflected at pages 21 to 28 of the transcript at first instance, which appear at pages 38 to 45 of the appeal book in appeal No FBA 13 of 2001, which is the appeal book referred to hereinafter (hereinafter referred to as "AB").

BACKGROUND

7 What occurred was that Complaints No CP 105 to 108 inclusive of 1998 were brought by the ALHMWU alleging that Falcon Investigations, being a party bound by the *Security Officers' Award* (No A25 of 1981) (hereinafter referred to as "the award")—

(a) On 25 March 1996 and 28 March 1996, committed a breach of Clause 13 of the award in that it paid its employee, Mr Joe Allen $108.00 and $40.50 respectively for work done during night shift when he should have been paid $129.00 and $44.10 respectively.

(b) Committed two breaches of Clause 14.1 of the award.

(c) On 30 March 1996, committed a breach of Clause 15.1 in that it paid its employee, Joe Allen, $54.00 for overtime work when he should have been paid $90.30.

(d) Between 24 March 1996 and 30 March 1996 at Perth, paid its employee, Joe Allen $54.00 for overtime work on a Sunday when he should have been paid $103.20, contrary to Clause 15.4 of the award.

8 The complaints were brought pursuant to s.83 of the Act and brought in the general jurisdiction of the Industrial Magistrates' Court at Perth. ("General jurisdiction" is defined in s.81CA of the Act.) (We would add that instituting proceedings by way of complaint rather than application, may not constitute a valid institution of proceedings, although we make no judgment on that at this time.)

9 The Industrial Magistrate's Court heard and determined these matters and the Complaints were dismissed, Counsel for the ALHMWU conceding that a gross mistake had been made and that there was no case (see page 37 (AB)).

10 An application for an order for costs was made by Mr Clarke, as agent, on behalf of Falcon Investigations, claiming the sum of $7,050.00. It was submitted by Mr Clarke that the claims against Falcon Investigations were frivolous and vexatious. The claim for costs was not itemised, as His Worship correctly observed (see page 43(AB)).

11 At page 45 (AB), His Worship, having correctly observed that costs should not be awarded in the jurisdiction unless the claim was frivolous and/or vexatious, having found that there was no merit in the claim, that it was fundamentally flawed and that it was at least "frivolous", made an order for costs against the ALHMWU in the sum of $2,500.00 on 8 March 2001.

12 It is against that order that the ALHMWU now appeals on the grounds, amended by leave on the hearing of the appeal (see page 2(AB)). It is unnecessary to reproduce the grounds in full here because the substance of the grounds and submissions relating to them are referred to hereinafter in these reasons.

13 Grounds 2(v) to (ix) are not grounds of appeal, but grounds in support of the application to amend the grounds of appeal.

APPEAL NO FBA 14 OF 2001

14 The appellant upon this appeal, the abovenamed Falcon Investigations, appeals against the order made at first instance for the payment of $2,500.00 costs on the following grounds—

> "- that the learned industrial magistrate erred in fact and in law in assessing costs in the sum of $2,500 when—
>
> (a) the principle for assessing costs in respect of proceedings found to have been frivolously and vexatiously instituted requires costs to be assessed on an indemnity basis; and
>
> (b) the learned industrial magistrate failed to make any or any proper assessment of the costs incurred and simply prescribed a figure that bore no relation to the particularised costs."

15 Falcon Investigations applied to extend time within which to appeal, being one day late with the institution of the appeal, and there being no objection to the application to extend time, the Full Bench, having determined that the equity, good conscience and the substantial merits of the case lay with the appellant on that application, granted the application for extension of time.

16 There was handed to His Worship on 8 March 2001 (see page 117(AB) of FBA 14 of 2001) a letter dated 6 March 2001, signed on behalf of Falcon Investigations, claiming costs. The costs claimed were outlined in the letter as follows, and not itemised—

"My Advocate—

Damien Clarke	29 hours @$75.00 = $2175.00
Myself	45 hours @ $75.00 = $3375.00
Witness—Jeff Brookes	4 hours @ $35.00 = $ 140.00
CCI—Mr Chris Keys	16 hours @ $85.00 = $1360.00
	In Total $7050.00"

17 That was the claim for costs which was disallowed. It was asserted by Mr Rosales-Castaneda, counsel for the ALHMWU, and was not denied, that he was not shown this letter nor had he been given a copy.

THE APPEALS

18 There were two questions raised on these appeals.

<u>Was the Application Frivolously or Vexatiously Instituted?</u>

19 The first question was whether the Industrial Magistrate erred in finding that the claim was frivolously or vexatiously instituted. The significance of that is that an Industrial Court, constituted pursuant to s.81A of the Act in proceedings under s.83 of the Act, has no jurisdiction and no power to order a party to pay costs unless it is able to reach the opinion first that the proceedings have been frivolously or vexatiously instituted or defended s.83(3) of the Act, which reads as follows—

> "In proceedings under this section costs shall not be given to any party to the proceedings for the services of any legal practitioner or agent of that party unless, in the opinion of the industrial magistrate's court, the proceedings have been frivolously or vexatiously instituted or defended, as the case requires, by the other party."

20 That question was considered by the Industrial Appeal Court in *WABBPU v Clarke and Another* 76 WAIG 4 (IAC), where costs of an appeal made to the court pursuant to s.90 of the Act were sought by the respondent. S.86(2) of the Act confers jurisdiction on the Industrial Appeal Court to make such orders as it thinks just as to the costs and expenses of proceedings before the court (including proceedings dismissed for want of prosecution).

21 Significantly, there is no difference between the words limiting the exercise of jurisdiction and power to order costs in s.86(2) of the Act. That subsection, in its material parts, reads as follows—

> "...but costs shall not be given to any party to the proceedings for the services of any legal practitioner or agent of that party unless, in the opinion of the Court, the proceedings have been frivolously or vexatiously instituted or defended, as the case requires, by the other party."

22 The test, as Their Honours observed at page 5, is an objective one. Their Honours quoted from and applied the reasons for decision of the Industrial Appeal Court in *TWU v Tip Top Bakeries* 75 WAIG 9 (IAC), where Their Honours said—

> "In support of these submissions it was said that the appeal was so unmeritorious and misconceived that the section should be applied. In the submissions it was said for the respondent that the meaning of the words "frivolous or vexatious" had not attracted explanation in decisions of the Court, the matter apparently not having been raised on any previous occasion. The submissions for the respondent were supported by reference to *Naqvi v M B P (SA) Pty Ltd* (1981) 36 ALR 379 where consideration was given to s 197A of the *Crimes Act* 1914 (Cth) providing for the payment of costs where proceedings were instituted "vexatiously or without reasonable cause". Evatt J referred to discussion of that section by Northrop J in *Heidt v Chrysler Australia Ltd* (1976) 26 FLR 257 and the judgment of Barwick CJ in *General Steel Industries v Commissioner of Railways (NSW)* (1964) 112 CLR 125 at 129 where the Chief Justice said in relation to the words "frivolous or vexatious" in O 26, r 18 of the *High Court Rules* 1952 (Cth)—
>
> > "It is sufficient for me to say that these cases uniformly adhere to the view that the plaintiff ought not to be denied access to the customary tribunal which deals with actions of the kind he brings, unless his lack of a cause of action—if that be the ground on which the court is invited, as in this case, to exercise its powers of summary dismissal—is clearly demonstrated. The test to be applied has been variously expressed: 'so obviously untenable that it cannot possibly succeed'; 'manifestly groundless'; so manifestly faulty that it does not admit of argument'; 'discloses a case which the court is satisfied cannot succeed'; 'under no possibility can there be a good cause of action'; 'be manifest that to allow them' (the pleadings) 'to stand would involve useless expense'.
> >
> > At times the test has been put as high as saying that the case must be so plain and obvious that the court can say at once that the statement of claim, even if proved, cannot succeed; or 'so manifest on the view of the pleadings, merely reading through them, that it is a case that does not admit of reasonable argument'; 'so to speak apparent at a glance'.
> >
> > The application for costs is opposed on behalf of the appellant on the grounds that there was no intent or purpose of being vexatious or frivolous and that the authorities relied upon are factually distinguishable from the present circumstances.
> >
> > The award of costs is a discretionary matter. While it is the case that in our opinion the appeal was untenable, we are not satisfied that this is an appropriate occasion to make an award of costs pursuant to s 86(2) of the Act. It must be remembered that the appellant succeeded at first instance. The section has to be applied in the context of the Act as a whole and having regard to the relative informality of proceedings before the Commission and the general policy of not awarding costs. In the particular circumstances of this matter, we are not prepared to hold that the appeal is brought vexatiously or frivolously. The application for costs is refused.""

23 In the end, Their Honours dismissed the appeal and ordered costs where advice had been taken by the appellant from Queen's Counsel that the single ground of appeal was not strong and the decision to seek to discontinue the appeal was made immediately thereafter; but, by then, only a few days remained before the date set for the hearing of the appeal. It is clear that the Industrial Appeal Court decided that that appeal was obviously untenable and could not possibly have succeeded and was therefore instituted frivolously or vexatiously.

24 In this case, the Industrial Magistrate found that the proceedings had been "frivolously or vexatiously instituted" because there was no merit in the claim. The words used at first instance by His Worship were "frivolous at least" (see page 43(AB)). His Worship also held that the claim could not succeed and that the fact that it could not succeed should have been discovered at the time of lodging the complaints. There is nothing to suggest that the lack of availability of time and wages records was a reason for the failure to properly investigate the claims and assess their merits, because the problems arose, as Mr Rosales-Castaneda conceded to the Court, from human error (see pages 40-41(AB)). What he later said, too, to his credit, was "Unfortunately there's been ..... a mistake and there's no point in wasting the court's time in pursuing something that is clearly based on a mistake." (see page 38(AB)). Mr Rosales-Castaneda properly conceded to the Court at first instance that his client organisation had no case, it would seem, because the calculations had been done on the basis of 48 hours worked in three days, whereas the evidence was that 39 hours were worked (see page 37(AB)).

25 Having regard to the concession by counsel for the ALHMWU at first instance, it is entirely unnecessary to consider in any detail why the application could not succeed. In the light of Mr Rosales-Castaneda's concession at first instance, there is nothing in the submissions referring to other complaints against Falcon Investigations not before the Court in the proceedings at first instance, or the involvement of the Department of Productivity and Labour Relations, which dilute or negative the fact that the case for the applicant at first instance was without merit, and that this should have been ascertained before the hearing at first instance, at least, and it was not. (This was a factual situation very similar to that in *WABBPU v Clarke and Another* (IAC)(op cit).)

26 The four complaints were, following that concession, dismissed. Mr Rosales-Castaneda did, however, submit that the claim was not vexatious.

27 The words "frivolous or vexatious" are one phrase. It is unnecessary to over-analyse them or separate the words, as is clear from the reasons for judgment in *WABBPU v Clarke and Another* (IAC)(op cit) (see also *Barrett v WABLPPU* 77 WAIG 2868 (FB) and *Gartrell v Hine Motors Pty Ltd* 77 WAIG 3193 (FB)). However, although his reasons are somewhat tersely expressed, it is clear that the Industrial Magistrate did find that the claim was frivolous and vexatious.

28 In terms of the meaning attributed to the phrase "frivolous or vexatious" or similar phrases, in the extract from *TWU v Tip Top Bakeries* (IAC)(op cit), cited with approval in *WABBPU v Clarke and Another* (IAC)(op cit) and the meaning applied in *WABBPU v Clarke and Another* (IAC)(op cit), the complaints at first instance were not tenable and/or were "so obviously untenable that [they could not] possibly succeed" and/or "disclosed a case which the court [was] satisfied [could not] succeed".

29 If one takes, as a proper description, that used in *WABBPU v Clarke and Another* (IAC)(op cit) (which is in any event synonymous with the other definitions of "frivolous and vexatious" to which we have just mentioned), the claim could not have succeeded, being fundamentally flawed,

and this should have been discovered at least before the hearing if not earlier. What, undoubtedly, His Worship found was that there was no merit in the claim (see page 43(AB)). That that was so was properly conceded by counsel.

30 For those reasons, it is clear that His Worship did not err in finding that the claim was instituted frivolously or vexatiously and that he had jurisdiction and power to order costs.

Costs—Power to award and Quantum

31 The second question on appeal related to the power of an Industrial Magistrates' Court to order costs in enforcement proceedings pursuant to s.83 of the Act, and the quantum ordered to be paid in this case. The costs ordered to be paid were, of course, party and party costs and could not contain elements which were properly agent and client costs.

Jurisdiction and Power to Order Costs

32 The subject complaints were laid on 20 May 1998. They were heard and determined on 8 March 2001. The subject complaints were brought by the ALHMWU pursuant to s.83 of the Act. By virtue of s.81CA(1)(a) of the Act, they were brought in the "general jurisdiction" of the Court because the general jurisdiction of the Court is expressly prescribed to include the jurisdiction of the Court under s.83.

33 The powers of the Industrial Magistrates' Court and the practice and procedure to be observed when exercising general jurisdiction are those provided for by the *Local Courts Act* 1904 (as amended). S.81CA(2) of the Act prescribes that expressly, as follows—

> "Except as otherwise prescribed by or under this Act or another law —
>
> (a) the powers of an industrial magistrate's court; and
>
> (b) the practice and procedure to be observed by an industrial magistrate's court,
>
> when exercising general jurisdiction are those provided for by the *Local Courts Act 1904* as if the proceedings were an action within the meaning of that Act."

34 S.81CA(2) of the Act came into operation on 16 January 1996.

35 Before that, the *Industrial Relations (Industrial Magistrates' Courts) Regulations* 1980 prescribed that the practice and procedure under the *Justices Act* 1902 (as amended) applied to applications for the enforcement of awards.

36 Regulation 3(1) of those regulations provided as follows—

> "**Proceedings before Industrial Magistrate**
>
> (1) Subject to the Act and to these regulations, proceedings before an industrial magistrate's court and in particular the making of a complaint, the issue of a summons, the summoning of witnesses, the fees to be paid relating to any matter, the taking of evidence, the hearing and determination of a complaint and the costs and allowances to parties and witnesses shall be, with such modifications as circumstances require, those prescribed by the *Justices Act 1902*, in respect of proceedings before justices for a simple offence."

37 Of course, s.83 of the Act clearly and expressly prescribes powers which are not provided for by the *Local Courts Act* 1904. Inter alia, s.83 of the Act creates what we might loosely call the awards enforcement jurisdiction, including a specific jurisdiction in costs, of the Industrial Magistrates' Court. (Indeed, s.83 was in the Act long before s.81CA was.) What is expressly provided "otherwise by or under this Act", within the meaning of s.81CA(2), is in fact provided for the purposes of enforcement proceedings by s.83 of the Act.

38 Inter alia, s.83(3) of the Act expressly empowers the Industrial Magistrates' Court to "give to [a] party to the proceedings costs for the services of any legal practitioner or agent" (our emphasis). Thus, the decision of the learned Industrial Magistrate in *Lopdell v Kulin Industries Pty Ltd* 80 WAIG 3287 that there was no power to award the costs of an agent in proceedings in the Industrial Magistrates' Court is not applicable to proceedings brought pursuant to s.83 of the Act which are brought in the general jurisdiction of that Court, because s.83 expressly empowers the Court to order the payment of costs for the services of an agent which, in our opinion, includes an industrial agent, registered and entitled to appear pursuant to s.112A of the Act. Thus, too, there is expressly conferred on the Court jurisdiction and power to order the payment of such costs, within the restrictions of s.83(3) of the Act.

39 There is undoubtedly jurisdiction in the Industrial Magistrate and a power "to give" a party to the proceedings costs for the services of an agent. The Industrial Magistrate therefore had the jurisdiction and power to do so in this case and did not err in apprehending that he had jurisdiction and power to so order.

40 New Industrial Magistrates regulations, the "*Industrial Magistrates' Courts (General Jurisdiction) Regulations* 2000", came into operation on 18 January 2001, after they were gazetted on 19 December 2000. These complaints were filed before, but heard after that date. No scale of costs in respect of matters in the general jurisdiction of the Industrial Magistrates' Court is prescribed by those regulations.

41 We propose to deal with whether any existing prescribed scale of costs applies to proceedings such as this where an agent is involved in due course. There is a concomitant question, of course.

42 It was the submission on behalf of both parties that neither the Local Court Scale of Costs nor the *Legal Practitioners (Local Court) (Contentious Business) Determination* 2000 of the Legal Practice Committee, applied to costs sought to be ordered in relation to the services of an industrial agent registered pursuant to s.112A of the Act. In our opinion, there is no provision in the Local Court Scale of Costs for costs to be payable in respect of the services of a person who is not a legal practitioner. An agent is not a legal practitioner, as that term is defined in the *Legal Practitioners Act* 1893 (as amended). Indeed, there is no provision which permits an agent or an industrial agent to appear in proceedings in the Local Court either. We would, if the matter were in issue, which it is not, apply the meaning ascribed by His Worship Cicchini IM in *Lopdell v Kulin Industries Pty Ltd* (op cit) to the words "agent" and "legal practitioner".

43 Further, it is clear, since agents are plainly not legal practitioners, that the determination made by the Legal Costs Committee, pursuant to s.58W of the *Legal Practitioners Act* 1893 (as amended), cannot apply to them and cannot and should not be used as a guide for costs awardable on a s.83 matter to an agent, because it is intended to apply only to legal practitioners. Some use can however be made of the figures for the services of clerks who are not, of course, practitioners, as agents are not. Care should, however, be taken in the use of these figures because the clerks referred to in the costs scales referred to herein are subject to supervision by legal practitioners.

44 We should observe that, whilst the *Industrial Relations (Industrial Magistrates' Courts) Regulations* 1980 (and even if they still remained in force) were in force, there was also no prescribed scale applicable to costs to be awarded pursuant to s.83 of the Act. Indeed, there was also no (and there is presently no) provision for an agent to appear pursuant to the *Justices Act* 1902 (as amended) (see s.137). Further, no scale of costs was or is applicable to proceedings under the *Justices Act*. S.151 and s.152 of the *Justices Act* provide for the quantum of costs to be ordered as what seems to the justices "to be just and reasonable".

45 Of course, where no scale of costs applies, a court or tribunal can look to a similar scale of costs as a guide (see *Cain v Shuttleton* 78 WAIG 1575 (FB) and *Klahn v Talbot* (No 43 of 1994) (unreported) delivered 20

November 1995 (Supreme Court of WA)(FC)). We would agree with the observations by His Worship Cicchini IM in *Lopdell v Kulin Industries Pty Ltd* (op cit) that, because there is no provision in the Act or any regulations under the Act (as there is not) to provide a scale of fees which industrial agents might charge, then they are payable by way of retainer. Neither, as we have observed, is there any other prescribed scale which applies to the services of agents in proceedings under s.83.

46 In this case, the amount of costs claimed by a letter which the ALHMWU's counsel says was not shown to him, was $7,050.00 (see page 117(AB) of FBA 14 of 2001) and we have reproduced the relevant parts of that letter above. The costs claimed do not and were not submitted to bear any relationship to any existing prescribed scale and quite properly so.

47 His Worship gave no reasons for deciding as he did and did not "tax" costs, but awarded the amount of $2,500.00 by way of costs. Both parties appealed against the quantum of costs awarded.

48 In *Cain v Shuttleton* (FB)(op cit), there was a consideration of questions relating to costs, and appeals against decisions as to costs which we will summarise here, and which are apposite to this case—

(a) First, a very wide discretion must necessarily be left to a taxing officer and the Commission will not readily interfere, particularly in relation to questions of quantum (see *Cain v Shuttleton* (FB)(op cit) at page 1575 citing *Australian Coal and Shale Employees' Federation and Another v The Commonwealth and Others* [1953] 94 CLR 621 and the cases cited therein).

(b) The Full Bench will generally only interfere where the discretion appears not to have been exercised at all, or to have been exercised in a manner which is manifestly wrong; where the question is one of amount only; and will do so only in an extreme case (see, too, *Sundell v Queensland Housing Commission* [1952] 94 CLR 531 at 533 per Webb J).

(c) The Industrial Magistrate exercised the power of a Taxing Master (as was described in *Cain v Shuttleton* (FB)(op cit) at page 1575; see, too, *Carter v Coombe* (1989) 154 LSJS 317).

(d) It will be generally impracticable and undesirable for Magistrates to give precise reasons for fixing costs, at least where no prescribed scale operates.

(e) The Full Bench approved of the ordering of a lump sum for costs on a party and party basis and approved formally the use of the Costs Scale 1999 under the *Official Prosecutions (Defendants' Costs) Determination* 1999 as a guide only because no scale of costs was said to apply.

(f) The fundamental principle is that an order for costs is made to indemnify the successful party against the expense of the proceedings being imposed on him (citing *Latoudis v Casey* [1990] 65 ALJR 151). However, that does not mean, as Mr Clarke submitted, that the respondent is entitled to be indemnified in respect of the amount claimed as its subjective view of the quantum of costs.

49 First, let us say that the claim for costs was not at all sufficiently justified, given that the quantum claimed was, on the face of it, obviously out of all proportion to the number or complexity of the claims or the amount of the alleged unpaid amounts claimed. We see some merit in Mr Clarke's submission that one should not assess costs purely on the basis of the total amount claimed, which he conceded was, in the end, about $150.00, because in s.83 proceedings, the finding of a breach of award with the risk of pecuniary penalty is also at issue in such complaints. However, the amount claimed of $150.00 is very much relevant, and the seriousness of a prospective finding or findings of breach is not at all sufficient, by itself, to justify a claim for $7,050.00 costs in this matter. We are not at all persuaded that a penalty at or near the maximum of $1,000.00 (see s.83(2)(a) of the Act) prescribed would have been properly fixed. Even if that were wrong, then such a claim for costs required careful justification of which there was almost none.

50 The four complaints, heard together, involved very few witnesses and seem also to have involved, at least in the hearing of the matter, few documents. There were no complex matters of law to be argued either, and the proceedings were, notwithstanding their premature termination, not, on the face of it, destined to be justifiably lengthy. It is difficult to understand why so much time was expended on the matter in the preparation, as was alleged. Falcon Investigations made a bald claim for the amount of $7,050.00 without even attempting to justify it. Its agent made no real attempt to properly justify the amount of costs claimed, on appeal either as to time or quantum.

51 Second, nothing was submitted to the Magistrate which might properly persuade him that the sum of $7,050.00 was at all reasonable, given that there were, on the submissions of both parties, kindred claims on which work would be required; and the prospect of overlap could not be discounted without proper material before the Commission. In any event, whether that be so or not, given the nature of the claims, the claim for costs was, prima facie, exorbitant and unjustified. The claim for costs required justification and meaningful itemisation. There was none. The number of hours claimed to have been spent by agents (and witnesses) is, prima face, excessive and nothing was produced or submitted to justify it. We have already referred to the unjustified claims for witness expenses.

52 Some idea of the excessiveness of the claim can be gained from a brief consideration of some other scales of costs.

53 We note, by way of example, that the *Legal Practitioners (Petty Sessions) (Contentious Business) Determination* 2000 and the *Legal Practitioners (Local Court) (Contentious Business) Determination* 2000 of the Legal Costs Committee both prescribe an hourly rate for Clerks and Paralegals at $65.00 and a Junior Practitioner of less than five years is $150.00. (The claim for an agent in this case was $75.00 per hour.)

54 On the Local Court scale, if one applied the scale for claims of less than $3,000.00, for example, allowing for an item such as motion of any kind $45.00; preparation for trial being a maximum of $375.00; and $750.00 for trial and that is the maximum; the total amount claimable in this case would be $1,170.00, plus witnesses allowances, as a maximum we would emphasise.

55 If one applied the *Official Prosecutions (Defendants' Costs) Determination* 1999, it is noteworthy that the first day of trial and conference fee payable is $2,150.00, as a maximum and for a legal practitioner. This refers also to a trial. Then there are there prescribed allowances to witnesses which have an upper limit of $20.00 or are assessed on the actual financial loss suffered. (It is noteworthy that the sum of $65.00 per hour is prescribed as a maximum for Clerks and Paralegals in that scale.)

56 Even though those scales do not apply and should not be used as a guide, we refer to those scales to demonstrate how exorbitant the claim is, but we do not apply them.

57 Witness allowances are either capped or are assessable by the actual loss up to a maximum amount in all of those scales. (It is noteworthy in the fixing of allowances for witnesses, including the Plaintiff and Defendant, the Taxing Officer may have regard to the amount of the salary, wages or income (if any) actually lost by the witness. None of this was before the Court.)

58 Further, as we understand allowances for witnesses (and as the scales to which we refer demonstrate), they relate primarily to the time spent in attending the court as witnesses and not for preparation, as here, by officers of Falcon Investigations (a party to the proceedings), or time in proofing witnesses or in conference with them. If we are wrong in that view, nothing was submitted to that end for calculating witness allowances in existing scales of costs. Accordingly, we should observe, too, that we do not understand why so much time was required to be spent with witnesses, or why these amounts were claimed.

Nothing was submitted to justify the quantum of those claims either.

59 We agree that, as was decided in *Cain v Shuttleton* (FB)(op cit), the absence of a scale where a person is entitled to an order for costs, should not act as a barrier to an order being made where s.83(3) of the Act expressly enables costs to be claimed.

60 In our opinion, where the legislation so plainly accounts these sort of proceedings as non-penal or non-criminal, the *Official Prosecutions (Defendants' Costs) Determination* 1999 should not be applied as a guide. Further, the costs apply to legal practitioners only. (It is certainly not applicable as a matter of law.)

61 However, the *Local Courts Act* 1904 costs provisions cannot be applied and the *Legal Practitioners (Local Court) (Contentious Business) Determinations* 2000 do not apply because they are applicable to legal practitioners only. Similarly, the *Justices Act* 1902 costs provisions, s.151 and s.152 (even if they were applied by the Act or any regulation, which they are not) would not apply, because industrial agents are not legal practitioners; and, as we have also observed, those sections refer to the services of legal practitioners. Further, they would not justify the order made or the amount claimed because neither is just and reasonable within the meaning of s.151 and s.152.

62 Mr Clarke submitted that there was no restriction on the quantum of costs claimable by an agent, as would be the case of legal practitioners. There is, however, as a matter of fairness. In our opinion, however, an agent could not be awarded more than was awardable to a practitioner under the Local Court Scale. Indeed, we do not think that agents, who exist pursuant to s.112A of the Act, who are not officers of the Supreme Court, and who do not have to achieve prescribed qualifications (or any qualifications) or other requirements, should be entitled to fees on a scale or equal to that reserved for legal practitioners. (We say that, too, given that the legislature does not intend that agents be paid at the rate of legal practitioners and expressly refuses to say so.) In our opinion, a fair figure for preparation and a day's hearing in this case would fall within the range of $700.00 to $1,000.00 for an agent including a fair allowance for witnesses, based on the principles which we have outlined above. That would be based on the sum of $65.00 maximum per hour for an agent, which is a figure we extract from the scales above as a guide which is applicable to clerks in legal practitioners' offices. The remuneration prescribed in scales for practitioners cannot, as we have observed, be applied and cannot be used as a guide. However, the hourly fee prescribed for Clerks and Paralegals is a useful guide and should be relied upon in the fixing of costs given for the services of industrial agents.

63 In our opinion, it was not established that a proper figure for costs would be represented by the amount of $7,050.00 claimed or the amount of $2,500.00 fixed, to be the amount awarded. For the reasons which we have expressed, to fix the amount of $2,500.00 constituted a miscarriage in the exercise of discretion. This is an extraordinary case where the exercise of the discretion to fix costs miscarried and the Full Bench is justified in interfering on the abovementioned authorities, including because the quantum in the end fixed was plainly excessive. Neither the amount fixed of $2,500.00 or the amount of $7,050.00 initially claimed at first instance would be fixed as a proper exercise of discretion because they are excessive figures.

64 We find, for those reasons, that the second appeal has absolutely no merit.

CONCLUSIONS

65 We would uphold the first appeal and set aside the order made. There was and is no scale of costs applicable, or properly applicable either, as a guide to the proceedings at first instance. On the material available, we would substitute an order that the ALHMWU pay to Falcon Investigations the costs at first instance which, having regard to all of the circumstances, including lack of complexity of matter, the time involved, and the number of witnesses, we would, as a generous figure, fix at $1,000.00, substituting the exercise of the Full Bench's discretion for the exercise of discretion at first instance. We do so because, in so fixing costs, we are attempting to reflect the view of the legislature expressed in s.83(3) of the Act that a party who is the subject of a claim which is frivolous or vexatious should be indemnified against the party and party costs expended in defending the claim, provided that the quantum claimed and awarded is a figure properly assessed as justified.

66 We would also observe that, if the costs are payable for the services of Mr Clarke, then Falcon Investigations may not be able to lawfully claim them, because he is not a registered industrial agent. If he was the employee or agent of a registered industrial agent, then there was no warrant to appear lodged in the name of that industrial agent.

67 However, since that is not a ground of appeal, we do not think that we should decide that matter on this appeal.

68 We would, however, dismiss the second appeal, for the reasons which we have expressed.

69 We would uphold appeal No FBA 13 of 2001 insofar as it relates to quantum and vary the order made to substitute the sum of $1,000.00 costs for the sum of $2,500.00 referred to in the order appealed against. We would otherwise dismiss that appeal.

70 We would dismiss appeal No FBA 14 of 2001.

COMMISSIONER J H SMITH—

JURISDICTION AND POWER TO AWARD COSTS UNDER S.83 OF THE ACT

71 The complaints were made under s.83 of the Act. In each case it was alleged that the Appellant (Respondent) had failed to comply with the provisions of the *Security Officers' Award*. All of the complaints were laid on 20 May 1998. Pursuant to s.81CA(1) of the Act applications under s.83 are within the general jurisdiction of an Industrial Magistrate's Court. Pursuant to s.81CA(2) of the Act, (except as otherwise prescribed by or under the Act or another law), the practice and procedure to be observed by an Industrial Magistrate's Court when exercising general jurisdiction is the practice and procedure provided for in the *Local Courts Act 1904* as if the proceedings were an action within the meaning of that Act.

72 Subsections (2) and (3) of s.83 of the Act provide—

"(2) On the hearing of an application under subsection (1) the Industrial Magistrate's Court may, by order—

(a) if the contravention or failure to comply is proved, issue a caution or impose such penalty as the Industrial Magistrate's Court considers just but not exceeding $1 000 in the case of an employer, organization or association and $250 in any other case;

(b) dismiss the application,

and, subject to subsection (3), in any case with or without costs, but in no case shall any costs be given against the Registrar, a Deputy Registrar, or an Industrial Inspector.

(3) In proceedings under this section costs shall not be given to any party to the proceedings for the services of any legal practitioner or agent of that party unless, in the opinion of the Industrial Magistrate's Court, the proceedings have been frivolously or vexatiously instituted or defended, as the case requires, by the other party. "

73 Pursuant to s.83(2) of the Act the Industrial Magistrate's Court may by order—

(a) If a contravention or failure to comply is proved, issue a caution or a penalty; or

(b) where the contravention or failure to comply is not proved dismiss an application with or without costs, subject to subsection(3).

74 Under s.81 Part IV—Procedure, of the *Local Courts Act*, it is provided that—

> "Except as hereinafter provided, and subject to the rules of court, the costs of any action or matter shall be paid by or apportioned between the parties in such manner as the magistrate directs, and in default of a special direction shall abide the event; and the costs may be recovered in like manner as a debt adjudged by the court to be paid can be recovered."

75 Further, s.83 of the Local Courts Act provides—

> "The fees to be allowed to legal practitioners for appearing or acting on behalf of a party to an action or other proceeding, and the expenses to be paid to witnesses, shall be fixed by determinations under section 58W of the *Legal Practitioners Act 1893*."

76 The issue is whether by the operation of s.83(2) and (3) of the Act whether the provisions of the *Local Courts* Act apply to an order for costs made by an Industrial Magistrate's Court under s.83(3) of the Act. In my view Section 83 (2) and (3) provide an exception to s.81CA(2) of the Act, only to the extent that an Industrial Magistrate may not order—

(a) costs against the Registrar, a Deputy Registrar or an Industrial Inspector; and

(b) costs to any party to the proceedings for the services of a legal practitioner or agent of that party unless in the opinion of the Industrial Magistrate's Court the proceedings have been frivolously or vexatiously instituted or defended, as the case requires, by the other party.

77 On 18 January, 2001 the *Industrial Magistrates' Courts (General Jurisdiction) Regulations 2000* came into operation. Regulation 57 provides—

"(1) The *Industrial Relations (Industrial Magistrates' Courts) Regulations 1980* are repealed.

(2) Subject to sub regulation (3), a legal proceeding under the repealed regulations subsisting immediately before the commencement day may be continued as if the repealed regulations had not been repealed.

(3) An order determining a substantive right or liability of a party to a legal proceeding under the repealed regulations is enforceable as if it were a final order under these regulations, whether the order was made before or after the commencement day.

(4) In this regulation —

"commencement day" means the day on which these regulations come into operation;

"legal proceeding" has the same meaning as in section 3 of the *Evidence Act 1906*;

"repealed regulations" means the regulations repealed by sub regulation (1). "Subject to sub-regulation (3), a legal proceeding under the repealed regulations subsisting immediately before the commencement day may be continued as if the repealed regulations had not been repealed." "

78 It is my view that the power to award costs is a procedural rather than a substantive right (*Galvin v Forests Commission of Victoria* [1939] VLR 284). The plain meaning and effect of Regulation 57 is that on hearing of a complaint commenced prior to 18 January, 2001 an Industrial Magistrate's Court is empowered with a discretion to make procedural orders (not being an order determining substantive right or liability of a party) under the repealed Regulations

79 The discretion vested in an Industrial Magistrate's Court to apply the repealed Regulations is relevant to these appeals in that the complaints were made prior to the commencement of the *Industrial Magistrates Court (General Jurisdiction) Regulations* coming into operation. The repealed Regulations expressly provide that costs to parties shall be those prescribed in the *Justices Act 1902*. Under the repealed Regulation 3(1) in relation to all proceedings, (whether in the general or criminal jurisdiction) of the Industrial Magistrate's Court, orders for costs to parties, are as prescribed by the *Justices Act* 1902 (with such modifications as circumstances require).

80 Prior to the commencement of the *Industrial Magistrates' Courts (General Jurisdiction) Regulations*, the President observed in *Cain v Shuttleton* [1998] 78 WAIG 1575 at 1576 in relation to an application for costs in matter within the prosecution jurisdiction of an Industrial Magistrate's Court that there was no prescribed scale of costs under the *Justices Act*, but that for the reasons expressed by the Full Court of the Supreme Court in *Klahn v Talbot* unreported, FCT SCt of WA; Library no 950628; 20 November 1995, an Industrial Magistrate's Court could have regard to 1991 scale invalidity prescribed under the *Official Prosecution Defendants' Costs Act 1973*, in the exercise of a discretion to fix costs.

81 On 17 September 1999, pursuant to s.58Y of the *Legal Practitioners' Act 1893*, the legal costs Committee published a new scale of costs to be applied under the *Official Prosecution Defendants' Costs Act* in the Government Gazette. The *Official Prosecutions (Defendants' Costs) Determination* 1999 came into operation on 1 October 1999.

82 It is my view that if the repealed Regulations were applied by an Industrial Magistrate's Court in relation to this matter because of the clear and unambiguous words in the repealed Regulations 3(1) in exercising his discretion to make an award of costs, the court could have had regard to the scale of costs set out in the *Official Prosecutions (Defendants' Costs) Determination* 1999.

83 The Industrial Magistrate in this matter did not, however, exercise his discretion to make an order for costs pursuant to the repealed Regulations. In making a costs order he had regard in part to the *Local Courts* Act, in that he observed that the scale of cost in the *Local Courts* Act does not compensate for the total expenditure incurred by a party.

84 Under s.83 of the *Local Courts* Act, the applicable scale for costs in a Local Court is provided for in the *Local Court (Contentious Business) Determination 2000* ("the *2000 Determination*") (made by the Legal Costs Committee on 14 April, 2000, pursuant to s.58Y of the *Legal Practitioners'* Act). Pursuant to s.3 and s.58W of the *Legal Practitioners'* Act the Legal Costs Committee may make determinations regulating the remuneration of persons admitted and entitled to practise as a barrister or solicitor of the Supreme Court of Western Australia. An agent is not a practitioner. However, pursuant to Clause 11 of the *2000 Determination*, it is provided that an hourly rate of $65 for a clerk/paralegal shall be used to calculate dollar amounts in the scale of costs set out in the Table to Clause 12.

CONCLUSION

85 Notwithstanding that the scale of costs set in the *2000 Determination* only applies to an award of costs made under s.83(2) and (3) where a party is represented by a legal practitioner, I am of the view that it is appropriate to have regard to the *2000 Determination* as a guide for costs awarded under s.83(2) and (3) where a party is represented by an agent, regard should be had to the rates that apply to paralegals, as agents clearly provide services of a paralegal nature.

86 Having regard to the scale for paralegals which fixes a maximum lower rate of $65 per hour, and having regard to the issues raised in the complaints, I am of the view that costs should have been awarded to Falcon Investigations and Security Ltd on the basis of one day's preparation and one day's hearing in Court. Accordingly, I agree with the President that costs to be paid by the ALHMWU to Falcon Investigations and Security Ltd should be fixed at $1,000.

THE PRESIDENT—

87 For those reasons, appeal No FBA 13 of 2001 is upheld and the decision at first instance varied, and appeal No FBA 14 of 2001 is dismissed.

Order accordingly

2001 WAIRC 03422

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	AUSTRALIAN LIQUOR, HOSPITALITY AND MISCELLANEOUS WORKERS UNION, WESTERN AUSTRALIAN BRANCH, APPELLANT/RESPONDENT
	v.
	FALCON INVESTIGATIONS AND SECURITY PTY LTD, RESPONDENT/APPELLANT
CORAM	FULL BENCH
	HIS HONOUR THE PRESIDENT P J SHARKEY
	COMMISSIONER S J KENNER
	COMMISSIONER J H SMITH
DELIVERED	FRIDAY, 3 AUGUST 2001
FILE NO/S	FBA 13 OF 2001, FBA 14 OF 2001
CITATION NO.	2001 WAIRC 03422

Decision	Appeal No FBA 13 of 2001 upheld and the decision at first instance varied.
	Appeal No FBA 14 of 2001 dismissed.
Appearances	
ALHMWU	Mr J Rosales-Castaneda (of Counsel), by leave
Falcon Investigations	Mr D Clarke, as agent

Order.

These matters having come on for hearing before the Full Bench on the 15th day of June 2001, and further for a speaking to the minutes hearing on the 3rd day of August 2001, and having heard Mr J Rosales-Castaneda (of Counsel), by leave on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch (hereinafter referred to as "ALHMWU") and Mr D Clarke, as agent, on behalf of Falcon Investigations and Security Pty Ltd (hereinafter referred to as Falcon Investigations), and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 19th day of July 2001, and the Full Bench having decided that it had no power pursuant to s.49(5) of the *Industrial Relations Act* 1979 (as amended) to make the order reflected in the amendments sought to be made to the Minutes of Proposed Order on behalf of the ALHMWU, it is this day, the 3rd day of August 2001, ordered and declared as follows—

(1) THAT appeal No. FBA 13 of 2001 and appeal No. FBA 14 of 2001 be heard together.

(2) THAT the ALHMWU in appeal No. FBA 13 of 2001 be and is hereby granted leave to amend the grounds of appeal in the Notice of Appeal filed herein by inserting a new ground of appeal (g) as it appears in the "Grounds for the Application for Leave to Amend the Grounds of Appeal for FBA 13/2001" filed on the 25th day of May 2001 herein.

(3) THAT the applications filed herein to extend time to file the appeal by Falcon Investigations in appeal No. FBA 14 of 2001 out of time be and are hereby granted.

(4) THAT the applications filed herein to extend time to file the appeal books by Falcon Investigations in appeal No. FBA 14 of 2001 out of time be and are hereby granted.

(5) THAT appeal No. FBA 13 of 2001 be and is hereby upheld.

(6) THAT the decision of the Industrial Magistrate in matters No. CP 105 to 108 of 1998 made on the 8th day of March 2001 be and is hereby varied by deleting the whole of the order made, and substituting therefore an order in the following terms—

"THAT the ALHMWU pay to Falcon Investigations the sum of $1,000.000 within seven days of the date hereof".

(7) THAT appeal No. FBA 14 of 2001 be and is hereby dismissed.

By the Full Bench.

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

COMMISSION IN COURT SESSION— Matters dealt with—

2001 WAIRC 03358

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	AUSTRALIAN LIQUOR, HOSPITALITY AND MISCELLANEOUS WORKERS UNION, WESTERN AUSTRALIAN BRANCH, APPLICANT
	v.
	BURSWOOD RESORT (MANAGEMENT) LTD, RESPONDENT
CORAM	COMMISSION IN COURT SESSION
	COMMISSIONER J F GREGOR
	COMMISSIONER J H SMITH
	COMMISSIONER S WOOD
DELIVERED	FRIDAY, 27 JULY 2001
FILE NO	CR 326 OF 2000
CITATION NO.	2001 WAIRC 03358

Result	Dismissed for want of jurisdiction
Representation	
Applicant	Mr Herron (of Counsel) and with him Mr J. Welch and Mr Kelly appeared on behalf of the Applicant Union
Respondent	Mr Martin (Queens Counsel) and with him Mr B. Di Girolami (of Counsel) appeared on behalf of the Respondent

Reasons for Decision.

1 On 1st December 2000 The Australian Liquor, Hospitality and Miscellaneous Workers' Union, Western Australian Branch (the Union) applied to the Commission for a conference pursuant to s.44 of the Industrial Relations Act, 1979 (the Act) on the grounds that it was in dispute with Burswood Resort (Management) Ltd (the Respondent) over the renewal of the Burswood International Resort Casino Employees Industrial Agreement 2000 (the 2000 Agreement) which Agreement was due to expire on 30th June 2001.

2 The Schedule to the notification advised the Commission that the Respondent had initially refused to enter into the 2000 Agreement despite having put the Agreement to a ballot of employees and a majority of those having given the Agreement their endorsement. The Respondent announced to employees that to benefit from the terms of the new Agreement employees would need to enter into an Australian Workplace Agreement (AWA's) under the Workplace Relations Act 1996 (Cwlth). Later the Respondent signed the 2000 Agreement after the Union had applied to this Commission for an arbitrated Enterprise Agreement.

3 The Union alleged that thereafter the Respondent began offering AWA's to all new employees who would otherwise have been covered by the terms of the 2000 Agreement and have required that such persons enter into AWA's as a condition of employment. In November 2000 the Union had written to the Respondent asking whether it intended to hold negotiations to replace the 2000 Agreement. The Union complained that the Respondent had declined to begin meetings and similarly had declined to indicate one way or the other its intentions. The Union therefore requested the Commission convene a conference to assist in dealing with the matter by conciliation.

4 The first conference was held on 20th December 2000 it was then followed by seven separate conferences, the last occurring on 5th June 2001 when the dispute remained unresolved. The Commission therefore made a Memorandum of Matters for Hearing and Determination pursuant to s.44 of the Act and referred the dispute for hearing and determination. It added the caveat to the Memorandum of Matters for Hearing and Determination that the Order sought had the effect of varying wages or conditions above the safety net and as such attracts consideration under Principle 10 of the State Wage Principles.

5 The dispute between the parties is set out in the Schedule to the Memorandum of Matters for Hearing and Determination pursuant to s.44. The Schedule is as follows—

> *"The applicant Union seeks parity, for its members employed by the respondent, with employees employed by the respondent under Australian Workplace Agreements performing comparable duties. The applicant Union seeks the order as detailed in Schedule 1.*
>
> *The respondent opposes the applicant Union's claim and seeks instead an order as per Schedule 2."*

6 The various instruments of this Commission described in paragraph 1 of these Reasons for Decision bind the parties to these proceedings. On 30th December 1999 the Commission ordered that the agreement entitled Burswood International Resort Casino Employees Industrial Agreement 2000 be registered as an Industrial Agreement. The effect of registration was to replace and supersede the Burswood Island Resort Employees Award No. A23 of 1985 and A25 of 1985 (as varied), the Burswood Resort Casino Employees Industrial Agreement 1993 No. AG85 of 1993, the Burswood Resort Casino Employees Industrial Agreement 1993 Amendment Agreement 1995 No. AG132 of 1995, the Burswood International Resort Casino Employees Industrial Agreement 1997 No. AG164 of 1997 and the Hotel and Tavern Workers Award 1978 No. R31 of 1977 as varied. Insofar as that award concerns the area of land occupied by the Burswood Island Resort in the State of Western Australia.

7 The 2000 Agreement by Clause 3.—Scope and Parties Bound is binding upon all employees employed by Burswood Resort (Management) Limited in its capacity as Manager of the Burswood Property Trust in the callings described in Clause 5. Wages of the agreement, on Burswood Resort (Management) Limited and on The Australian Liquor, Hospitality and Miscellaneous Workers Union, WA Branch. Importantly for the matter before this Commission in Court Session the term of the agreement was for a period of eighteen months from the date of registration which meant that it would expire on 30th June 2001.

8 By the time that date had been reached no agreement had been made to replace the 2000 Agreement which by s.41(6) and 41(7) of the Act continues after the term is completed until the parties or either of them retire from it. It is common ground that neither party has retired from the 2000 Agreement and it remains in force. This matter came on for hearing before the Commission in Court Session on 26th June 2001 at which time some procedural matters were heard. These became the subject of Directions issued by the Commission in Court Session. As a result thereof the matter was listed for hearing again on 5th July 2001.

9 Notice was given by the Respondent that it would raise three preliminary issues at hearing. The first of those was that the orders in the terms sought cannot be made by the Commission in Court Session, secondly that the Commission would need to deal with matters raised by s.109 of the Constitution of the Commonwealth of Australia and thirdly an application by the Union for an interim order lodged on 26th June 2001 was either contrary to procedural directions already made by the Commission in Court Session, misconceived or not supported by any source of power to make orders of such a kind.

10 For the purpose of these Reasons for Decision we need only deal with the first of the jurisdictional submissions. The Respondent argues that the existing 2000 Agreement is a single enterprise agreement made pursuant to s.41 of the Act, it is not an agreement within the regime of s.51(2) General Orders. The Agreement continues in force notwithstanding its expiry of term, and pursuant to s.41(7), there has been no notice by either party to retire from the 2000 Agreement. Similar matters have been before the Commission constituted by a Commission in Court Session in *ALHMWU and HSOA v Activ Foundation (2000) 80 WAIG 4994* where the Commission in Court Session decided that it could make no order which could have the effect of amending an enterprise bargaining agreement with the implication that if a party retired from the said agreement then the application then before the Commission in Court Session was capable of being relisted.

11 The Respondent identified the matters which were before the Commission in Court Session for its consideration. It was suggested that Schedule 1 to the Memorandum of Matters for Hearing and Determination pursuant to s.44, described as an 'order', is not in substance an order it is in fact a replication of most of the existing 2000 Agreement with some changes which seek parity to AWA's entered by the Respondent. The claim by the Union is for not an order of the type usually made by Courts and Tribunals nor is it an industrial agreement because to be so and registrable under s.41 of the Act it must be a consensual document, nor is it possible to put an order on top of an industrial agreement.

12 The present Agreement continues by s.41 after its nominal expiry date. This is important because the conferences, which were held under s.44, were convened to see whether the parties could settle a new s.41 agreement. But that has not happened.

13 The Applicant in its submission, says that it seeks an order that maintains all existing conditions set out in the 2000 Agreement and reflects the additional benefits it says are available under the AWA's. The additional benefits being—

- A 5.3% Perth CPI increase from the 1 July 2001;
- Additional pay increases to employee's under the Order if like employees under Australian Workplace Agreements (AWA's) receive them;
- Journey Cover.

14 The nub of the argument on behalf of the Applicant Union is that the application is simple in nature; it seeks an Order, the Act recognises there is a difference between Orders, Awards and Industrial Agreements. The Union does not seek an industrial agreement under s.41 nor does it seek an award, it is conceded that the Order sought does reflect an earlier Industrial Agreement, but that creates no difficulties because it is an Order to resolve an industrial dispute between the parties. The Commission is empowered to hear these matters in accordance with equity, good conscious without regard to technicalities and legal form and given that the order the Union seeks is between two parties for a limited period of time there is no impediment to the Union proceeding with their application. If the Commission in Court Session was to find that the Union was seeking an award it is then empowered to waive the procedural requirements of the Act.

15 These matters are before the Commission in Court Session following a reference made after the Commission,

otherwise constituted, had decided that there was a dispute between the parties which could not be resolved otherwise than by arbitration. The power to make such a reference is set out in s.44(9) which provides as follows—

> *"(9) Where at the conclusion of a conference held in accordance with this section any question, dispute, or disagreement in relation to an industrial matter has not been settled by agreement between all of the parties, the Commission may hear and determine that question, dispute, or disagreement and may make an order binding only the parties in relation to whom the matter has not been so settled."*

16 Section 44(9) can only be invoked at the conclusion of a conference/s held in accordance with s.44. It follows that the Commission's access to all the interlocutory powers, which are variously described in s.44, are then exhausted. The Commission can do only one thing as a result of hearing a matter under s.44(9) and that is to make an order binding only on the parties in relation to whom the matter in dispute has not been settled. It can only make such an order when an industrial matter has not been settled by an agreement between all of the parties.

17 Here is a situation where the Act recognises the continuation of an Agreement that has been made pursuant to s.41 and registered as an Industrial Agreement pursuant to that section. This occurred on 3rd December 1999 when the Commission constituted by the Chief Commissioner signed an Order of registration. Once the Commission has registered the industrial agreement pursuant to the powers vested in it by s.41(2) it is an industrial agreement which is administered within the terms of s.41, one of which in s.41(6) provides that notwithstanding the expiry of the term of an industrial agreement it shall continue in force in respect of all of the parties except those who retire there from until a new agreement or an award in substitution has been made.

18 If a party wishes to retire from an industrial agreement s.41(7) provides that at any time after or not more than thirty days before the expiry of an industrial agreement any party may file in the office of the Registrar a notice in the prescribed form signifying intention to retire there from at the expiration of thirty days. The section then says that if on the expiration of the thirty-day period the party ceases to be bound by the agreement, that is, they are no longer the party.

19 If the Commission in Court Session were to make the Order sought it would have the effect of applying the general provisions under s.44(9) without regard to the specific provisions of s.41(6). A similar issue was raised in the Industrial Appeal Court in *Hungry Jacks & Others v Wilkins and Others (1991) 71 WAIG 1751*. In his judgement Nicholson J at 1755 observed—

> *"The appellant contends that the issue should be resolved by reference to the principle that general things or words do not derogate from special things or words ("generalia specialibus non derogant"). As stated by O'Connor J in Goodwin v. Phillips (1908) 7 CLR 1 at 14 it is—*
>
> > *"Where there is a general provision which, if applied in its entirety, would neutralize a special provision dealing with the same subject matter, the special provision must be read as a proviso to the general provision, and the general provision, in so far (sic) as it is inconsistent with the special provision, must be deemed not to apply."*
>
> *This is a principle applicable to determining the effect of a later statute on an earlier statute and for resolving a conflict between two sections of the one act: see D C Pearce, Statutory Interpretation in Australia (1988) at 83 and 149. In The Bank Officials' Association (South Australian Branch) v. The Savings Bank of South Australia (1923) 32 CLR 276 Isaacs and Rich JJ (at 289-290) described the principle as follows—*
>
> > *"As to the second ground, namely, the maximum Generalia specialibus non derogant, the first requisite is to get a clear understanding of its meaning. In Barker v. Edger (1898) A.C., at p.754 it is said— "The general maxim is, Generalia specialibus non derogant. When the Legislature has given its attention to a separate subject, and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject matter and its own terms." Now, the first thing we have to understand is what is the meaning of "separate subject" and "a subsequent general enactment." In Blackpool Corporation v. Starr Estate Co. (1922) 1 A.C., at p.34 Viscount Haldane, as to that rule of construction, says— "It is that wherever Parliament in an earlier statute has directed its attention to an individual case and has made provision for it unambiguously, there arises a presumption that if in a subsequent statute the Legislature lays down a general principle, that general principle is not to be taken as meant to rip up what the Legislature had before provided for individually, unless an intention to do so is specially declared. A merely general rule is not enough, even though by its terms it is stated so widely that it would, taken by itself, cover special cases of the kind I have referred to. An intention to deal with them may, of course, be manifested, but the presumption is that language which is in its character only general refers to subject matter appropriate to class as distinguished from individual treatment. Individual rights arising out of individual treatment are presumed not to have been intended to be interfered with unless the contrary is clearly manifest." Viscount Cave, the present Lord Chancellor, quoted with approval (1922) 1 A.C., at p.38 the rule in Barker v. Edger (1898) A.C., at p.754, Lord Cave also, for himself, said: "The rule is clear that a general statute will not, in the absence of clear words, be construed as derogating from special provisions in a previous statute." The language in those two cases—and they are in accordance with previous authorities—shows that the subject matter in the earlier Act must be the same as that in the later Act before the maximum can have any possible application. …"*
>
> *The principle has recently been recognized by Deane J in Refrigerated Express Lines (A/Asia) Pty Ltd v. Australian Meat and Live-Stock Corporation (1980) 29 ALR 333 at 347 where he referred to the statement by Romilly MR in Pretty v. Solly (1859) 26 Beav 606 at 610 that—*
>
> > *"The rule is, that wherever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be taken to be operative…"."*

20 If we were to make the Order sought the registered agreement would be overtaken. This is impermissible even if it was to be by implication or accident. We apply that principle here. We conclude that there is no power to make an order under s.44, which purports to be in substitution for an existing industrial agreement.

21 What this boils down to is that absent agreement, the parties have to go back to the award process. This has not been the approach pursued in this application. Therefore the instant process is a misapplication of the provisions of the Act and the Commission is without jurisdiction to deal with the matter.

———

2001 WAIRC 03359

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	AUSTRALIAN LIQUOR, HOSPITALITY AND MISCELLANEOUS WORKERS UNION, WESTERN AUSTRALIAN BRANCH, APPLICANT
	v.
	BURSWOOD RESORT (MANAGEMENT) LTD, RESPONDENT
CORAM	COMMISSION IN COURT SESSION
	COMMISSIONER J F GREGOR
	COMMISSIONER J H SMITH
	COMMISSIONER S WOOD
DELIVERED	FRIDAY, 27 JULY 2001
FILE NO/S	CR 326 OF 2000
CITATION NO.	2001 WAIRC 03359

Result Dismissed

Order.

HAVING heard Mr Herron (of Counsel) and with him Mr J. Welch and Mr Kelly on behalf of the Applicant Union and Mr Martin (Queens Counsel) and with him Mr B. Di Girolami (of Counsel) behalf of the Respondent, the Commission pursuant to the powers conferred on it under the *Industrial Relations Act, 1979,* hereby orders—

THAT the claim be dismissed for want of jurisdiction.

(Sgd.) J.F. GREGOR,
[L.S.] Commission in Court Session.

PUBLIC SERVICE ARBITRATOR— Awards/Agreements— Variation of—

GOVERNMENT OFFICERS SALARIES, ALLOWANCES AND CONDITIONS AWARD 1989

No. PSAA 3 of 1989.

2001 WAIRC 03389

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED, APPLICANT
	v.
	ALBANY PORT AUTHORITY AND OTHERS, RESPONDENTS
CORAM	COMMISSIONER P E SCOTT
	PUBLIC SERVICE ARBITRATOR
DELIVERED	TUESDAY, 31 JULY 2001
FILE NO	P 15 OF 2001
CITATION NO.	2001 WAIRC 03389

Result Award varied

Order.

HAVING heard Mr G Wauhop on behalf of the applicant and Ms A Davison 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 Government Officers Salaries, Allowances and Conditions Award 1989 (No. PSA A 3 of 1989) be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 1st day of July 2001.

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

Schedule.

1. Schedule G—Part II—Clause 31.—District Allowances: Delete this schedule and insert the following in lieu thereof—

(a) Officers without dependants (subclause 31(3))—

Column 1 District No.	Column II Standard Rate $ p.a.	Column III Exceptions to Standard Rate Town or Place	Column IV Rate $ p.a.
6	3,203	Nil	Nil
5	2,621	Fitzroy Crossing	3,529
		Halls Creek Turner River Camp Nullagine Liveringa (Camballin) Marble Bar Wittenoom	3,279
		Karratha	3,086
		Port Hedland	2,871
4	1,320	Warburton Mission	3,548
		Carnarvon	1,243
3	832	Meekatharra Mount Magnet Wiluna Laverton Leonora Cue	1,320
2	597	Kalgoorlie Boulder	200
		Ravensthorpe Norseman Salmon Gums Marvel Loch Esperance	788
1	Nil	Nil	Nil

(b) Officers with dependants (subclause 31(4))—

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 July 1, 2001.

GOVERNMENT OFFICERS (SOCIAL TRAINERS) AWARD 1988

No. PSAA 20 of 1985.

2001 WAIRC 03389

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED, APPLICANT
	v.
	CHIEF EXECUTIVE OFFICER, DISABILITY SERVICES COMMISSION, RESPONDENT
CORAM	COMMISSIONER P E SCOTT
	PUBLIC SERVICE ARBITRATOR
DELIVERED	TUESDAY, 31 JULY 2001
FILE NO	P 13 OF 2001
CITATION NO.	2001 WAIRC 03387

Result Award varied

Order.

HAVING heard Mr G Wauhop on behalf of the applicant and Ms A Davison 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 Government Officers (Social Trainers) Award 1988 (No. PSA A 20 of 1985) be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 1st day of July 2001.

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

SCHEDULE.

1. Schedule E—Clause 27.—District Allowances: Delete this schedule and insert the following in lieu thereof—

(a) Officers without dependants (subclause 27(3))—

Column 1 District No.	Column II Standard Rate $ p.a.	Column III Exceptions to Standard Rate Town or Place	Column IV Rate $ p.a.
6	3,203	Nil	Nil
5	2,621	Fitzroy Crossing Halls Creek Turner River Camp Nullagine	3,529
		Liveringa (Camballin) Marble Bar Wittenoom	3,279
		Karratha	3,086
		Port Hedland	2,871
4	1,320	Warburton Mission	3,548
		Carnarvon	1,243
3	832	Meekatharra Mount Magnet Wiluna Laverton Leonora Cue	1,320
2	597	Kalgoorlie Boulder	200
		Ravensthorpe Norseman Salmon Gums Marvel Loch Esperance	788
1	Nil	Nil	Nil

(b) Officers with dependants (subclause 27(4))—

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 July 1, 2001.

MISCELLANEOUS GOVERNMENT CONDITIONS AND ALLOWANCES AWARD No. A 4 of 1992.

2001 WAIRC 03278

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES AUSTRALIAN LIQUOR, HOSPITALITY AND MISCELLANEOUS WORKERS UNION, WESTERN AUSTRALIAN BRANCH, APPLICANT

v.

THE BOARD OF MANAGEMENT ALBANY REGIONAL HOSPITAL AND OTHERS, RESPONDENTS

CORAM COMMISSIONER P E SCOTT
DELIVERED MONDAY, 16 JULY 2001
FILE NO APPLICATION 288 OF 2001
CITATION NO. 2001 WAIRC 03278

Result Award varied

Order.

HAVING heard Ms D MacTiernan on behalf of the applicant and Ms A Davison on behalf of various respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Miscellaneous Government Conditions and Allowances Award No. A 4 of 1992 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 11th day of July 2001.

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

Schedule.

1. Clause 16.—District Allowance: Delete subclause (6) of this clause and insert the following in lieu thereof—

(6) The weekly rate of district allowance payable to employees pursuant to subclause (3) of this clause shall be as follows—

Column I District	Column II Standard Rate	Column III Exceptions to Standard Rate	Column IV Rate
	$ per week	Town or Place	$ per week
6	61.10	Nil	Nil
5	49.95	Fitzroy Crossing	67.20
		Halls Creek	
		Turner River Camp	
		Nullagine	
		Liveringa (Camballin)	62.55
		Marble Bar	
		Wittenoon	
		Karratha	58.90
		Port Hedland	54.65
4	25.15	Warburton Mission	67.80
		Carnarvon	23.65
3	15.90	Meekatharra	25.15
		Mount Magnet	
		Wiluna	
		Laverton	
		Leonora	
		Cue	
2	11.25	Kalgoorlie	3.75
		Boulder	
		Ravensthorpe	15.00
		Norseman	
		Salmon Gums	
		Marvel Loch	
		Esperance	
1	Nil	Nil	Nil

(**Note**: In accordance with subclause (4) of this clause, employees with dependants shall be entitled to double the rate of district allowance shown.)

The allowances prescribed in this subclause shall operate from the beginning of the first pay period commencing on or after July, 11 2001.

PUBLIC SERVICE AWARD 1992

No. PSAA 4 of 1989.

2001 WAIRC 03388

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED, APPLICANT
	v.
	ABORIGINAL AFFAIRS DEPARTMENT OF WA AND OTHERS, RESPONDENTS
CORAM	COMMISSIONER P E SCOTT
	PUBLIC SERVICE ARBITRATOR
DELIVERED	TUESDAY, 31 JULY 2001
FILE NO	P 14 OF 2001
CITATION NO.	2001 WAIRC 03388

Result Award varied

Order.

HAVING heard Mr G Wauhop on behalf of the applicant and Ms A Davison 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 Public Service Award 1992 (No. PSA A 4 of 1989) be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 1st day of July 2001.

[L.S.]

(Sgd.) P.E. SCOTT,
Commissioner,
Public Service Arbitrator.

Schedule.

1. Schedule D—District Allowance: Delete this schedule and insert the following in lieu thereof—

(a) Officers without dependants (subclause 31(3)(a))—

Column 1 District No.	Column II Standard Rate $ p.a.	Column III Exceptions to Standard Rate Town or Place	Column IV Rate $ p.a.
6	3,203	Nil	Nil
5	2,621	Fitzroy Crossing	3,529
		Halls Creek	
		Turner River Camp	
		Nullagine	
		Liveringa (Camballin)	3,279
		Marble Bar	
		Wittenoom	
		Karratha	3,086
		Port Hedland	2,871
4	1,320	Warburton Mission	3,548
		Carnarvon	1,243
3	832	Meekatharra	1,320
		Mount Magnet	
		Wiluna	
		Laverton	
		Leonora	
		Cue	
2	597	Kalgoorlie	200
		Boulder	
		Ravensthorpe	788
		Norseman	
		Salmon Gums	
		Marvel Loch	
		Esperance	
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 July 1, 2001.

AGREEMENTS—
Industrial—Retirements from—

IN THE WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION

No. 1380 of 2001

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

Brownes Dairy Pty Ltd will cease to be a party to the Brownes Dairy North Perth (Enterprise Bargaining) Agreement 1995 No AG 14 of 1995 on and from the 26th day of August 2001.

DATED at Perth this 26th day of July 2001.

J.A. SPURLING,
Registrar.

IN THE WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION

No. 1392 of 2001

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

Jandakot Wool Washing Pty Ltd will cease to be a party to the Jandakot Wool Washing Pty Ltd Agreement 1999 No AG 109 of 1999 on and from the 27th day of August 2001.

DATED at Perth this 27th day of July 2001.

J.A. Spurling,
REGISTRAR.

NOTICES—
Award/Agreement matters—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

(Application No A 3 of 2001)

APPLICATION FOR AWARD

ENTITLED "BURSWOOD ISLAND RESORT EMPLOYEES AWARD 2001"

As instructed by the Chief Commissioner of the Western Australian Industrial Relations Commission a copy of the Counter Proposal award as it relates to area of operation and scope of the proposed award is hereby published.

3.—AREA AND SCOPE AND RESCISSION OF ALL PREVIOUS AWARDS AND AGREEMENTS

(1) This Award extends to and binds—

(a) Burswood Resort (Management) Limited ("the Company") and no other employer;

(b) The following Unions—

(i) The Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch; and

(ii) The Media, Entertainment and Arts Alliance of Western Australia (Union of Employees);

(c) All employees employed by the Company in the callings in Clause 5—Wages of this Award.

(2) This Award supersedes and replaces the Burswood Island Resort Employees' Award No A23 of 1985 and No A25 of 1985 (as varied), all prior Industrial Agreement including but not limited to—

(a) the Burswood Resort Casino Employees' Industrial Agreement 1993 No AG85 of 1993;

(b) the Burswood Resort Casino Employees' Industrial Agreement 1993 Amendment Agreement 1995 No AG132 of 1995;

(c) the Burswood International Resort Casino Employees' Industrial Agreement 1997 No AG164 of 1997; and

(d) the Burswood International Resort Casino Employees' Industrial Agreement 2000 No AG 243 of 1999.

5.—WAGES

(1) The following table as listed hereunder shall be the minimum fortnightly rate of wage payable to employees covered by this Award. The rates prescribed shall take effect from the first pay period on or after the Award being issued.

		$ Per Fortnight
A.	*FOOD AND BEVERAGE*	
1.	Bar Attendant (Grade 1)	776.30
2.	Bar Attendant (Grade 2)	789.20
3.	Head Bar Attendant	833.90
4.	Cellarperson	792.90
5.	Waiter/Waitress	761.70
6.	Steward/Stewardess	761.70
7.	Head Waiter/Waitress	818.30
8.	Head Steward/Stewardess	818.30
9.	Snack Bar Attendant	761.70
10.	Bar Useful	755.60
11.	Host/Hostess	818.30
B.	*KITCHEN*	
1.	Chef	871.00
2.	Qualified Cook	818.30
3.	Cook Employed Alone	777.50
4.	Breakfast and/or Other Cook	770.60
5.	Kitchenhand	755.60
6.	Qualified Butcher	818.30
7.	Other Butcher	794.10
C.	*MISCELLANEOUS*	
1.	Cafeteria Attendant—(Grade 1)	761.70
2.	Cafeteria Attendant—(Grade 2)	770.60
3.	Commissionaire	755.60
4.	Valet/Carparking Attendant	755.60
5.	Storeperson	770.60
6.	Laundry Attendant (Grade 1)	755.60
7.	Laundry Attendant (Grade 2)	772.00
8.	Cleaner	755.60
9.	General Hand	755.60
10.	Seamstress	822.60
11.	Wardrobe Attendant	818.30
12.	Guest Services Officer	818.30
13.	Cashier	776.30
D.	*CASINO OPERATIONS*	
1.	Croupier/Dealer	789.00
2.	Electronic Gaming Attendant	789.00
3.	Count Team	789.00
4.	Change Booth Cashier	789.00
5.	Main Cage Cashier	1047.80

(2) Classifications

(a) "Bar Attendant—Grade 1" shall be an employee over the age of 18 years who serves liquor for sale from behind a bar counter, and shall include an employee employed in the sale of liquor from a bottle department.

(b) "Bar Attendant—Grade 2" shall be an employee over the age of 18 years who, in addition to performing the normal duties of a "Bar Attendant- Grade 1" as defined in (a) hereof, shall be required by the Company to have a knowledge of the preparation and/or mixing of drinks and where necessary carry out such duties. Duties performed may also include attending a wagering (eg TAB) terminal, electronic gaming terminal or similar terminal.

(c) "Qualified Butcher" shall be a butcher who has completed a trade test at a recognised school or college acceptable to the Company.

(d) "Cafeteria Attendant—Grade 1" shall be an employee serving and/or receiving money from employees for snacks or meals.

(e) "Cafeteria Attendant—Grade 2" shall be an employee who, in addition to the duties of a Cafeteria Attendant Grade 1, assists in the preparation of snacks and meals served to employees.

(f) "Cellarperson" shall be an employee employed in charge of, or responsible for, the contents of a cellar or liquor store.

(g) "Cleaner" shall be an employee who does general cleaning duties in or about the Resort complex.

(h) "Chef" shall be an employee appointed as such and shall be an employee who is a "Qualified Cook" (as defined in (i) hereof).

(i) "Qualified Cook" shall be an employee who has completed and can produce appropriate documentary evidence to the Company to the effect that he/she has successfully completed an apprenticeship in cooking at an approved or recognised school or college, or who can provide documentary evidence of having served at least 6 years in Her Majesty's Armed Forces in the classification of Cook.

(j) "Breakfast Cook" shall be an employee (other than a Chef, Qualified Cook or Cook Employed Alone) who is responsible for the preparation of breakfasts.

(k) "Other Cook" shall be an employee who assists in the cooking and preparing of meals.

(l) "Cook Employed Alone" shall be an employee who is employed when no other cook is employed during their shift.

(m) "General Hand" shall be an employee engaged to perform general duties in and around the Resort but not including cooking, waiting, dispensing of liquor or other specialised functions.

(n) "Snack Bar Attendant" shall be an employee serving and/or receiving money from the public for snacks or meals.

(o) "Head Waiter, Head Waitress, Head Steward or Head Stewardess" shall be an employee required by the Company to be in charge of other Waiters, Waitresses, Stewards or Stewardesses.

(p) "Head Bar Attendant" shall be a Grade 2 Bar Attendant required by the Company to be in charge of other Bar Attendants.

(q) "Laundry Attendant—Grade 1" shall be an employee required to launder, wash, clean, dry-clean and maintain Company uniforms and other items.

(r) "Laundry Attendant—Grade 2" shall be an employee required to operate specialised equipment in the process of maintaining and dry-cleaning Company uniforms and other items.

(s) "Wardrobe Attendant" shall be an employee who receives, distributes and maintains employee clothing, uniforms and equipment.

(t) "Waiter or Waitress" shall be an employee who attends to the needs of guests at a table and/or performs room service duties.

(u) "Guest Services Officer " shall be a person who attends to the needs of patrons including providing information and conducting tours.

(v) "Storeperson" shall mean a person employed in charge of and/or responsible for the contents of a

store, not being a place where alcoholic beverages or liquors are kept.

(w) "Bar Useful" shall be an employee required to perform duties associated with bar and waiting work. Such duties include the wiping of tables or bar tops, collection of glasses or plates and the cleaning of bar mats or other general duties of a similar nature.

(x) "Change Booth Cashier" shall be an employee responsible for the use of and accounting for change and/or being responsible for machine payouts.

(y) "Main Cage Cashier" shall be an employee responsible for the receiving, disbursing, reconciling and controlling receipt and issue of gaming chips to gaming tables from the Casino Cage and for exchanging chips for currency from players reconciling and controlling their own float and for recording all transactions therein.

(z) "Count Team" shall be employees responsible for the conduct of a full count of monies received via gaming table drop boxes and video machines and the recording of these monies.

(aa) "Croupier/Dealer" shall be an employee required to deal one or more particular game to a required standard.

(ab) "Electronic Gaming Attendant" shall be an employee responsible for conducting and assisting patrons with electronic games including Keno games.

(ac) "Valet/Carparking Attendant" shall be an employee engaged in and around the Resort in the direction and/or parking of vehicles, including the receipt and dispensing of monies.

9.—DEFINITIONS

(1) "Company" shall mean Burswood Resort (Management) Limited.

(2) "Union" shall mean the Australian, Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch and the Media, Entertainment and Arts Alliance of Western Australia (Union of Employees), insofar as classifications (1) to (5) in Section D of Clause 5—Wages of this Award.

(3) "Daily spread of shift" shall mean the time which elapses from the employee's actual starting time to the employee's actual finishing time for the day or shift.

(4) "Ordinary time rate" shall mean the rates of pay referred to in Clause 5—Wages of this Award, as varied from time to time.

(5) "Rostered fortnight" shall mean those ordinary hours the employee is rostered to work within any given pay fortnight.

(6) "Casino Operations" shall mean persons employed in the classifications of Croupier/Dealer, Electronic Gaming Attendant, Count Team, Change Booth Cashier and Main Cage Cashier.

(7) "Rostered day off" shall mean any period of 24 continuous hours off work between the completion of the employee's last rostered ordinary shift of work and the commencement of the employee's next rostered ordinary shift of work.

(8) "Casino Control Act" shall mean the Casino Control Act, 1984 (WA).

The application is listed for hearing before the Commission in Court Session on the 24th 25th 27th and 28th days of September 2001.

J.A. SPURLING,
Registrar.

10 August 2001.

PUBLIC SERVICE ARBITRATOR— Matters Dealt With—

2001 WAIRC 03302

FAIRNESS AND EQUITY OF TREATMENT OF MR STEVE BROWN.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES	CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED, APPLICANT
	v.
	COMMISSIONER OF POLICE, RESPONDENT
CORAM	COMMISSIONER P E SCOTT
	PUBLIC SERVICE ARBITRATOR
DELIVERED	TUESDAY, 17 JULY 2001
FILE NO	P 6 OF 2001
CITATION NO.	2001 WAIRC 03302

Result Jurisdiction found and application for interim orders dismissed

Reasons for Decision.

1 This is an application pursuant to s.80E of the Industrial Relations Act 1979. The background to this matter is that Mr Steve Brown whose substantive position was classified at Level 1, has since 1997 acted in a higher position almost continuously. For the three years from 23 March 1998 to 30 March 2001 he did act continuously in the position of Bike Education Area Manager ("BEAM") classified at Level 3, during the incumbent's secondment elsewhere. At regular intervals of two to three months, he completed applications for Higher Duties Allowance.

2 From the papers before the Public Service Arbitrator, it does not appear to be in dispute that in February 2001, the respondent advised that there was to be a reorganisation of the arrangements in the section involving bike education. This restructure included the position being acted in by Mr Brown being abolished, a new position for a sworn officer being established and the item allocated to the BEAM position being transferred to another area and being filled by a person in that area. That meant that Mr Brown could no longer act in the higher position, and as I understand it, his own substantive position had previously been abolished. Therefore he was surplus to requirements and substantively at Level 1.

3 The complaint by the applicant is that the respondent has been unfair and inequitable in its treatment of Mr Brown, that given the circumstances which applied for a number of years, and that it was known by the respondent that the acting arrangement would continue for some time, Mr Brown ought to have been given the opportunity to have been placed in the BEAM Level 3 position. The applicant alleges that the position ought to have been declared vacant, and Mr Brown allowed to apply for it. The consequences of the respondent's actions were that Mr Brown has reverted to substantive Level 1 for all purposes resulting in a substantial reduction in his income, and he is now surplus to requirements and has no position.

4 The applicant's seeks—

(1) an interim order pursuant to s.32 of the Industrial Relations Act 1979 that until the matter is finally resolved, Mr Brown continue to be paid at Level 3; and

(2) a finding that the respondent has treated Mr Brown unfairly and inequitably; and

(3) that Mr Brown's standing in the position of BEAM Level 3 be formalised.

5 The respondent says that this matter fundamentally relates to Mr Brown no longer having the opportunity to act in a position classified substantially higher than his own. The

respondent also says that the Public Service Arbitrator has no jurisdiction to deal with this matter because "temporary deployment" (acting) is a human resource activity which is covered by Public Sector Standards in Human Resource Management. This is the province of the Public Sector Standards Commissioner and the Public Sector Standards. According to s.80E(7) of the Industrial Relation Act 1979 such a matter is outside the jurisdiction of the Commission. This is on the basis that any matter in respect of which a procedure referred to in s.97(1)(a) of the Public Sector Management Act 1994 is, or may be, prescribed under that Act, is excluded from the jurisdiction of the Arbitrator.

6 Section 97(1)(a) of the Public Sector Management Act says—

> **97. Functions of Commissioner concerning relief in respect of breach of public sector standards**
>
> (1) The functions of the Commissioner under this Part are—
>
> (a) to make recommendations to the Minister on the making, amendment or repeal of regulations prescribing procedures, whether by way of appeal, review, conciliation, arbitration, mediation or otherwise, for employees and other persons to obtain relief in respect of the breaching of public sector standards;

7 I am satisfied that the matter the subject of the claim which the applicant seeks the Public Service Arbitrator to inquire into and deal with is a matter relating to the fairness and equity of the respondent's treatment of Mr Brown, and does not require the Commission to deal with a matter the subject of a procedure referred to in s.97(1)(a) of the Public Sector Management Act 1974. The applicant seeks the Arbitrator to enquire into and deal with a matter of equity and fairness and to make declarations and orders accordingly.

8 Accordingly, I am not satisfied that there is any jurisdictional impediment to the Public Service Arbitrator dealing with this substantive matter.

9 As to the issue of an interim order sought by the applicant that Mr Brown continue to be paid at Level 3 until the final hearing and determination of the substantive matter, I note the terms of s.32(1), (2) and (3) of the Industrial Relations Act 1979 which enables the Arbitrator to do certain things in dealing with a matter before it. Those terms are—

> **"32. Reference of industrial matters for conciliation**
>
> (1) Where an industrial matter has been referred to the Commission the Commission shall, unless it is satisfied that the resolution of the matter would not be assisted by so doing, endeavour to resolve the matter by conciliation.
>
> (2) In endeavouring to resolve an industrial matter by conciliation the Commission shall do all such things as appear to it to be right and proper to assist the parties to reach an agreement on terms for the resolution of the matter.
>
> (3) Without limiting the generality of subsection (2) the Commission may, for the purposes of that subsection —
>
> (a) arrange conferences of the parties or their representatives presided over by the Commission;
>
> (b) arrange for the parties or their representatives to confer among themselves at a conference at which the Commission is not present;
>
> (c) give such directions and make such orders as will in the opinion of the Commission—
>
> (i) prevent the deterioration of industrial relations in respect of the matter until conciliation or arbitration has resolved the matter;
>
> (ii) enable conciliation or arbitration to resolve the matter; or
>
> (iii) encourage the parties to exchange or divulge attitudes or information which in the opinion of the Commission would assist in the resolution of the matter;
>
> (d) give any direction or make any order or declaration which the Commission is otherwise authorized to give or make under this Act."

10 It is clear to me that further resort to conciliation would be unavailing and that the matter is to be decided by arbitration. In the circumstances, the provisions of s.32(3) need to be considered in the context of s.32 as a whole. That is on the basis that the powers identified in s.32(3) are for the purposes of s.32(2), which is for the purpose for endeavoring to resolve the matter by conciliation. As this matter is now to be resolved by arbitration, the powers in s.32(3) do not apply. However, if I am wrong and they do apply, I make the following comments regarding s.32(3)(c), which deals with giving directions and making orders. As to s.32(3)(c)(i) there is nothing before me that would indicate that the failure to give directions or make orders as sought would result in the deterioration of industrial relations in respect of this matter until arbitration has resolved the matter. The failure to give such directions or make such orders as the applicant seeks being an interim order would simply mean that Mr Brown continues as a redeployee albeit at a lower rate of pay than he has received for some time. That of itself does not mean that there would be a deterioration in industrial relations. Nothing has been put which would establish such deterioration in the absence of order as sought.

11 Section 32(3)(c)(ii) refers to the making of orders or giving of directions to "enable conciliation or arbitration to resolve the matter". As I have noted, conciliation is no longer a consideration. The orders sought would not enable arbitration to take place or to resolve the matter. There appears to be no impediment to arbitration which would be facilitated by the order sought.

12 Section 32(3)(c)(iii) is not applicable because the order sought does not relate to the parties exchanging information or divulging attitudes which would assist in the resolution of the matter.

13 Section 32(3)(d) refers to giving any directions or making any orders or declarations which the Commission is otherwise authorized to give or make under this Act. This must be read in the context of the opening words of subsection (3) which links subsection (3) with subsection (2) of that section. Subsection (2) refers to the Commission endeavoring to resolve an industrial matter by conciliation.

14 In that context I am not satisfied that the interim order sought by the applicant is within power as set out in s.32. There is nothing further within s.32 which would enable the issuing of the order as sought by the applicant for the payment of Mr Brown at Level 3 until the resolution of its claim on his behalf.

15 Accordingly, the substantive matter of the question of the respondent's treatment of Mr Brown and the fairness and equity of that treatment shall be set down for hearing, as there is no jurisdictional impediment to the Arbitrator dealing with that matter.

2001 WAIRC 03433

PERMANENT APPOINTMENT OF AN EMPLOYEE

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED, APPLICANT
	v.
	DIRECTOR GENERAL, DEPARTMENT OF AGRICULTURE, RESPONDENT
CORAM	COMMISSIONER P E SCOTT
	PUBLIC SERVICE ARBITRATOR
DELIVERED	MONDAY, 6 AUGUST 2001
FILE NO	P 23 OF 2001
CITATION NO.	2001 WAIRC 03433

Result Application withdrawn by leave

Order.

WHEREAS this is an application pursuant to Section 80E and Section 32 of the Industrial Relations Act 1979; and

WHEREAS by an email dated the 1st day of August 2001 the Applicant sought to discontinue the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT this application be, and is hereby withdrawn by leave.

[L.S.]

(Sgd.) P.E. SCOTT,
Commissioner,
Public Service Arbitrator.

2001 WAIRC 03354

RECLASSIFICATION OF POSITION

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	HOSPITAL SALARIED OFFICERS ASSOCIATION OF WESTERN AUSTRALIA (UNION OF WORKERS), APPLICANT
	v.
	METROPOLITAN HEALTH SERVICE BOARD, RESPONDENT
CORAM	COMMISSIONER P E SCOTT
	PUBLIC SERVICE ARBITRATOR
DELIVERED	THURSDAY, 26 JULY 2001
FILE NO	P 6 OF 1998
CITATION NO.	2001 WAIRC 03354

Result Application pursuant to s.80E dismissed

Order.

WHEREAS this is an application pursuant to Section 80E of the Industrial Relations Act 1979; and

WHEREAS on the 23rd day of August 2000 the Commission convened a conference for the purpose of conciliating between the parties; and

WHEREAS at the conclusion of that conference the Applicant sought time to consider its position; and

WHEREAS by an email dated the 25th day July 2001 the Applicant sought to discontinue the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) P.E. SCOTT,
Commissioner,
Public Service Arbitrator.

UNFAIR DISMISSAL/ CONTRACTUAL ENTITLEMENTS—

2001 WAIRC 03308

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	RAY ALLEN, APPLICANT
	v.
	ST JOHN AMBULANCE AUSTRALIA, RESPONDENT
CORAM	COMMISSIONER P E SCOTT
DELIVERED	WEDNESDAY, 18 JULY 2001
FILE NO	APPLICATION 646 OF 2001
CITATION NO.	2001 WAIRC 03308

Result	Application for unfair dismissal dismissed
Representation	
Applicant	Mr G Halliwell
Respondent	Mr M O'Connor

Reasons for Decision.

1 The respondent argues that the Commission has no jurisdiction to deal with the applicant's claim that he was harshly, oppressively or unfairly dismissed from his employment, an application made pursuant to s.29 of the Industrial Relations Act 1979 ("IR Act"). The respondent says that this is on account of the applicant's employment as a Clinical Manager being the subject of a workplace agreement pursuant to the Workplace Agreements Act 1993 ("WA Act"), and there being no provision within the workplace agreement for the matter to be referred to the Commission pursuant to s.7G of the IR Act.

2 The parties are agreed that the applicant was employed by the respondent as a Clinical Manager covered by a workplace agreement and that his demotion to the position of Ambulance Officer Grade 3 constituted a dismissal. They also agree that there is no particular provision within the workplace agreement which covered the applicant's employment as a Clinical Manager which provides for reference of a claim of unfair dismissal pursuant to s.7G of the IR Act. They also agree that the applicant's employment post the dismissal was covered by an award.

3 The applicant says that the matter before the Commission is an industrial matter pursuant to s.7(1)(a) of the IR Act. He says that when his employment as a Clinical Manager terminated, his workplace agreement came to an end. He then took up the position of Ambulance Officer during which time he made application to the Commission pursuant to s.29 of the IR Act. The applicant says that at the time of making his application he was an employee covered by an award. Further, the applicant says that the Performance Management Guidelines, which constituted a policy of the respondent, contain disciplinary procedures not included in the workplace agreement. Those Performance Management Guidelines form part of the applicant's contract of employment. The termination of employment occurred without the respondent applying the proper processes in accordance with that procedure.

The workplace agreement came to an end with the employment as a Clinical Manager. If the applicant were successful in his claim for reinstatement then he would again be covered by a workplace agreement.

4 In considering the issue of jurisdiction raised by the respondent, the Commission needs to examine relevant terms of the IR Act and the WA Act.

5 Section 18 of the WA Act provides—

"18. Implied provision as to unfair dismissal

(1) There is implied in every workplace agreement a provision that the employer must not unfairly, harshly or oppressively dismiss from employment any employee who is a party to the agreement.

(2) The provision described in subsection (1) is enforceable under section 51 of this Act or under section 7G of the Industrial Relations Act 1979, as the case may be, and not otherwise.

(3) A workplace agreement must not exclude the operation of subsection (1) and to the extent that it purports to do so it is of no effect."

6 Therefore a person whose employment was covered by a workplace agreement who claims to have been unfairly dismissed has two potential routes by which to pursue a claim of harsh, oppressive or unfair dismissal—s.51 of the WA Act or s.7G of the IR Act. Section s.51 of the WA Act, states—

"51. Unfair dismissal

(1) Where—

(a) a person who was a party to a workplace agreement as an employee claims that he or she has been unfairly dismissed from employment in breach of the provision implied in the agreement by section 18; and

(b) section 7G (1) (b) of the *Industrial Relations Act 1979* does not apply,

the person dismissed may bring an action in an industrial magistrate's court against the employer for relief in respect of that dismissal."

7 Section 7G of the IR Act provides—

"7G. Referral of claim of unfair dismissal

(1) Where—

(a) a person who was a party to a workplace agreement as an employee claims to have been harshly, oppressively or unfairly dismissed from employment in breach of the provision implied in the agreement by section 18 of the *Workplace Agreements Act 1993*; and

(b) the workplace agreement provides for referral of such claims to the Commission under this section,

the person dismissed may, within the time allowed by section 29(2), refer the claim to the Commission for determination.

(2) The Commission is to enquire into and deal with any claim referred under subsection (1) as if it were an industrial matter referred to it under section 29(1)(b)(i)."

8 This makes provision for an employee who was a party to a workplace agreement to claim that he or she was harshly, oppressively or unfairly dismissed from employment after that employment has ended. It is not an unfettered provision. For s.7G to enable an employee who was covered by a workplace agreement to bring the claim to the Commission both s.7G(1)(a) and (b) must be met. Section 7G (1)(b) requires that the workplace agreement provide for referral of claim to the Commission. The applicant's workplace agreement makes no such provision.

9 Notwithstanding this, the applicant says that at the time he filed his claim, he was an employee covered by an award, and was not covered by a workplace agreement.

10 Section 14 of the WA Act recognises that employment pursuant to a workplace agreement will come to an end at some time, and yet maintains the rights and obligations which are to take effect after termination. It provides—

"14. Termination of contract of employment

(1) Where a contract of employment of an employee comes to an end, a workplace agreement that governs that contract no longer applies to that person except where an agreement under subsection (2) provides otherwise.

(2) An employer and a person who is employed by the employer may agree in writing that a specified workplace agreement is to apply to that person as an employee of that employer during a specified period, not exceeding 12 months, regardless of the number of separate contracts of employment between them that come into existence during that period.

(3) Subsection (1) does not affect rights or obligations under a workplace agreement that are to take effect after termination of employment."

11 It is clear from the terms of the IR Act and the WA Act that the employee's status at the time of making a claim of unfair dismissal is not relevant. What is relevant is whether his or her employment the subject of the dismissal claim was subject to a workplace agreement, and the terms of that workplace agreement.

12 It is wrong to conclude that the person's status at the time of making the application is the determining factor in deciding whether he or she utilises the provisions of the IR Act or the WA Act.

13 Section 7G of the IR Act and s.51 of the WA Act make provision for "a person who *was* a party to a workplace agreement as an employee", to claim unfair dismissal i.e. reference is to the past tense (emphasis added). The legislation provides for a person who was a party to a workplace agreement, regardless of his or her status at the time of making the application, to pursue a claim of unfair dismissal in accordance with a particular regime for workplace agreement parties. Section 14 of the WA Act recognises that workplace agreements will come to an end, but provides that the rights and obligations under the workplace agreement, which were to take effect after the termination of employment, are not affected by the coming to an end of the workplace agreement.

14 On these bases, I conclude that as the workplace agreement which covered the applicant's employment made no provision for reference of a claim for unfair dismissal to the Commission under s.7G that the Commission has no jurisdiction to hear this matter. The WA Act makes specific provision for such a claim to be dealt with by the Industrial Magistrate's Court in those circumstances. The employment of a person whose employment was covered by a workplace agreement is not an employee for the purpose of the IR Act (s.7B of the IR Act) and it is only where specific provision is made, such as in s.7G of the IR Act, that the Commission is able to deal with matters affecting, relating to or arising out of relationship of parties to a workplace agreement.

15 Accordingly the application is to be dismissed.

2001 WAIRC 03309

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	RAY ALLEN, APPLICANT
	v.
	ST JOHN AMBULANCE AUSTRALIA, RESPONDENT
CORAM	COMMISSIONER P E SCOTT
DELIVERED	WEDNESDAY, 18 JULY 2001
FILE NO	APPLICATION 646 OF 2001
CITATION NO.	2001 WAIRC 03309

Result	Application for unfair dismissal dismissed

Order.

HAVING heard Mr G Halliwell on behalf of the applicant and Mr M O'Connor 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.

2001 WAIRC 03274

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	DEAN FRANCIS HILL, APPLICANT *v.* METROPOLIS CONCERT CLUB, RESPONDENT
CORAM	COMMISSIONER S WOOD
DELIVERED	FRIDAY, 13 JULY 2001
FILE NO	APPLICATION 301 OF 2001
CITATION NO.	2001 WAIRC 03274

Result	Application dismissed for want of jurisdiction
Representation	
Applicant	Mr D F Hill
Respondent	Mr I Curlewis of Counsel

Reasons for Decision.

1 The applicant, Mr Dean Francis Hill applied to the Commission on 16 February 2001 for an order pursuant to section 29(1)(b)(i) and (ii) of *Industrial Relations Act, 1979* (the Act). The application named the respondent as Metropolis Concert Club. The applicant claimed six months compensation for unfair dismissal and $11,700 in unpaid contractual benefits. The applicant says the unpaid contractual benefits relate to 20 weeks annual leave plus leave loading over the previous five years. The applicant says he was reduced to casual in 1997 and has not received holiday pay as a consequence.

2 The person named in the application Mr Tony Grego filed a notice of answer and counter proposal on 8 March 2001 indicating Mr Hill was not employed by himself or the directors of Metropolis Concert Club. The matter was dealt with in conference on 30 April 2001, could not be settled and was referred and listed for hearing on 4 July 2001. The notices for hearing were forwarded to the parties on 30 May 2001. The applicant failed to attend the hearing on 4 July 2001 and the Commission listed the matter for a hearing on 13 July 2001 for the applicant to show cause why the matter should not be dismissed.

3 At the hearing on 4 July 2001 counsel for the respondent provided documentation to the Commission to establish the changing ownership of the Metropolis Concert Club. The club is now owned by D Club Pty Ltd of which Mr Grego is a director. Ownership of the business transferred on 17 January 2001. The previous owner, Emerald Entertainment Australia Pty Ltd was in liquidation.

4 The applicant attended the hearing on 13 July 2001 and advised the Commission that he simply mistook the date of the earlier hearing and thought it was in August 2001. He acknowledged that he had received the notice but had simply made a mistake concerning the date. The Commission found this to be an inadequate reason for non-appearance at the hearing of 4 July 2001. Mr Hill also stated that he was aware that D Club Pty Ltd is the owner of the business and that he was never employed by that company. Having regard to these admissions the Commission found there to be no employment relationship between the applicant and the named respondent upon whom the application was served and dismissed the application, as made, for want of jurisdiction.

2001 WAIRC 03275

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	DEAN FRANCIS HILL, APPLICANT *v.* METROPOLIS CONCERT CLUB, RESPONDENT
CORAM	COMMISSIONER S WOOD
DELIVERED	FRIDAY, 13 JULY 2001
FILE NO	APPLICATION 301 OF 2001
CITATION NO.	2001 WAIRC 03275

Result	Application dismissed for want of jurisdiction
Representation	
Applicant	Mr D F Hill
Respondent	Mr I Curlewis of Counsel

Order.

HAVING heard Mr D F Hill on his own behalf and Mr I Curlewis of counsel on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the application be and is hereby dismissed for want of jurisdiction.

(Sgd.) S. WOOD,
[L.S.] Commissioner.

2001 WAIRC 03392

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	CRAIG GORDON HYWOOD, APPLICANT *v.* SUBIACO WINE ROOM, RESPONDENT
CORAM	COMMISSIONER P E SCOTT
DELIVERED	TUESDAY, 31 JULY 2001
FILE NO	APPLICATION 1950 OF 2000
CITATION NO.	2001 WAIRC 03392

Result	Application alleging unfair dismissal and denied contractual benefits dismissed
Representation	
Applicant	Ms K Evans (agent)
Respondent	Mr G Bull (of Counsel)

Reasons for Decision.

1 This is an application made pursuant to s.29(1)(b) of the Industrial Relations Act 1979 ("the Act") by which the applicant claims that his dismissal was harsh, oppressive or unfair and he also claims outstanding contractual benefits. This application was lodged with the Commission on 1 December 2000. The date of termination which the applicant has noted at point 14 of the schedule of Particulars of Claim attached to the Form 1 is 28 November 2000. Point 20 of that form provides

for the applicant to set out the grounds on which the claim of unfair dismissal is made. The applicant has answered this as being—

> "No warnings, just fired me out of the blue. I have been off with a back complaint, (with a doctors (sic) certificate) and was just about to see a specialist the next day with a firm diagnosis of the injury. I was given six weeks notices (sic) and was told I couldn't come back into the kitchen without a doctors (sic) clearance."

2 In point 21, the applicant has ticked the box indicating he does not seek reinstatement to his job. At point 23, which asks "if you are seeking a remedy other than reinstatement, give specific details", the applicant has written "6 weeks notice pay & all leave pay".

3 At point 24, which invites the applicant to set out the contractual benefits claimed the applicant has noted—

$	For
2466.00	Leave entitlement—7 months
6342.00	6 weeks severance pay per contract

4 It is noted that the applicant had foreshadowed an application to amend the application however, none was made. This was notwithstanding that Ms Evans, agent for the applicant, during the course of the hearing on a jurisdictional challenge raised by the respondent, made reference to amending the application, but made no effort to seek leave to do so, nor to identify the nature of any amendment which might be sought to be made.

5 The facts are agreed between the parties insofar as they are relevant to the preliminary points raised by the respondent. They are that on 25 November 2000, upon attending for work the applicant was given 6 weeks notice that his employment was to terminate. This would take the termination date to 9 January 2001. This was confirmed by letter dated 28 November 2000 posted to the applicant but not received by the applicant until 6 December 2000. On 25 November 2000, the applicant was also advised that he was not to return to work in the kitchen of the respondent until he obtained a medical clearance. It is also agreed between the parties that the applicant had lodged a workers' compensation claim which was accepted and subsequently, he received payments back to 25 November 2000. The applicant was still in receipt of workers' compensation payments at the date of hearing. The Commission was also advised by the applicant that subsequent to filing the Notice of Application, he received payment for the leave entitlements which had formed part of the claim as filed.

6 The respondent seeks the dismissal of this matter on 2 bases. The first is that it says that the application was premature in that at the time the application was made there had been no dismissal as such, what had occurred was that the applicant had been given notice. The respondent says there was no jurisdiction to deal with the matter when the application was filed and no application could be made pending a later termination. The Commission was referred to the decision in *Angelin v BP Australia Limited* (1970) 37 SAIR 10, a decision of the South Australian Industrial Relations Commission, to the decision of the Full Bench in *Satie v Swan Television and Radio Broadcasters Limited trading as STW Channel 9 Perth* (1999) 79 WAIG 955, and to the decision of Gregor C. in *Nock v Morawa Golf and Bowling Club* (2000) 80 WAIG 651.

7 The applicant says that by being given 6 weeks notice and being told that he was not allowed back into the kitchen until he got a medical clearance, his employment was, in effect, terminated at that point.

8 The respondent's second point was that the application ought be dismissed pursuant to s.27 of the Act on the basis that the remedy sought, being 6 weeks notice and paid leave, has been received by the applicant. Payment for the 6 weeks of the period of notice was part of the payment for the period of workers' compensation when the applicant performed no work. The applicant has acknowledged that the leave benefits have been paid, therefore, no remedy could be provided to the applicant.

9 The respondent also says that if the applicant claims he has suffered loss for which he seeks an order for compensation, then the applicant has suffered no loss in that he has continued to receive workers' compensation payments from the date of termination until the date of hearing and beyond.

10 The applicant's agent says that although the applicant has received workers' compensation payments it has been at a lower rate of pay. The applicant's agent did not seek to elaborate on what this meant.

11 I have considered the arguments raised by the respondent in this matter. The first matter I shall deal with is the date of termination. The applicant says that the termination occurred on the day he was given notice to terminate in 6 weeks, on the basis that that was the effect of the employer's direction that he not be allowed back to work in the kitchen until he had a medical clearance.

12 Clearly, the employment relationship was not terminated at this point. What occurred is common practice when an employee is injured and not able to perform work. The employer is entitled to refuse to have the employee perform work while not fit to do so. In this case, it would seem that the applicant was not declared fit to return to work during the 6 weeks' notice period. However, there was no termination of the employment relationship at that point.

13 As to the first issue raised by the respondent, I note that the decision of the South Australian Industrial Commission in *Angelin v BP Australia Limited* (supra) is a decision from 1970. The Industrial Employee Relations Act (SA) 1994 supersedes that decision. The decision of the Full Industrial Relations Commission of South Australia of 27 July 1998 in *Jeffrey Ross Grivell v Advertiser Newspapers Ltd* (1998) 65 SAIR 395, deals with South Australian legislation as it stood in 1998 and includes provisions reflecting international conventions regarding dismissals. That decision refers to a number of other authorities and agrees with the view of Von Doussa J. in *Fryar v Systems Services Pty Ltd* (1994) 125 ALR 592. The effect of the decision is that it was important to refer to the objects of the South Australian Act which included giving effect to the Convention but also to the object of the legislation being to ensure industrial fair play. On this basis, it was held that the terms of the legislation could not be seen to mean that an application could only be made after the termination of employment had been effected, that the term dismissal should be interpreted broadly, and could include the period of notice.

14 The decisions of this Commission in *Satie v Swan Television* (supra) and *Nock v Morawa Golf and Bowling* Club (supra) can be distinguished in that the references made by the Full Bench and Gregor C. respectively were made in the context of applications being challenged on the basis of their being out of time, that is, filed after the 28 day period provided for in s.29(2) of the Act. Section 29(2) provides—

> "A referral by an employee under subsection (1)(b)(i) cannot be made more than 28 days after the date on which the employee's employment has terminated."

15 The reference contained in s.29(2) to the application being made not more than 28 days after the date on which the employee's employment has terminated sets a time frame after which claims cannot be referred to the Commission. That is quite a different matter from the point in time from which claims may be referred. There is nothing contained within s.29 which sets out that stating point.

16 On that basis, those decisions do not assist as they deal with applications made after the termination of employment took effect whereas this matter relates to a termination which took effect after the application was filed.

17 The question is whether the "dismissal" referred to in s.29(1)(b)(i) occurs at the conclusion of the employment, or at some other time or by some other action. It seems to me that there are two competing principles involved in

the consideration of this matter. The first is set out in the decision of the High Court in *Wigan v Edward and Another (1973)* 47 ALJR 586 at 596 where Mason J. said that—

> "To succeed a plaintiff must establish his cause of action at the date of the plaint, for that is the origin of the action … although the District Court is not a strict court of pleading, there is no good reason for concluding that in the absence of appropriate statutory provisions, or the consent of the defendant, the respondents could succeed in obtaining a judgement on a cause of action which had not accrued at the date the plaint."

18 In *Baldry v Jackson (1996)* 2 NSWLR 415 at 419 Samuels J.A., with whom Moffatt P. and Glass J.A. agreed, said—

> "It seems to me, therefore, impossible to permit any amendment to this statement of claim which would have the effect of introducing into a cause of action based upon facts which had not arisen when the statement of claim was filed … I cannot see how a plaintiff can commence proceedings by a statement of claim dated November 1995 (and that date would remain after amendment) which pleads facts which did not occur first until the 1st December 1995 …".

19 The learned judge concluded that—

> "at the date of statement of claim, there were no facts in existence that entitled the appellant to seek a declaration. All that exists was an hypothesis" (page 420).

20 It is arguable that at the time of the application being lodged, there was not so much an hypothesis rather there was notice of intent to bring the employment to an end i.e. notice of impending termination of employment. With the passage of time the intention became a fact.

21 The provisions of s.29(1)(b)(i) are beneficial provisions. They enable an employee to bring a claim of unfair dismissal. On that basis, the conclusion drawn in *Grivell v Advertiser Newspapers Ltd* (supra) is apposite—i.e. that the terms of the legislation could not be seen to mean that an application could only be made after the termination of employment had been effected. Therefore, a broad interpretation should be applied to the term "dismissed" and this period should include the period of notice. I would allow the application on that basis.

22 As to the second matter, the applicant seeks a remedy of "6 weeks notice pay and all leave pay". As noted, notwithstanding the respondent clarifying the details of the remedy sought during the hearing of these issues, no application was made by the applicant to amend the remedy sought, nor was there any suggestion as to the nature of any alternative remedy. The applicant indicated that the issues raised by the respondent were not a surprise, and no adjournment was sought to consider them. The applicant was represented by a registered agent and the Commission is entitled to presume that a registered agent is competent (see Industrial Relations (Industrial Agents) Regulations 1997, Schedule 1—Code of Conduct).

23 It is clear that the applicant has received the leave pay which is the second part of what he sought being "all leave pay". It is clear, too, that the applicant was paid for the period of notice albeit he was paid workers' compensation payments and that this was not received for some time after the notice was given. However, when the workers' compensation claim was accepted back pay was made. The applicant was not fit to work during that period as he continued on workers' compensation throughout the notice period and up to and including the date of hearing. There is no suggestion from the applicant's submissions that what has been sought has not been provided. The applicant draws a distinction between being paid in lieu of notice and receiving workers' compensation payments. I am not satisfied that the applicant is entitled to receive the notice pay claimed in the Notice of Application. The applicant was unable to work out the notice period because of his injury. Had he worked the period, he would have been entitled to be paid wages for the notice period, and would not have been entitled to workers' compensation payments. As he was unable to work because of a work related injury, he was paid during that period in accordance with the workers' compensation regime. He was not denied payment during the notice period.

24 I also note that, in accordance with s.26(2) of the Act, the Commission is not restricted to the specific claim made or the subject matter of the claim. As I have already noted, the applicant's agent had heard the nature of the respondent's objections, yet did not seek to amend or elaborate on the claim. The claim as set out in the Particulars of Claim was that which the applicant pursued.

25 Notwithstanding that, I have considered whether the applicant is entitled to have the Commission examine his case more widely, such as a claim for a declaration that the dismissal was unfair, although no such remedy was sought. I note the reasons for decision of His Honour the President and Chief Commissioner Coleman in *Gregory R Hutchinson v Cable Sands (WA) Pty Ltd* (1999) 79 WAIG 951 at 953. In that matter, the Full Bench noted "in our opinion, proceeding to make a mere declaration in a s.23A application, without granting a remedy would, in some cases not be in the public interest". In the case before the Full Bench however, the appellant sought reinstatement and in those circumstances the question was not merely academic.

26 In the application currently before the Commission, the applicant has set out in the Notice of Application the remedies sought. Those remedies are clear, and have been met. As a consequence, it is not in the public interest for the matter to proceed to hearing and determination. Pursuant to s.27(1)(a)(ii) and (iv), further proceedings are not necessary or desirable in the public interest and there is no other reason why the matter should proceed to hearing and determination. The application is to be dismissed.

2001 WAIRC 03391

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	CRAIG GORDON HYWOOD, APPLICANT *v.* SUBIACO WINE ROOM, RESPONDENT
CORAM	COMMISSIONER P E SCOTT
DELIVERED	TUESDAY, 31 JULY 2001
FILE NO	APPLICATION 1950 OF 2000
CITATION NO.	2001 WAIRC 03391

Result	Application alleging unfair dismissal and denied contractual benefits dismissed

Order.

HAVING heard Ms K Evans on behalf of the applicant and Mr G Bull (of Counsel) on behalf of the respondent, the Commission pursuant to the powers conferred on in under the Industrial Relations Act 1979, hereby orders—

THAT this application be, and is hereby dismissed.

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

2001 WAIRC 03270

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	STEPHEN LAROSE, APPLICANT *v.* KIAM CORPORATION PTY LTD, RESPONDENT
CORAM	COMMISSIONER S WOOD
DELIVERED	FRIDAY, 13 JULY 2001
FILE NO	APPLICATION 1552 OF 2000
CITATION NO.	2001 WAIRC 03270

Result	Application dismissed
Representation	
Applicant	Mr M Morgan of Counsel
Respondent	Mr J Uphill as agent

Reasons for Decision.

1 This is an application pursuant to section 29(1)(b)(i) of the *Industrial Relations Act, 1979* (the Act). The applicant Mr Stephen LaRose worked for the respondent as a mechanical fitter at their Leinster Nickel operation. The applicant was responsible for the repair and maintenance of equipment. The applicant says he was unfairly dismissed on 1 September 2000 in that he was dismissed for allegedly discussing with another employee the intended misappropriation of company property. The applicant does not seek reinstatement and instead seeks compensation for lost income.

2 The respondent initially challenged the jurisdiction of the Commission claiming that Mr LaRose was a contractor. This contention was withdrawn at a preliminary hearing. The respondent maintains that on 31 August 2000 its General Manager, Mr Andrew Ellison overhead two employees discussing their intention to steal a caddy welder from site. The respondent says that subsequent investigation identified the applicant, Mr LaRose, as being one of the participants in the conversation. After consultation with his client, Western Mining Corporation, a decision was taken to remove the applicant from site. The applicant was dismissed on 1 September 2000.

3 Mr LaRose says he was employed full time with the respondent from March 2000 to 1 September 2000. Mr LaRose says he had a problem getting pay issues resolved. He says he also had difficulties obtaining work clothing and a workplace agreement. There were also problems experienced on site due to a mobile scaffold falling over. He says because of these combination of problems at one stage he spoke to another contractor on site, Skilled Engineering, regarding the terms of an employment contract they might offer.

4 On Thursday 31 August 2000, in the afternoon just prior to leaving site, Mr LaRose spoke to a Rebecca on the telephone regarding his pay. He says she did not know what was happening with his pay and he was furious at this. He was flying out that day with two other employees, Mr Luke Hudson and Mr Gary Kruger. Mr Kruger was a Western Mining employee and a maintenance team leader (effectively their boss). Mr LaRose went and had a couple of beers and got some food, then went to the airport with the other two employees. He says they were talking about the scaffold incident and his pay difficulties. He says on the plane he sat opposite the aisle from Mr Hudson and had a three-way conversation with Mr Hudson and Mr Vernon Reed, a Western Mining storeman.

5 Mr Hudson and Mr LaRose were due to fly back to site on the Monday. On Friday, 1 September 2000, Michelle Greenwell on behalf of the respondent called Mr LaRose to advise him that he was not needed back on site by Western Mining. He says he asked if he had been sacked and she said, "Not at this particular time. Come in on Monday and we'll sort it out." He rang Mr Hudson, and found out that Mr Hudson had also been given the same advice. They then went to the respondent's offices in Rockingham. He says they were told by Ms Greenwell that Western Mining did not require them back on site but she did not know why. He says he did not believe her and rang one of his colleagues at site but could not get any further information. He then spoke to Mr Robbie Ellis, another team leader who informed him of the allegations. He says Mr Ellis told him that it was alleged that Mr LaRose was intending to steal a power generator.

6 Mr LaRose and Mr Hudson had a second meeting with Ms Greenwell who told them that the reason they were sacked was because their conversation was overheard by Mr Andrew Ellison, the General Manager on the way home in the plane. He says this was his last contact with the respondent. He says he thinks he was sacked because he was "rocking the apple cart" and at about the same time he says the respondent's contract was under threat.

7 Mr LaRose under cross examination denied that Mr Hudson and he talked about having approached Skilled Engineering to take over the contract and says all conversation at the airport was with Mr Kruger and Mr Hudson (ie not simply with Mr Hudson). He says they were out the front of the airport, not in the terminal, because Mr Kruger is a smoker. He does not deny that on the plane Mr Hudson and he continued a conversation and were critical of the respondent.

8 Mr Hudson was called to give evidence but effectively not examined by counsel for the applicant. As Mr Hudson had entered into a confidentiality agreement with the respondent, arising from a conciliation conference before the Commission as presently constituted. Mr Hudson stated he did not wish to violate the agreement. He was not questioned further by counsel for the applicant or by Mr Uphill for the respondent.

9 Mr Ellison, the General Manager of the respondent gave evidence that in the airport on 31 August 2000 he heard two people talking about "Kiam". He says he went and stood side on to them and about two feet away from them. The two men talked about a safety incident on the Leinster site. He says they indicated that Western Mining and Kiam were looking to blame people for the incident. Mr Ellison says they talked about a discussion one of the men had had with the payroll officer in Kalgoorlie. They talked about discussions they had with Skilled Engineering and how they had asked them to see if they could take the contract off Kiam and how much they would get paid by Skilled Engineering. He says they discussed whether they could get more money and Mr LaRose indicated he felt he was owed money by Kiam and to obtain this he could steal a caddy welding machine off the company as a repayment of the money. After 15 or 20 minutes they were approached by another person and there was five minutes general discussion on various things to do with Western Mining but nothing of a derogatory nature. All three men went outside and Mr Ellison assumes they had a cigarette before boarding the plane. He says he did not know who the two people were at the time as he had never seen them before in his life. On the plane Mr Ellison sat behind the men and they continued their conversation criticising the respondent and saying they hoped that Skilled Engineering would get the contract. He says Mr Hudson was directly in front of him and Mr LaRose was on his left on the other side of the aisle.

10 When Mr Ellison returned to Perth he contacted his personnel department to confirm which Kiam employees were on the flight and check their seat numbers. He says he checked to see whether there was any money owing to those employees. Once it was confirmed that Mr Hudson and Mr LaRose were the two employees on the plane, and it was confirmed from Mr Reece Power in Kalgoorlie that no monies were owing to them, he made a decision to terminate their services. Prior to the termination he instructed the personnel officer Ms Greenwell to talk to the Kiam site superintendent Mr Peter Smith and have him inform Western Mining of the conversation. He says to save aggravation the company took a decision to advise Mr Hudson and Mr LaRose that they were being put off as Western Mining was reducing numbers on site. He instructed Ms Greenwell to give effect to the terminations.

He then instructed Ms Greenwell to talk to them again a couple of days later as they had spoken to Western Mining who had told them that it was a Kiam issue not a Western Mining issue

11 Ms Michelle Greenwell, the personnel officer for Kiam gave evidence that Mr Ellison gave her a call on 31 August 2000 when he got off the plane. She says he asked her to find out who were the two employees on the plane. She telephoned the site supervisor Mr Smith who advised her of their names. They were the only two Kiam employees on the flight. She was also asked to enquire whether there was any substance in their complaints. She conveyed the information from Mr Smith to Mr Ellison who advised her to ring Mr LaRose and Mr Hudson and tell them that they were not required to return to site. When they asked why they were not to return to site she advised them to come in on Monday and she would discuss it with them. She says that John Brown and her told the two men that they would not need to return to site because the crew was being cut down. She says they decided to do this to avoid animosity. Following that, either Mr Hudson or Mr LaRose, she could not remember which, rang her up indicating that he did not believe her concerning the reasons she had stated for the termination. She was told they had contacted somebody from Western Mining who had said that their employment was terminated because of a discussion overheard on the plane. She advised them to come in again and discuss it. She says they came in for another meeting and they were angry that she had not been up front with them in the first place. The real reason for their dismissal was then explained to them.

12 The key consideration is whether the evidence of Mr LaRose or that of Mr Ellison is to be preferred. It is not seriously contended that there would not be valid grounds for dismissal if the employer was reasonably of the belief that an employee was planning to steal from the employer. Instead Mr Morgan on behalf of the applicant says that the conversation did not relate to this, the applicant was summarily dismissed and there was no procedural fairness in the termination as there was no proper investigation and the allegations were not put to Mr LaRose. He says the onus lies with the respondent to prove that the summary dismissal was justified.

13 The only evidence of a conversation I have is that of LaRose and Mr Ellison. These are the only two witnesses who have given evidence about conversations at the airport and on the airplane. The other participants in the conversation according to Mr LaRose were Mr Hudson and Mr Kruger. Mr Hudson's evidence was so restrained as to doubt why he was called to give evidence at all. Mr Kruger was not called to give evidence. It is Mr Kruger who could have added considerable weight to verify Mr LaRose's account of events if the applicant is to be believed. The evidence of Ms Greenwell does not add to the substance of the allegation against the applicant. Her evidence is really about the process of the termination which was flawed in my view by the lack of honesty in advising Mr LaRose of the proper reason for his termination. The other issue of importance is that Mr LaRose, as would be normally expected, did not have the opportunity to answer the allegation against him.

14 I have no doubt that the process of the dismissal was flawed by its lack of initial directness and honesty. There is no suggestion of a threat or other reason which might otherwise be used to explain why Mr LaRose was initially misled. He was finally given the correct reason only after his own investigation had disclosed it (even though the property in question was described as a power generator).

15 This procedural flaw is but one factor in the question of unfair dismissal. A dismissal may not of necessity be deemed unfair simply by virtue of a procedural flaw *Shire of Esperance—v- Peter Maxwell Mouritz* 71 WAIG 891 @ 895. Nevertheless, I do not consider the process of investigation to be flawed. In that sense the evidence is clear and unchallenged that Mr Ellison caused enquiries to be made as to who were the Kiam employees on the flight and were they owed monies which might lend legitimacy to their complaints. Having received an answer to these questions Mr Ellison decided to terminate their services and to pay them notice in lieu. This is also not seriously challenged. Mr Morgan for the applicant says that Mr LaRose was summarily dismissed and the onus lies with the respondent to prove their case. I do not find that Mr LaRose was summarily dismissed. Irrespective, as Kennedy J states in the *Shire of Esperance* decision at page 895 the evidential burden is—

> "to show that there is sufficient evidence to raise an issue as to the existence or non-existence of a fact in issue".

The respondent has achieved this.

16 Mr LaRose was paid 8 hours notice in lieu and Mr Hudson was paid for 38 hours. The period of notice for Mr LaRose, on the evidence, was considered correct as the respondent deemed Mr LaRose to be a contractor. This issue was originally contended by the respondent and then withdrawn at preliminary hearing. The period of notice would seem to be inadequate in light of section 170CM of the Federal *Workplace Relations Act 1996*. However, this matter was not raised by either party at hearing.

17 I prefer the evidence of Mr Ellison to that of Mr LaRose. It is not significant, as Mr Uphill for the respondent would have it, that Mr LaRose has a previous offence for stealing. This occurred many years ago and has no relevance to this matter in substance or for an assessment of credibility. I am, however, persuaded by the plain and direct manner of Mr Ellison in giving his evidence. I am particularly persuaded by the thought that, if Mr Ellison did not hear the conversation as he claims to have, then how could he have known so much of the detail of the conversation. The subject matter of the conversation is not challenged except for discussion about an intention to steal a caddy welder. Mr Ellison did not on his evidence, which I accept, know the two men. He made inquiries as to who they were and whether they were owed monies. To come to a different conclusion I would need to perceive this, as Mr LaRose would maintain, as a case where Mr Ellison has engineered matters to dismiss Mr LaRose. Having viewed both men giving evidence I do not believe, in all probability, that is how best to characterise this matter. This is weighed against a backdrop of Mr LaRose, on his own evidence, being greatly disaffected with the respondent. I accept the evidence of Mr Ellison, which was quite straightforward and unchanged under cross-examination. He discovered who the two men were. He was troubled by their adverse comments, particularly the discussion regarding an intention to steal company property. He sought advice on the validity of their complaints and the views of the company to which his company was contracted. He then decided that he could not trust the two employees any further and instructed that their services be terminated.

18 I find the conversation between Mr LaRose and Mr Hudson, witnessed by Mr Ellison at the Leinster airport, included discussion about an intention to steal company property and led to a breakdown in trust between employer and employee sufficient to warrant dismissal.

19 For the above reasons I would dismiss the application.

2001 WAIRC 03260

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	STEPHEN LAROSE, APPLICANT *v.* KIAM CORPORATION PTY LTD, RESPONDENT
CORAM	COMMISSIONER S WOOD
DELIVERED	FRIDAY, 13 JULY 2001
FILE NO	APPLICATION 1552 OF 2000
CITATION NO.	2001 WAIRC 03260

Result	Application dismissed
Representation	
Applicant	Mr M Morgan of Counsel
Respondent	Mr J Uphill as agent

Order.

HAVING heard Mr M Morgan of counsel on behalf of the applicant and Mr J Uphill 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. WOOD,
[L.S.] Commissioner.

2001 WAIRC 03238

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	MITCHELL WILLIAM MACGREGOR, APPLICANT
	v.
	STAR SURF SHOP PTY LTD, RESPONDENT
CORAM	COMMISSIONER A R BEECH
DELIVERED	THURSDAY, 12 JULY 2001
FILE NO	APPLICATION 934 OF 2001
CITATION NO.	2001 WAIRC 03238

Result	Application alleging unfair dismissal and denied contractual benefits dismissed for want of jurisdiction.
Representation	
Applicant	Mr M.W. MacGregor (by way of written submissions)
Respondent	Mr D.A. Kennedy (by way of written submissions)

Reasons for Decision.

1 Mr MacGregor has made two claims in the Commission. The first claims that he was unfairly dismissed. The second claims that he has not been allowed by his employer benefits under his contract of employment. The issue that arises in this matter is whether the Commission has the jurisdiction to entertain the application lodged by Mr MacGregor. The respondent has queried whether the claim of unfair dismissal was lodged within 28 days of the date of termination. The application lodged by Mr MacGregor also suggests that the contractual benefits he is claiming are in reality allegations of a breach of an award. The Commission drew this to the attention of the parties in correspondence dated 21 June 2001. Mr MacGregor responded in writing to that correspondence on 5 July 2001.

2 The Commission determines the matters as follows.

Claim of unfair dismissal

3 The *Industrial Relations Act 1979* provides in section 29(2) 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.

4 Mr MacGregor states in his Notice of Application that his employment terminated on 11 May 2001. His application was filed in the Commission on 31 May 2001. However, it is admitted now by Mr MacGregor, and I find, that Mr MacGregor's employment actually terminated on 17 April 2001. This is the date referred to by the respondent in its Notice of Answer and Counter Proposal. It is also the date acknowledged by Mr MacGregor in his letter dated 5 July 2001.

5 Accordingly, I find as a matter of fact that Mr MacGregor's employment terminated on 17 April 2001. Accordingly, his application to this Commission is filed out of time because it was referred to the Commission more than 28 days after that date.

6 Mr MacGregor draws the Commission's attention to section 28 (not s.28(2) as he states) of the *Industrial Relations Act 1979* which is as follows—

> "The powers conferred on the Commission by section 27 may be exercised in relation to the matter at any time after the matter has been lodged in the Commission notwithstanding that the procedures prescribed under this Act have not at this time been complied with to the extent necessary to enable the matter to be heard and determined by the Commission."

7 Mr MacGregor asks the Commission to use its discretionary powers as per section 28 to still hear this matter.

8 However, section 28 refers to the powers conferred on the Commission by section 27 of the Act. Section 27 of the Act prescribes certain powers of the Commission which may be exercised in relation to any matter that is before it. In order for those powers to be exercised, there must be a matter lodged in the Commission. That must mean lodged in accordance with the *Industrial Relations Act 1979*. The claim lodged by Mr MacGregor is not lodged in accordance with the *Industrial Relations Act 1979* because a claim of unfair dismissal cannot be made more than 28 days after the day upon which his employment terminated. If Mr MacGregor was correct in his submission to the Commission, it would mean that section 29(2) would cease to have any effect. A referral by an employee claiming unfair dismissal would be able to be made at any time after the day upon which the employee's employment terminated and the Commission would be able to exercise its powers in relation to it. That clearly cannot be the case. Section 29(2) is not able to be simply circumvented in the manner Mr MacGregor has requested. Accordingly, his submission to the Commission cannot be agreed to. The simple fact remains that Mr MacGregor's application has been lodged outside the 28-day period following the day upon which his employment terminated and it is not validly before the Commission.

9 Further, although Mr MacGregor has not requested this, if Mr MacGregor requested that the Commission extend the 28 day period to allow his application to be lodged out of time, his application is most unlikely to succeed. The decision of the Commission in *Richardson v. Cecil Bros Pty Ltd* (1994) 74 WAIG 1017 which held that the Commission was without jurisdiction to extend the 28 day period prescribed in section 29(2) has been consistently followed since that date.

10 That is not to say that the Commission does not understand why Mr MacGregor did not lodge his application within the 28-day period. Mr MacGregor has gone to pains to set out the circumstances which followed his dismissal and which included discussions with his employer almost immediately after his termination regarding reinstatement. As Mr MacGregor states, his willingness to resume employment and resolve any misunderstandings with his former employer outweighed his desire to submit an application to the Industrial Relations Commission. It was not until 15 May 2001 that Mr MacGregor formally declined the offer of re-employment with the respondent and he then took steps to lodge his application in the Commission. If he had referred his claim to the Commission on that day, it would have been within time. As it is, his application claiming unfair dismissal was lodged out of time and section 28 is not available to the Commission as Mr MacGregor has submitted.

11 Accordingly, there is no alternative other than to dismiss his application for want of jurisdiction.

Claim for denied contractual benefits

12 A claim of denied contractual benefits is not subject to the 28-day period. The issue in this part of Mr MacGregor's application is that his Notice of Application indicates that he believes his employment was bound by an award of this Commission, *The Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977*. He is claiming, according to his Notice of Application "outstanding entitlements as per the award", and "overtime" by reference to specified award clauses.

13 Further, in his letter of 5 July 2001, Mr MacGregor writes—

> "I also acknowledge outstanding employment benefits apply under Magistrate Court jurisdiction." (sic)

14 All of the material before the Commission from the applicant himself leads inevitably to the conclusion that the claims he brings to the Commission under this heading are in fact claims for entitlements which he believes are due to him under an award of this Commission and accordingly the Commission does not have jurisdiction to deal with this claim.

15 Accordingly, an Order now issues which also strikes out this part of Mr MacGregor's application.

2001 WAIRC 03239

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	MITCHELL WILLIAM MACGREGOR, APPLICANT
	v.
	STAR SURF SHOP PTY LTD, RESPONDENT
CORAM	COMMISSIONER A R BEECH
DELIVERED	THURSDAY, 12 JULY 2001
FILE NO	APPLICATION 934 OF 2001
CITATION NO.	

Result	Application alleging unfair dismissal and denied contractual benefits dismissed for want of jurisdiction.
Representation	
Applicant	Mr M.W. MacGregor (by way of written submissions)
Respondent	Mr D.A. Kennedy (by way of written submissions)

Order.

HAVING HEARD Mr M.W. MacGregor on his own behalf as the applicant (by way of written submissions) and Mr D.A. Kennedy on behalf of the respondent (by way of written submissions), the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders—

(1) THAT the claim of Mitchell William MacGregor that he was unfairly dismissed by the respondent is hereby struck out for want of jurisdiction.

(2) THAT the claim of Mitchell William MacGregor that he has not been allowed by his employer a benefit, not being a benefit under an award or Order, to which he is entitled under his contract of service is hereby dismissed for want of jurisdiction.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

2001 WAIRC 03394

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	JAROD STONE, APPLICANT
	v.
	MR MAURICE RANDRUP, RESPONDENT
CORAM	COMMISSIONER P E SCOTT
DELIVERED	TUESDAY, 31 JULY 2001
FILE NO	APPLICATION 2136 OF 2000
CITATION NO.	2001 WAIRC 03394

Result	Applicant alleging unfair dismissal and denied contractual benefits dismissed
Representation	
Applicant	Applicant appeared on his own behalf
Respondent	Respondent appeared on his own behalf

Reasons for Decision.

1 This is an application made pursuant to s.29 of the Industrial Relations Act 1979 whereby the applicant claims that he was harshly, oppressively or unfairly dismissed from his employment with the respondent.

2 The applicant commenced employment with the respondent as a deck hand on a crayfishing vessel skippered by the respondent in approximately mid October 2000. As is the usual practice in the industry, he undertook approximately 4 weeks unpaid work prior to the commencement of the crayfishing season. He commenced paid work in mid November 2000. The applicant says that on 10 December 2000, while travelling in the vessel to commence fishing, he injured his back. He says that he continued working that day and did not report the injury to Mr Randrup, the skipper of the vessel and his employer. He says that on 11 December 2000, he attended for work and continued to work throughout the day and took painkillers to overcome the pain he was suffering from the injury. He said that he found it hard to lift during the day. At the end of the day, he was unable to get to see a doctor so he visited a chiropractor. The chiropractor told him that he needed time off to allow the injury to heal. On 12 December 2000 the applicant attended for work and continued working throughout the day. He says that on that day he told Mr Randrup that he was unfit for work, that he had visited a chiropractor. He says Mr Randrup told him that he was faking it and that a chiropractor's certificate was not adequate in respect of workers' compensation. The applicant says that Mr Randrup told him that if he was injured, he was not any good to him, if he wanted to work on another boat then he could go. He says that at the end of the day Mr Randrup asked him what he was doing and he said that he was going to get a medical certificate. The applicant says that Mr Randrup said to him that he wanted him to come back and do light duties.

3 The applicant says that on 13 December 2000, he got a medical certificate from the chiropractor and rang Mr Randrup who confirmed that the medical certificate from the chiropractor was not adequate. Mr Randrup gave him the details he needed to make a workers' compensation claim. The applicant visited a doctor on 18 December 2000. He says that, unfortunately, the medical certificate he received from the doctor erroneously says that the injury occurred on 14 December 2000 when in fact it did not. The doctor's certificate noted that he would be fit to work on about 20 December.

4 The applicant says that although Mr Randrup did not tell him that he was fired, that Mr Randrup's comment to him on 12 December 2000 that he could leave the boat, constituted the dismissal.

5 The applicant says he has had no work since the termination of his employment some 7 months ago. He has been to Centrelink but has not made any job applications.

6 The evidence from Mr Randrup is quite contrary to the evidence of the applicant. He agrees that he was not aware of the applicant having injured himself until 12 December 2000. He says that he was in the wheelhouse when the applicant came and told him about the injury and says that the applicant told him that he wanted to quit. Mr Randrup says that he told the applicant that he did not have to quit but that he should go to the hospital and see a doctor. Mr Randrup says that his wife has been nursing for many years and has experience in this area. Mr Randrup also says that he told the applicant that he should go onto workers' compensation and he should see a doctor to facilitate that process. Mr Randrup also says that the applicant had originally shown him a chiropractor's card which had the words on it that the applicant could take one to two days off. He says that he did not receive any medical certificates until 18 December 2000 at which time he asked the applicant if he was coming back to work and the applicant said he was not. He asked the applicant what he wanted, if he wanted his job back and the applicant told him, no he did not, that he felt intimidated. On 4 January 2001, after the applicant had filed this application, Mr Randrup spoke with the applicant again and says that he tried to clarify with the applicant whether he wanted his job back and said that he would attempt to facilitate that.

7 The Commission also heard evidence from Jamie Collins, a deckhand employed on the vessel skippered by Mr Randrup. He says that he overheard part of the conversation between the applicant and Mr Randrup on 12 December 2000. He heard them talking about the applicant having injured himself. Mr Collins says that he heard Mr Randrup say to the applicant that he did not have to leave the boat.

8 I have considered all of the evidence in this matter and am satisfied that the applicant may have injured his back whilst on the vessel on or around 10 December 2000. However, he made no attempt to inform his employer of his injury for some days and continued to work. I accept the evidence of Mr Randrup in preference to the evidence of the applicant as to what occurred when they discussed what was to happen in respect of that injury. I accept that Mr Randrup told the applicant that he should go to the hospital and see a doctor, that he should undertake stretching exercises, and most importantly that he could go on to light duties. The applicant acknowledges that he was told that he could go on to light duties. This does not constitute a dismissal. I am not satisfied that anything said to the applicant by Mr Randrup or any conduct of the respondent constituted a dismissal of the applicant. I conclude that having been injured, the applicant sought to not continue with his employment notwithstanding that Mr Randrup properly advised him to get medical certification and to make a workers' compensation claim, and that he could return on light duties if appropriate.

9 Even if I am wrong in this and that for some reason there has been a dismissal and that that dismissal was unfair, in considering the claim for compensation by the applicant, I note that the applicant has not sought to mitigate his loss. He has given evidence that although he has been to Centrelink, in a period of 7 months since the termination of his employment he has not made any job applications. Those who have been harshly, oppressively or unfairly dismissed from their employment have an obligation to attempt to mitigate their loss and not simply just sit back and await the outcome of any hearing.

10 In all of the circumstances, I conclude that there has been no dismissal of the applicant and no unfair dismissal such as to enable or warrant the intervention of the Commission. Further, if there had been a dismissal, and an unfair one, the applicant has not sought to mitigate his loss such as to warrant a claim for compensation.

2001 WAIRC 03393

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	JAROD STONE, APPLICANT *v.* MR MAURICE RANDRUP, RESPONDENT
CORAM	COMMISSIONER P E SCOTT
DELIVERED	TUESDAY, 31 JULY 2001
FILE NO	APPLICATION 2136 OF 2000
CITATION NO.	2001 WAIRC 03393

Result	Application alleging unfair dismissal and denied contractual benefits dismissed

Order.

HAVING heard the applicant on his own behalf and the respondent on his own behalf, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT this application be, and is hereby dismissed.

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

2001 WAIRC 03261

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	RICHARD CHARLES WHYTE, APPLICANT *v.* NARROGIN BRICK, RESPONDENT
CORAM	COMMISSIONER S WOOD
DELIVERED	FRIDAY, 13 JULY 2001
FILE NO/S	APPLICATION 1869 OF 2000, APPLICATION 651 OF 2001
CITATION NO.	2001 WAIRC 03261

Result	Claim for annual payment granted Claim for deducted wages dismissed for want of jurisdiction
Representation	
Applicant	Mr R C Whyte on his own behalf
Respondent	Mr E Rea as Agent

Reasons for Decision.

1 These applications are made pursuant to section 29(1)(b)(ii) of the *Industrial Relations Act, 1979* (the Act). The applicant, Mr Richard Charles Whyte worked packing and strapping bricks for the respondent, Narrogin Brick from 18 August 1989 to 26 August 1999, when he resigned.

2 Application 1869 of 2000 was listed for conference on 2 February 2001. The matter was adjourned for both parties to check their records. The applicant subsequently filed a second application and both applications were listed for conference on 12 April 2001 at the conclusion of which the matters could not be resolved. The matters were listed for a directions hearing on 24 April 2001 on an application for discovery filed by the applicant. An order for discovery issued out of those proceedings. The matters were then listed for hearing on 25 June 2001.

3 The key finding in relation to application 1869 of 2000, that Mr Whyte was not a casual employee at the time of his resignation, was given extemporaneously at the conclusion of the hearing on 25 June 2001. As a consequence Mr Whyte was awarded his claim of $1,447.27. It was clear from the evidence that there was an altercation involving Mr Whyte sometime in early June

1998 and he left the respondent's premises. He then returned to his employment a matter of two days later or, if not, a few days more than that. There was no evidence that his rate of pay changed. He returned to do the same work at the same rates. His pattern of work was both regular and continuing and it is trite to say that his employment could not be made casual simply by calling it so. There was no written contract of employment.

4 I should say that I do not believe that he was validly reengaged as a casual in June 1998. Even if this were so, if I apply the indicia of the Full Bench in *Serco (Australia) Pty Limited—v- John Joseph Moreno* 76 WAIG 937 @ 939, I conclude that Mr Whyte was not casual during his employment in 1998 and 1999. His pattern of employment was the same pre and post June 1998 and the evidence of Mr Allinson and Mr Boothey, a fellow employee, regarding Mr Whyte's working hours goes to confirm this view.

5 The evidence was also clear that the 10% annual payment was paid for annual leave and no taxation was deducted from this amount. This I find was the arrangement that operated between the parties albeit Mr Whyte is unsure of the arrangement. The actual amount claimed, ie $1,447.27, was not challenged by Mr Rea on behalf of the respondent. He says that the payment was simply not due as it was not paid to casual staff and that Mr Whyte was a casual from mid 1998. Given my finding that Mr Whyte was not a casual employee, he was awarded the sum of $1,447.27.

6 The Commission also made certain comments in relation to application 651 of 2001. That application was far less clear and involved the allegation that deductions were made from Mr Whyte's pay in the years 1995 to 1998 inclusive. Mr Whyte did not challenge that he received, what he calls, his annual bonus in those years. He did not challenge that the payment was made without deduction of taxation, and that issue was clear from the exhibits. He simply says that if the respondent says that it was for annual leave then he was otherwise entitled to annual leave. He says that deductions were made throughout the year to accrue towards this bonus and so, as he was entitled to annual leave, the deductions should not have been made and are now claimed as a denied contractual benefit. The sum claimed in that application is $8,582.20.

7 Mr Rea on behalf of the respondent says that the Commission is without jurisdiction to deal with this second claim. He says that Mr Whyte's employment was covered by an award. Hence that claim is a matter for the Industrial Magistrate. Whilst making some comments concerning the evidence that was heard, I reserved my decision on application 651of 2001. I also encouraged the parties, given my comments to seek to settle the matter and gave them approximately two weeks if they chose to do so.

8 As indicated to the parties, the most compelling evidence was that of Mr Allinson, a current employee at Narrogin Brick, who worked alongside Mr Whyte and performed similar tasks. Mr Allison gave his evidence quite freely. I have no doubt though that Mr Allinson was attempting at least, as he is employed currently by the respondent, to not be more fulsome than he needed to be. That is no taint on Mr Allinson's evidence, and no disrespect to him, because I consider his evidence was given quite openly and it is upon his evidence that I would rely mainly in making my judgement. He says that an arrangement was entered into, and operated, which was to convert 10% of gross earnings to be paid at the end of the year as some sort of Christmas payment for annual leave.

9 Mr Allinson also gave evidence that the arrangement of a 10% of gross wage payment for annual leave was an agreement which he struck with Mr Les Page, one of the owners. He says deductions were not made from his pay to accrue towards this payment, however, some small deductions were taken by way of extra tax to ensure that he did not receive a tax bill at the end of financial year. It would seem that the annual payment was paid without deducting taxation. Mr Allison's evidence is also that the payment was made to those workers on piece rates. He says he kept his own records and checked deductions against a taxation schedule.

10 Mr Allinson says that Mr Les Page kept an A4 exercise book to record wages, Mr Allinson says he didn't read that book. It is clear from the Commission's own cross-examination that this book was different to the invoice book which was displayed at hearing and which the respondent provided under direction by way of discovery. This directly contradicts the evidence of the respondent who maintains that the invoice book was used to record wages and to register the count of brick stacks. Mr Allinson also says that Mr Les Page did not count their stacks. Separate to this he says that Mr Whyte was a good worker, but was a bit slacker with his hours in the last part of his employment.

11 The evidence of Mr Les Page and Mr Clive Page, owners of the business, cannot be relied upon. Their lack of directness before the Commission, even in response to questions addressed to them by the Commission, undermined the credibility of their evidence substantially.

12 I also have difficulty with the evidence of Mr Whyte. This is not due to any doubts I have about the honesty of the witness. It is more due to the confusion of the evidence of Mr Whyte. If it were not for this important difficulty I would accept his evidence readily over that of Mr Les Page. My dilemma with Mr Whyte's evidence, in relation to application 651 of 2001, can most appropriately be summed up by the following piece of his evidence under cross examination at page 66—

> "No, well, I don't know if I did get less because that's why I'm here today for because Les kept on saying that it was paid to us at Christmas time so I'm just saying that his 10 per cent scheme between the two brothers, there was a difference, there was a conflict of interest—- not conflict of interest, there was a difference between 10 per cent on top and 10 per cent out, and I could never prove it because we never got to see the books."

Put simply he is not sure about his payments and has not proven his case. He puts this down to not having access to Mr Les Page's exercise books to verify whether he was paid correctly.

13 It is clear that the employment of Mr Whyte was covered by the Brick Manufacturing Award 1979 (No. R19 of 1979). Clause 3—SCOPE says—

> "This award shall apply to all workers employed in the Callings listed in Clause 11. hereof by employers engaged in the Brick Manufacturing Industry."

14 Clearly this covers the respondent's business as was submitted on their behalf. Clause 11 provides for two classifications engaged in strapping and packing bricks, ie the duties undertaken primarily by Mr Whyte.

15 Clause 12—PIECE WORK states—

> "(1) An employer may make a contract with a worker for payment by results by piecework.
>
> (2) The rate of payment shall be fixed on the basis that it shall be sufficient to yield to a worker of average capacity for a full week's work of the ordinary hours, at least the minimum time rate of pay for such week's work. Provided that, where a worker performs part of a full week at piecework rates and at time rates, he shall be paid so much as he is entitled to receive under such piecework rates, plus the proportionate amount which he is entitled to receive at time rates of pay.
>
> (3) A worker working under any system of payment by results shall be entitled to receive at least the time rate of pay prescribed under clause 11.—Wages, for his particular classification.
>
> (4) Piecework rates for drawers shall be on truck or at stack.
>
> (5) In the event of any dispute regarding piecework rates occurring and remaining unsettled between the employer and the worker, the employer or the union may refer such dispute to the Board of Reference.

(6) When flat increases apply to the weekly rate prescribed in Clause 11.—Wages hereof the piece work rate will be adjusted so that an average capacity pieceworker receives not less than the flat increase for a full week's work."

16 These are the arrangements under which Mr Whyte worked. Clause 20—ANNUAL LEAVE is also relevant and in part states—

"(2) (a)(i) A worker whilst on annual leave shall have the wages the worker would have received in respect of the ordinary time he or she would have worked had he or she not been on leave during the relevant period paid into his or her account on normal pay days except when an alternative arrangement is requested by the worker, provided that the request is made in writing to the employer not less than two weeks prior to the commencement of the leave.

(ii) Subject to paragraph (b) hereof a worker shall, where applicable, have the amount of wages to be received for annual eave calculated by including the following where applicable.

(aa) The rate applicable to him as prescribed in clause 11.—Wages.

(bb) Subject to paragraph (b)(ii) the rate prescribed in ordinary time by clause 10.—Shift Work of this award according to the workers roster including Saturday and Sunday shifts.

(cc) The rate payable pursuant to clause 15.—Mixed Functions, calculated on a daily basis, which the worker would have received for ordinary times during the relevant period whether on a shift roster or otherwise.

(dd) Any other to which the worker is entitled in accordance in accordance with his contract of employment for ordinary hours of work: Provided that this provision shall not operate so as to include any payment which is of similar nature to or is paid in lieu of those payments prescribed by clause 9.—Overtime."

17 It is clear that the nature of the claim made by Mr Whyte is as the respondent submits one for the Industrial Magistrate. Clause 20.2(a)(ii)(dd) would appear to allow for an arrangement between employer and employee concerning calculation of the annual leave payment. No clear evidence was presented as to the amount of time taken off each year by Mr Whyte. Mr Whyte's own evidence is that he took time off during the year and at Christmas. He bases his claim on the allegation that regular deductions were made from his wages to cover his annual payment rather that he was not permitted to take annual leave.

18 I make no finding as to whether a deduction from wages has occurred. There is insufficient material before me to do so. The absence of proper discovery by the respondent has hampered the Commission from concluding whether the wages paid to Mr Whyte were accurate. Mr Whyte says that he kept records of his stacks himself and that he received $8.50 per stack. The amount of $8.50 per stack is not disputed. The record of the amount of stacks is disputed as is the issue of whether a deduction from wages was ever made. Mr Les Page says he counted the stacks and recorded them in the invoice book. On the evidence of Mr Allinson, which I accept as reliable, this is clearly not correct.

19 In contrast, the evidence of Mr Allinson is that deductions for the annual leave payment were not made from his wages. Deductions from his wages were made for additional taxation purposes as he requested. It is more probable than not that a similar arrangement was made for Mr Whyte as was made for Mr Allinson. On that basis I would otherwise have dismissed Mr Whyte's claim in application 651 of 2001 on the basis of him not having proven his claim. However, I cannot do that as he has been hampered in his claim by the lack of production of documents, namely the exercise books, which were apparently used by Mr Les Page. It may be that those records could show an underpayment of wages, even though I considerably doubt that they would should a deduction of wages for the purposes of the annual leave payment.

20 Having said that I would dismiss application 651 of 2001 for want of jurisdiction.

2001 WAIRC 03249

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	RICHARD CHARLES WHYTE, APPLICANT
	v.
	NARROGIN BRICK, RESPONDENT
CORAM	COMMISSIONER S WOOD
DELIVERED	THURSDAY, 12 JULY 2001
FILE NO	APPLICATION 1869 OF 2000
CITATION NO.	2001 WAIRC 03249

Result	Outstanding benefits claim granted
Representation	
Applicant	Mr R C Whyte on his own behalf
Respondent	Mr E Rea as agent

Order.

WHEREAS this is an application pursuant to section 29(1)(b)(ii) of the Industrial Relations Act 1979; and

WHEREAS the applicant claims that he is owed by way of a denied contractual entitlement the amount of $1,447.27 being an annual bonus; and

WHEREAS the respondent contends that the bonus payment is not due as the applicant's employment was casual in nature; and

WHEREAS the Commission finds that the applicant was not employed as a casual; and

WHEREAS the Commission finds that the bonus payment has not been paid and is due;

HAVING heard Mr R C Whyte on his own behalf and Mr E Rea for the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the said respondent do hereby pay, as and by way of an outstanding contractual entitlement, the amount of $1,447.27 to Richard Whyte.

(Sgd.) S. WOOD,
[L.S.] Commissioner.

2001 WAIRC 03259

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	RICHARD CHARLES WHYTE, APPLICANT *v.* NARROGIN BRICK, RESPONDENT
CORAM	COMMISSIONER S WOOD
DELIVERED	FRIDAY, 13 JULY 2001
FILE NO	APPLICATION 651 OF 2001
CITATION NO.	2001 WAIRC 03259

Result	Application dismissed for want of jurisdiction
Representation	
Applicant	Mr R C Whyte on his own behalf
Respondent	Mr E Rea as agent

Order.

HAVING heard Mr R C Whyte on his own behalf and Mr E Rea on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the application be and is hereby dismissed for want of jurisdiction.

(Sgd.) S. WOOD,
[L.S.] Commissioner.

SECTION 29 (1)(b)—Notation of—

Applicant	Respondent	Number	Commissioner	Result
BA'Court KJ	Efficient Communications Services Pty Ltd	774/2001	BEECH C	Discontinued
Advic WD	Community Newspaper Group Ltd	1746/2000	KENNER C	Discontinued
Anderson TL	Toffs of Dalkeith	134/2001	KENNER C	Discontinued
Anthon D	Double G Sound	626/2001	GREGOR C	Discontinued
Arnold JIG	Cooks Construction	1974/2000	BEECH C	Discontinued
Bailey WJ	SSL Berkeley Challenge Pty Ltd	649/2001	SCOTT C.	Discontinued
Barnett PA	Air Ride Tech. Group Pty Ltd T/A Bevran F/Glass	697/2001	SCOTT C.	Discontinued
Barry JAM	Valencia Café	908/2001	SCOTT C.	Discontinued
Barter AP	Blue Seas Pearling Company	1747/2000	COLEMAN CC	Dismissed
Bloom MD	Guests Furniture Hire Pty Ltd	106/2001	KENNER C	Discontinued
Brockwell CJ	Stanton Park Pty Ltd	1784/2000	SCOTT C.	Discontinued
Brown KD	Ivey Enterprises	1077/2001	SCOTT C.	Dismissed
Cain JP	ACIRL Ltd	937/2001	KENNER C	Discontinued
Carlton K	Heyder and Shears	185/2001	SCOTT C.	Discontinued
Cats T	Sunny Sign Company	872/2001	SCOTT C.	Discontinued
Cavanagh VT	Kiam Corporation Ltd	733/2001	BEECH C	Discontinued
Chadwick J	Howard Bough c/- Success Hill Lodge	1243/2001	KENNER C	Discontinued
Chilman GR	Jewelstone Pty Ltd ACN 091229202	1575/2000	KENNER C	Discontinued
Christiansen J	Kusina Property Management	874/2001	SCOTT C.	Discontinued
Coan BM	Alstom Australia Ltd	786/2001	GREGOR C	Dismissed
Cook MA	Melfin Securities (Belmont Tavern)	821/2001	GREGOR C	Dismissed
Cooper RM	Drakes Australia pty Ltd	580/2001	BEECH C	Discontinued
Corkill M	Bruce Herbert Moor—Mosman Park Veterinary Hospital	898/2001	KENNER C	Discontinued
Davis EJ	Australian Grown	921/2001	BEECH C	Discontinued
Delaney JG	Michael McClure & Associates	349/2001	KENNER C	Discontinued
Dewsnap SF	Signature Security Group Pty Ltd	779/2001	KENNER C	Discontinued
Everingham TB	R.W. Piper & Sons ACN 009 404 344	1130/2000	SCOTT C.	Order Issued
Freckelton AJ	Konica Australia Pty Ltd	2119/2000	SMITH, C	Discontinued
Gallie I	Link Project Services Pty Ltd & Others	1743/2000	BEECH C	Discontinued
Gouge RJ	Polyline Industries Pty Ltd	919/2001	SCOTT C.	Discontinued
Higgs TA	Koala Self Storage	576/2001	SCOTT C.	Discontinued
Hillbrick M	Lenards Poultry Shop Australia	1054/2001	SCOTT C.	Dismissed
Howard CJ	Wastemunchers	164/2001	BEECH C	Dismissed
Jackman KS	Byford and Districts Country Club Inc	438/2001	SMITH, C	Discontinued
Jamieson J	YHA WA (Youth Hostels Association of WA Inc)	836/2001	BEECH C	Discontinued
Kenneally FL	David and Donna (c/o Scoff)	959/2001	KENNER C	Discontinued
Keyt ET	J Blackwood & Son Limited	695/2001	SMITH, C	Discontinued
Kohlschein NV	Carbird Pty Ltd (trading as Hawk Rent a Car)	759/2001	GREGOR C	Discontinued
Lane MS	Citizens Advice Bureau of WA (Inc)	97/2000	SMITH, C	Discontinued
Lane Z	Allen BJ Psychologist	427/2000	GREGOR C	Discontinued

Applicant	Respondent	Number	Commissioner	Result
Lazzarini PL	Plastic Injection Company Pty Ltd	1490/2000	BEECH C	Discontinued
Lesk S	West Magic Holdings Pty Ltd T/A Deering Autronics	1682/2000	KENNER C	Discontinued
Lesk S	West Magic Holdings Pty Ltd T/A Deering Autronics	641/2001	KENNER C	Discontinued
Locsin V	Sphinx Bar and Restaurant	568/2001	BEECH C	Discontinued
Maley BVF	New Millenium Curtains	854/2001	SCOTT C.	Discontinued
Marevic A	McMahon Contractors Pty Ltd	2099/2000	GREGOR C	Discontinued
Massara KA	Eurest (Australia) Catering & Services	560/2001	BEECH C	Discontinued
McCarthy SB	I Q Net Internet Solutions	673/2001	KENNER C	Discontinued
McGough P	BFP Management Principals Pty Ltd	565/2000	BEECH C	Discontinued
McNamara GJ	Makita Australia Pty Ltd	831/2001	BEECH C	Discontinued
Mercer S	Fresh Choice WA Pty Ltd ACN 082 733 006	764/2001	SCOTT C.	Discontinued
Monley P	Keep Australia Beautiful Council (WA)	2086/2000	SCOTT C.	Dismissed
Morgan I	University of Notre Dame Australia	1333/2000	KENNER C	Discontinued
Mowarin J	Wongatha Wonganarra Aboriginal Corporation	777/2001	WOOD,C	Dismissed
Parker AJ	Heathco Pty Ltd t/as Kwik Cash Buy & Sell	113/2001	GREGOR C	Discontinued
Pass JD	Robert J Elliott Real Estate & Business Agent	853/2001	SCOTT C.	Discontinued
Paterniti TJ	Cottesloe Hair Gallery—now rellocated to Hair on the Boulevard	559/2001	GREGOR C	Dismissed
Polinelli JW	ADT Security	1070/2001	BEECH C	Discontinued
Prasad R	Z-tek Computer (WA) Pty Ltd	1592/2000	SCOTT C.	Discontinued
Primrose RS	Civmec Construction & Engineering	191/2001	BEECH C	Discontinued
Radica GJ	MTIC Corporate Pty Ltd	788/2001	BEECH C	Discontinued
Ryder P	WA Country Bakers Pty Ltd	929/2001	SCOTT C.	Discontinued
Sangwin ML	Consolidated Business Media Pty Ltd	1097/2001	GREGOR C	Discontinued
Smith B	Brunel Energy Pty Ltd & Others	1741/2000	BEECH C	Discontinued
Steicke WJ	WAMMCO International	486/2001	BEECH C	Dismissed
Tahmizian V	Glenn Farrells Farrells Café	464/2001	SCOTT C.	Discontinued
Tan SH	GHD Pty LTd	621/2001	BEECH C	Discontinued
Thomas R	Amalgamated Television Services Pty Ltd/Channel 7 Sydney Pty Ltd ACN 000 145 246	321/2001	SMITH, C	Discontinued
Turner WL	Plastic Injection Company Pty Ltd	1489/2000	BEECH C	Discontinued
Tzvetkova J	Keep Australia Beautiful Council (WA)	2085/2000	SCOTT C.	Dismissed
Van Lieshout TV	Churches' Commission on Education (Inc.)	2127/2000	KENNER C	Discontinued
Vickery CM	Plastic Injection Company Pty Ltd	1488/2000	BEECH C	Discontinued
Vintiner J	T.C. Scott Pty Ltd ACN 008 705 333	629/2001	GREGOR C	Discontinued
Walker RS	Natsum Pty Ltd ATFT Fisher Family Trust T/A Marriner Smash Repairs	832/2001	BEECH C	Discontinued
Warwick MT	Parmelia Hilton Perth	528/2001	SMITH, C	Discontinued
Young MJ	Mainline Salons	124/2001	SCOTT C.	Discontinued

CONFERENCES—
Matters arising out of—

2001 WAIRC 03313

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES TRANSFIELD SERVICES (AUSTRALIA) PTY LTD, APPLICANT

v.

THE AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION OF WORKERS — WESTERN AUSTRALIAN BRANCH, AND THE COMMUNICATIONS, ELECTRICAL, ELECTRONIC, ENERGY, INFORMATION, POSTAL, PLUMBING, AND ALLIED WORKERS UNION OF AUSTRALIA, ENGINEERING & ELECTRICAL DIVISION, WA BRANCH, RESPONDENTS

CORAM	COMMISSIONER S J KENNER
DELIVERED	WEDNESDAY, 18 JULY 2001
FILE NO/S	C 171 OF 2001
CITATION NO.	2001 WAIRC 03313

Result	Recommendation issued.
Representation	
Applicant	Mr P Stillman as agent & Mr D Pretsel
Respondent	Mr J Ferguson on behalf of the AFMEPKIU & Mr L O'Laughlan on behalf of the CEPU

Recommendation.

WHEREAS on 16 July 2001 the applicant made application for an urgent compulsory conference pursuant to s 44 of the Industrial Relations Act 1979;

AND WHEREAS the Commission convened a compulsory conference between the parties to this application on 17 July 2001;

AND WHEREAS the Commission was advised at the conference that the parties were in dispute as to working

arrangements to apply for maintenance employees during the July 2001 Train Two Shutdown at the BHP HBI plant in Port Hedland.

AND WHEREAS the Commission was informed that the matter in dispute concerns the payment of a meal break to day employees;

AND WHEREAS the Commission was informed by the applicant that the matter in dispute has the potential to seriously impact on the applicant's contractual obligations to complete the July 2001 Train Two Shutdown at the BHP HBI Port Hedland operations;

AND WHEREAS the Commission convened a further compulsory conference between the parties on 18 July 2001 in a further endeavour to resolve the dispute;

AND WHEREAS the Commission, after having heard the parties and having endeavoured to assist the parties to reach agreement on the matters in dispute and having considered the issues was of the view that in all the circumstances, it would issue a recommendation to the parties in order to expeditiously resolve the dispute;

NOW THEREFORE the Commission, having regard for the interests of the parties directly involved and to prevent the deterioration of industrial relations in respect of the matters in dispute, in accordance with the provisions of the Industrial Relations Act, 1979 hereby recommends—

THAT in relation to day employees of the applicant currently working or who have worked on the July 2001 Train Two Shutdown at the BHP HBI operations in Port Hedland they be paid, in addition to any payments already received or to be received, a sum equivalent to 30 minutes at ordinary time rates.

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

2001 WAIRC 03325

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	TRANSFIELD SERVICES (AUSTRALIA) PTY LTD, O'DONNELL GRIFFIN PTY LTD & OTHERS, APPLICANTS *v.* THE AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION OF WORKERS — WESTERN AUSTRALIAN BRANCH AND THE COMMUNICATIONS, ELECTRICAL, ELECTRONIC, ENERGY, INFORMATION, POSTAL, PLUMBING, AND ALLIED WORKERS UNION OF AUSTRALIA, ENGINEERING & ELECTRICAL DIVISION, WA BRANCH, RESPONDENTS
CORAM	CHIEF COMMISSIONER W S COLEMAN
DELIVERED	MONDAY, 23 JULY 2001
FILE NO/S	C 178 OF 2001 & C 179 of 2001
CITATION NO.	2001 WAIRC 03325

Result	Order issued
Representation	
Applicant	Mr D Pretsel on behalf of Transfield Services (Australia) Pty Ltd Mr C Mitsopolous on behalf of O'Donnell Griffin Pty Ltd & Others
Respondent	Mr B Davis on behalf of the union Mr J Ferguson on behalf of the union Mr P Wawati on behalf of the union Mr G Miekle on behalf of the union Mr V Sewell on behalf of the union Mr D Tewano on behalf of the union

---

Order.

1. WHEREAS on Saturday the 21st July 2001 the Applicant applied to the Commission for an urgent conference pursuant to section 44 of the *Industrial Relations Act 1979* ("the Act");
2. AND whereas on Sunday the 22nd July 2001 the Deputy Registrar (Karratha) was directed to investigate and report on the matter pursuant to section 93(8) of the Act;
3. AND whereas on that day pursuant to the direction the Deputy Registrar met with parties and was informed that the Applicant and the Respondents were in dispute as to the withdrawal of labour by employees of the Applicant engaged on shutdown maintenance work at the BHP HBI Plant in Port Hedland, due to onsite health and safety issues arising from emissions of SMF in the cooling conveying area on or about Thursday the 19th July 2001;
4. AND whereas the Commission having received a report from the Deputy Registrar and having been advised of the discussions including initiatives to assist in resolving the dispute formulated a recommendation which was to be put to a report back meeting to be held at 6.30 am 23rd July 2001.
5. AND having been advised that the recommendation was rejected and that there was not a return to work the Commission reconvened the conference by telephone link on Monday 23rd July AND having been advised of the reason why there was not a return to work in accordance with the recommendation and being of the opinion that action is necessary to prevent a further deterioration of industrial relations and to put in place arrangements which will ensure confidence in occupational health and safety procedures which will address issues giving rise to this dispute HEREBY ORDERS pursuant to section 44(6) of the Act—
   1. THAT application in matter number C179 of 2001 is hereby joined to matter number C178 of 2001.
   2. THAT following a meeting to be organised by the Union at the direction of the Commission for later this afternoon, employees are to resume work at the commencement of the night shift tonight Monday 23rd July 2001. AND that all other employees are to continue to work in accordance with their shifts from Tuesday 24th July 2001.
   3. THAT commencing at 8:30am on Tuesday 24th July 2001, Deputy Registrar McCann pursuant to this order is directed to investigate all facets of the communication process relating to notification of occupational health and safety issues arising out of the current dispute and that following the completion of that investigation the Deputy Registrar is to provide a written report to the Chief Commissioner. The report is to be completed expeditiously and to this end the Deputy Registrar is to interview and liaise with all relevant personnel. If the report is not completed by Friday 27th July 2001 the Deputy Registrar is to advise the Chief Commissioner on its progress.

      The Deputy Registrar is to include in his report to the Chief Commissioner all matters still in contention between the parties associated with those which were identified in discussions between the parties on Sunday 22nd July 2001.

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

2001 WAIRC 03201

ALLEGED THREAT OF PREJUDICE IN THE EMPLOYMENT OF

MEMBERS OF THE UNION

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	TRANSPORT WORKERS' UNION OF AUSTRALIA, INDUSTRIAL UNION OF WORKERS, WESTERN AUSTRALIAN BRANCH, APPLICANT
	v.
	DOWN SOUTH TRANSPORT PTY LTD, RESPONDENT
CORAM	COMMISSIONER J H SMITH
DELIVERED	FRIDAY, 6 JULY 2001
FILE NO	C 145 OF 2001
CITATION NO.	2001 WAIRC 03201

Result	Declaration that the matters in dispute between the Respondent and Mr White is not an industrial matter.
Representation	
Applicant	Mr R Raven
Respondent	Mr J N Uphill as agent

Reasons for Decision.

1 On 13 June 2001 the Union lodged an application for a conference under s.44 of the Industrial Relations Act 1979 ("the Act") claiming that three employees employed by Down South Transport Pty Ltd ("the Respondent") had expressed their desire to improve their conditions of employment by carrying out their existing pattern of work, under the Transport Workers' (General) Award ("the Award") rather than under a new workplace agreement.

2 The Commission convened a compulsory conference under s.44 of the Act on 26 June 2001 in respect of this matter. At the conference, the Respondent raised a preliminary issue in respect of one of the employees, namely Andrew White. The issue raised is that Mr White and the Respondent are parties to a registered workplace agreement, whereby by operation of s.7A and s.7C of the Act and s.19(4)(b) of the Workplace Agreements Act 1993, the Commission is prohibited from dealing with the matters in dispute in respect of Mr White's employment.

3 Mr White and the Respondent became parties to a workplace agreement which was signed by both parties on 24 March 2000 and was subsequently registered by the Commissioner of Workplace Agreements. A copy of the Workplace Agreement has been provided to the Commission. For the reasons set out by Beech, C in *Australian Liquor, Hospitality and Miscellaneous Workers' Union, Western Australian Branch v Bowra and O'Dea Pty Ltd* (2000) 80 WAIG 2747 at 2747, the Commission is not prohibited by s.26A of the Act by informing itself of Mr White's workplace agreement, as the Commission is not exercising the jurisdiction conferred on it by s.23 to enquire into and deal with any industrial matter. Rather, it is determining whether it has an industrial matter before it.

4 The express terms of Mr White's workplace agreement, under the heading "Duration of Agreement" provide, "This agreement will expire on 03/05/2001". Further, under the heading "Expiry of Agreement" it is provided—

> "No later than four weeks before expiry of this agreement, the parties shall meet to discuss the arrangements to apply after the agreement expires.
>
> The parties agree that until another workplace agreement is registered this agreement will be abided by."

5 On a date unknown in May 2001, the Respondent wrote to Mr White and stated—

> "Unfortunately due to the fact your workplace agreement expired on 05/05/01 and as yet we have not come to any other agreement we have no alternative but to pay you on TWU minimum rates of $11.83 per hour gross.
>
> ….
>
> You still have the option of signing the workplace agreement which is still open for negotiation.
>
> For your information we have enclosed a sample for you to look at and is correct to the best of our knowledge.
>
> TWU rates for 37.5 hr week would be $443.63 gross
>
> Possible extra 5 hrs a week $88.75
>
> Total possible earnings $532.38 gross per week
>
> New workplace agreement as it stands at present 37.5 hrs per week $468.75 gross
>
> Extra 5 hrs $62.50 gross
>
> Total would be $531.25
>
> Potential to earn more but obviously at the rate at present of $12.50 per hour gross."

6 In a letter signed by Mr White and two other employees on 14 June 2001, the Respondent was informed by Mr White that he did not wish to sign a new workplace agreement and he made a demand that his pay and conditions be in accordance with the Award.

7 Section 19(4) of the Workplace Agreements Act provides—

> "(4) On the expiry of a workplace agreement this Act no longer applies to any contract of employment that it governed and that contract then becomes subject to relevant award provisions (if any) unless it becomes subject to —
>
> (a) another workplace agreement; or
>
> (b) some other arrangement between the parties provided for in the expired workplace agreement."

8 Section 7A of the Act provides—

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

9 Section 7C of the Act provides—

> "(1) Where any employer and any employee are parties to any workplace agreement, a matter that is part of the relationship between that employer and that employee —
>
> (a) is not —
>
> (i) an industrial matter; or
>
> (ii) capable of being agreed to be an industrial matter, for the purpose of the definition of "industrial matter" in section 7(1);
>
> (b) is not capable of being determined under section 24(1) to be an industrial matter; and
>
> (c) cannot be referred to the Commission under section 80ZE.
>
> (2) Subsections (3) and (4) of section 34 do not apply to a determination that is made contrary to subsection (1)(b) or to any proceeding based on that determination, and in the determination of any application for a prerogative writ or declaratory judgment no regard shall be had to the existence of any right of appeal under this Act.
>
> (3) Subsection (1) also applies where —
>
> (a) a workplace agreement has expired; and
>
> (b) an arrangement is in force between the parties to that agreement of the kind referred to in section 19(4)(b) of the Workplace Agreements Act 1993,
>
> except to the extent that the employer and any employee agree that any matter is to be treated as an industrial matter between them."

10 Section 7D of the Act provides—

"(1) Where any employer and any employee are parties to —

(a) an agreement that has been lodged for registration as a collective workplace agreement under Division 4 of Part 2 of the Workplace Agreements Act 1993; or

(b) a workplace agreement that is in force under that Act,

the powers in section 44 shall not be exercised by the Commission —

(c) to summon that employer or employee under that agreement to attend at a conference in relation to any matter (including industrial action) affecting, relating to or arising out of —

(i) that agreement; or

(ii) if that agreement has expired or is about to expire, the making of a new workplace agreement in its place;

or

(d) to deal with any matter affecting, relating to or arising out of —

(i) the relationship of that employer and that employee while that agreement is in force; or

(ii) that agreement after it has expired, unless the agreement provides for the Commission to do so.

(2) Without limiting paragraph (b) of subsection (1), that subsection ceases to apply to an agreement that has been lodged as mentioned in paragraph (a) of that subsection —

(a) on the refusal of registration and the expiration of the time for appeal against that refusal; or

(b) if such an appeal is commenced, on the disposition of the appeal that does not result in registration of the agreement or on the appeal being discontinued or dismissed for want of prosecution."

11 The Union submits that s.7D of the Act empowers the Commission to have jurisdiction in respect of this matter as the workplace agreement has expired, notwithstanding some other arrangement between the parties has been provided for in the workplace agreement, as contemplated by s.19(4) of the Workplace Agreements Act. Alternatively, the Union argues that the terms of Mr White's workplace agreement no longer have any effect. In support of this argument, the Union raises three grounds. The first is that the Respondent has cancelled the workplace agreement. Secondly, by victimising Mr White the Respondent has lost its right to any benefits arising from the workplace agreement. Thirdly, the terms of the "Expiry of Agreement" clause should not be read so as to continue the terms of the workplace agreement, as to do so is unconscionable.

12 The Respondent contends that the workplace agreement has not expired. In the alternative, it is argued on behalf of the Respondent that as the expired workplace agreement provides for an arrangement on expiry as contemplated by s.19(4)(b) of the Workplace Agreements Act, the effect of s.7C(3)(b) of the Act is that the matters in dispute in respect of Mr White is not an industrial matter.

13 The Respondent's argument that the workplace agreement has not expired in my view cannot be made out. The consequence of the Respondent's argument is that if the workplace agreement has not expired then the agreement would be invalid. Pursuant to s.16(1)(a) of the Workplace Agreements Act, a workplace agreement must comply with s.19(3) of the Workplace Agreements Act. Section 19(3) of the Workplace Agreements Act, requires that a workplace agreement must provide for the day on which it expires which cannot be more than five years after it was entered into. Mr White's workplace agreement expressly and unequivocally has the effect that the workplace agreement expired on 3 May 2001.

14 The real issue in this matter is whether upon the expiry of the workplace agreement the contract of employment between Mr White and Respondent became subject to some other arrangement within the meaning of s.19(4)(b) of the Workplace Agreements Act. The first sentence of the "Expiry of Agreement" clause requires the parties to meet and discuss arrangements that are to apply after the workplace agreement expires. It is apparent from the undated letter set out in paragraph 5 above, the parties have had some discussion about the arrangements to apply after the workplace agreement expired. It is also apparent from that letter that the employee was offered Award conditions or, alternatively, to enter into a new workplace agreement. It is clear from the group letter to the Respondent dated 14 June 2001, that Mr White advised the Respondent that he did not wish to enter into a new workplace agreement. The Union contends those negotiations can be construed as a cancellation of the workplace agreement within the meaning of s.24(1) of the Workplace Agreements Act. In particular, it is argued by the Union that the Respondent's undated letter and Mr White's response dated 14 June 2001 can be construed as "an agreement in writing to cancel the workplace agreement".

15 Section 24 of the Workplace Agreement Act provides—

"(1) The parties to a workplace agreement may enter into an agreement in writing cancelling the workplace agreement.

(2) The parties to a workplace agreement may while it is in force agree to change the agreement, but can only do so by a new workplace agreement containing the change.

(3) A change under subsection (2) cannot be in the form of a separate variation agreement.

(4) On the cancellation of a workplace agreement this Act no longer applies to any contract of employment that it governed and that contract then becomes subject to relevant award provisions (if any) unless it becomes subject to another workplace agreement."

16 Section 31 of the Workplace Agreement Act must also be considered. It relevantly provides—

"(1) Where in relation to an agreement the Commissioner is satisfied as to the matters referred to in section 30 (1), the Commissioner must —

(a) register the agreement as a workplace agreement or as an agreement under section 23 (1) or 24 (1), as the case may be; and

(b) give to the parties notice in writing of the registration and the day on which it occurred, within 7 days after that day.

(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."

17 The effect of s.24 of the Workplace Agreements Act is that a workplace agreement can only be cancelled by entering into a new workplace agreement or an agreement that is registered by the Commissioner of Workplace Agreements. This construction is supported by the requirements of s.31(1) of the Workplace Agreements Act which imposes a duty on the Commissioner of Workplace Agreements to be satisfied of certain matters set out in s.30(1) of the Workplace Agreements Act, prior to registering an agreement as an agreement under s.24(1) of the Workplace Agreements Act.

18 The Union in written submissions concedes that the parties have not registered any agreement to cancel the

workplace agreement but says the issue is academic because mutual termination was not of the workplace agreement, but of the agreement to continue its terms and conditions after the workplace agreement expired. The Union says that pursuant to the definition of workplace agreement in s.3 of the Workplace Agreements Act and the provisions of s.6(4) of the Workplace Agreements Act, a workplace agreement only displaces a contract of employment where a workplace agreement is in force.

19 Section 3 of the Workplace Agreements Act defines a workplace agreement to means—

> " an agreement of the kind described in section 5 and where the context so requires means an agreement of that kind that is in force."

20 Section 6 of the Workplace Agreements Act provides—

> "(1) Where a workplace agreement —
>
> (a) has been made between —
>
> (i) an employer and an employee under a contract of employment; or
>
> (ii) an employer and employees under contracts of employment;
>
> and
>
> (b) has come into force,
>
> no award, whether existing or future, applies to —
>
> (c) that contract or those contracts of employment; or
>
> (d) the employer or any such employee as a party to any such contract,
>
> so long as the workplace agreement remains in force.
>
> (2) Where a workplace agreement has been made as mentioned in subsection (1) (a), in relation to any contract of employment, and has come into force, any award provision that applied to that contract immediately before that coming into force is not to be implied into, or in any way read as being part of, the workplace agreement unless the agreement expressly so requires.
>
> (3) A workplace agreement also has the effects described in sections 7B, 7C, 7D and 7E of the Industrial Relations Act 1979.
>
> (4) A workplace agreement does not displace the contract of employment between an employer and an employee but while it is in force it has effect —
>
> (a) as if it formed part of that contract; and
>
> (b) regardless of any provision of that contract.
>
> (5) Subsection (1) (c) may be extended by an agreement of the kind described in section 14 (2)."

21 The Union's argument, however, does not consider the effect of s.19(5) of the Workplace Agreements Act, which provides that as long as a contract of employment is not subject to Award provisions because of an arrangement under s.19(4)(b), s.6 continues to apply to that contract as if the workplace agreement had not expired. When s.6 is applied to an agreement made to continue the terms of the workplace agreement after the workplace agreement has expired, the consequences are that pursuant to s.6(1)(c) the workplace agreement remains in force and the effects described in s.7B, 7C and 7D of the Act apply.

22 In relation to s.7D of the Act, the Union argues that whereas s.7C(3)(b) of the Act expressly excludes as an industrial matter any matter that is part of the relationship between an employer and employee, where there is an arrangement in force between the parties referred to in s.19(4)(b) of the Workplace Agreements Act, s.7D does not contain such an exclusion. However section 7D(1)(d)(i) excludes the Commission's jurisdiction under s.44 to deal with any matter affecting, relating to or arising out of the relationship of that employer and that employee whilst the workplace agreement is in force, or an arrangement between the parties provided for in the expired workplace agreement is in force within the meaning of s.7D(1)(d)(i) of the Act. Further, it is clear from the provisions of s.44(6), (8), (9) and (12)(a) of the Act that the Commission can only deal with industrial matters under s.44 of the Act.

23 Whilst the Union argues that consequences of a finding that this Commission has no jurisdiction to deal with the matters in dispute in respect of Mr White is unconscionable, it is not open to the Commission not to give effect to legislative provision even if the result may be considered inconvenient or unfair to Mr White as the function of a judicial or administrative body in interpreting legislation remains one of construction and not legislation (*Kingston v Keprose Pty Ltd* (1987) 11 NSWLR 404 per McHugh JA at 423). It is only where two meanings of a legislative provision are open, that regard may be had to the consequences of interpretation (see *Public Transport Commission of NSW v Murray-More (NSW) Pty Ltd* (1975) 6 ALR 271 per Gibbs J at 282).

24 In relation to the Union's argument that the Respondent has allegedly victimised Mr White, the Union relies upon an argument in relation to breaches of s.67 of the Workplace Agreements Act. However, it is not open to this argument to be considered by the Commission unless the Commission makes a finding that an industrial matter arises.

25 For the reasons set out above, the matters in dispute between the Respondent and Mr White is not an industrial matter and the Commission does not have the jurisdiction to enquire into and deal with those matters.

26 The preliminary point is decided accordingly. The application otherwise remains adjourned pending a request from either party for it to be re-listed.

2001 WAIRC 03421

ALLEGED THREAT OF PREJUDICE IN THE EMPLOYMENT OF APPLICANT UNION

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES	TRANSPORT WORKERS' UNION OF AUSTRALIA, INDUSTRIAL UNION OF WORKERS, WESTERN AUSTRALIAN BRANCH, APPLICANT *v.* DOWN SOUTH TRANSPORT PTY LTD, RESPONDENT
CORAM	COMMISSIONER J H SMITH
DELIVERED	FRIDAY, 3 AUGUST 2001
FILE NO	C 145 OF 2001
CITATION NO.	2001 WAIRC 03421

Result	Declaration that the matters in dispute in respect of Mr White is not an industrial matter.
Representation	
Applicant	Mr R Raven
Respondent	Mr J N Uphill as agent

Order.

HAVING heard Mr R Raven on behalf of the Applicant and Mr J Uphill as agent on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby

(A) DECLARES that the matter referred to the Commission in respect of Mr White's employment is not an industrial matter and the Commission has no jurisdiction to deal with it; and

(B) ORDERS that the application otherwise be adjourned sine die to be re-listed at the request of either party.

(Sgd.) J.H. SMITH,
[L.S.] Commissioner.

2001 WAIRC 03364

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	ATTORNEY GENERAL, APPLICANT *v.* WESTERN AUSTRALIAN PRISON OFFICERS UNION OF WORKERS, RESPONDENT
CORAM	COMMISSIONER A R BEECH
DELIVERED	THURSDAY, 26 JULY 2001
FILE NO	C 177 OF 2001
CITATION NO.	2001 WAIRC 03364

Result	Order issued
Representation	
Applicant	Mr R. Andretich (of Counsel) and with him Mr D. Matthews (of Counsel)
Respondent	Mr P. Momber (Of Counsel) And With Him Mr S. Smith

Reasons for Decision.
(Extemporaneous)

1 The Order that issued on Saturday, 21 July 2001 was to address a specific issue regarding the filling of rosters and the rejection, because of the circumstances of that time, of the Recommendation that had issued from the Commission on 20 July. However, following Saturday, 21 July 2001 and as a result particularly of today, there is now a clear direction for the hearing and determination of the whole of the union's claim which goes not necessarily to the filling of the daily roster but rather to the number of positions that should be on the daily roster in the first place. I appreciate the strength of feeling that is behind the claim.

2 As a result of the discussions that the parties have had this afternoon, the timetable for the arbitration appears set so that the formal hearing will commence no later than 30 and 31 August 2001, or earlier if possible to accommodate the future absence of the Prison Superintendent, Mr Jennings. The Commission will also conduct inspections of the entire prison on 2 August. I am however concerned that the dispute that occurred at Hakea Prison which lasted two days was caused by a perception of the current practice of filling the vacancies on the daily roster. Whatever the status quo is regarding that practice represents a cause of concern amongst the prison staff.

3 The arbitration of the union's claim will address the underlying concerns of the union and it is my assessment that for the period between now and the arbitration of the union's claim if no further interim Order issues and there is a return to the status quo it might allow, perhaps I can put it somewhat higher, it will allow the environment prior to Friday, 20 July 2001 and which led to the dispute on Friday, 20 July 2001 and Saturday, 21 July 2001 to be recreated. I make no comment on the merit of the perception regarding the current practice. It would seem to me therefore that for the purposes of preventing a deterioration of industrial relations between now and the hearing of the matter a further interim Order ought to issue.

4 The concern is the content of the Order.

5 From my point of view there are two considerations. First, the Order that issued on Saturday, 21 July 2001 required all the vacant positions on the roster to be filled. That was seen by the Commission as being a holding position until today and I indicated in my Reasons for Decision which were printed subsequently, as indeed of course these now will be, that it was not an Order which would continue for the life of the arbitration of the union's claim.

6 Secondly, I am aware that the Recommendation that was issued by the Commission for the filling of eight vacancies was a position which in large part represented an understanding that may have been able to be reached between the parties but of itself would have lasted only until further conference proceedings reconvened.

7 It would seem to me therefore, as a matter of logic, that for the Commission to be seen to be maintaining some control over the situation and also that there be a further holding position that an Order should now issue that goes down that same path; that is, that it addresses the filling of vacancies rather than the number of positions on the roster. Given that the interim Order now to issue will operate for a period of up to six weeks (given the arbitration of the matter and possibly a two week period in order to consider and deliver the decision), I can appreciate that it may be oppressive to extend either the interim Order that operated from Saturday, 21 July 2001 or the Recommendation which was designed to operate only until there had been a re-convening on Monday, 23 July 2001.

8 It would seem to me therefore that an Order ought now issue which requires the Superintendent of the Prison to fill up to six positions that are vacant on the roster over a 24-hour period. The Order will also require the Superintendent to provide to the Commission on a daily basis a summary of the number of positions on the roster that have been filled and the corresponding number of positions that remain vacant. The Order to issue will also provide for the ability for this conference to be re-convened at short notice if, on any given day, there are concerns of the union that some unusual circumstance is occurring which is not satisfactorily addressed by the Order.

9 A Minute of the Order now issues.

2001 WAIRC 03365

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	ATTORNEY GENERAL, APPLICANT *v.* WESTERN AUSTRALIAN PRISON OFFICERS UNION OF WORKERS, RESPONDENT
CORAM	COMMISSIONER A R BEECH
DELIVERED	27 JULY 2001
FILE NO	C 177 OF 2001
CITATION NO.	2001 WAIRC 03365

Result	Interim Order issued
Representation	
Applicant	Mr R. Andretich (of Counsel) and with him Mr D. Matthews (of Counsel)
Respondent	Mr P. Momber (of Counsel) and with him Mr S. Smith

Order.

WHEREAS on 21 July 2001 the Commission issued an Order which, amongst other things required the Honourable Attorney General to authorise the Superintendent of Hakea Prison to fill all vacant positions on the daily sheets and the Superintendent of Hakea Prison fill all vacant positions on the daily sheets up to and including 26 July 2001 (Order 5);

AND WHEREAS the Order provided that the effect of the operation of Order 5 be reviewed by the Commission on 26 July 2001 and that both the Department of Justice and the Union each prepare a report for that purpose;

AND WHEREAS the Commission re-convened the conference on 26 July 2001 at Hakea Prison for the purpose of reviewing Order 5 and has considered the reports prepared by the parties and heard the parties further on any further Order to issue;

AND WHEREAS the hearing of the matters in dispute commenced in CR 26 of 2001 on 26 July 2001 and are listed for further hearing and determination by the Commission on 2, 30 and 31 August 2001;

AND WHEREAS the Commission is of the opinion that a further Order is necessary to prevent the deterioration of industrial relations between the parties until arbitration has resolved the matters in issue between the parties;

NOW THEREFORE I, Commissioner of the Western Australian Industrial Relations Commission, pursuant to the powers vested in me pursuant to s.44(6) of that Act hereby ORDER—

(1) THAT the Honourable Attorney General authorise the Superintendent of Hakea Prison to fill up to 6 vacant positions on the daily sheets over a 24 hour period;

(2) THAT the Superintendent of Hakea Prison fill up to 6 vacant positions on the daily sheets over a 24 hour period;

(3) THAT the Department of Justice provide to the Commission daily for the duration of this Order a report showing the number of positions vacant filled and the number of positions remaining vacant on the daily sheets at Hakea Prison after Order 2 hereof has been complied with;

(4) THAT this Order comes into effect on and from 27 July 2001 and will continue until further Order or until the decision of the Commission in matter CR26 of 2001;

(5) THAT either party have liberty to apply, upon written notice to the other party, for the urgent re-convening of this conference or to vary any of the terms of this Order.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

CONFERENCES—
Matters referred—

2001 WAIRC 03041

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	THE AUSTRALIAN WORKERS' UNION, WEST AUSTRALIAN BRANCH, INDUSTRIAL UNION OF WORKERS, APPLICANT
	v.
	BHP HBI, RESPONDENT
CORAM	COMMISSIONER S J KENNER
DELIVERED	FRIDAY, 15 JUNE 2001
FILE NO/S	CR 128 OF 2000
CITATION NO.	2001 WAIRC 03041

Result	Application upheld. Order issued.
Representation	
Applicant	Mr M Llewellyn
Respondent	Mr T Power of counsel and with him Mr R Kelly of counsel

Reasons for Decision.

1. By this application referred for hearing and determination pursuant to s 44(9) of the Industrial Relations Act 1979 ("the Act") the applicant's member Mr Alan Chalk, alleges he was unfairly dismissed from his employment on or about 24 April 2000. The applicant seeks an order on behalf of Mr Chalk, that the respondent reinstate him. The respondent employer opposes this.

Factual Background

2. Whilst the hearing of this matter proceeded over some five days over an extended period of time, the essential facts are not particularly complicated. In this regard, the Commission was assisted by the parties in the preparation of an agreed statement of facts which is in the following terms—

" *Statement of Agreed Facts*

1. *Allan Chalk ("**Chalk**") was employed by BHP Direct Reduced Iron Pty Ltd (ABN 50 058 025 960) ("**BHP HBI**") as an EMP Technician at Port Hedland in the State of Western Australia on 6 January 1997. See attachment 1 being a copy letter of offer of employment by BHP HBI to Chalk dated 13 November 1996.*
2. *The letter of offer referred to in paragraph 1, which governed Chalk's employment, relevantly provided, amongst other things, that Chalk—*
   (a) must comply with all Acts, Regulations, codes of practice and recognised safe work procedures as part of BHP HBI's safe working systems; and
   (b) must comply with the policies and guidelines of BHP HBI.
3. *The terms and conditions of Chalk's employment with BHP HBI were also governed by the BHP Direct Reduced Iron Pty Ltd HBI—Port Hedland Operations Industrial Agreement 1996.*
4. *BHP HBI also provided Chalk with a copy of BHP HBI's Employment Equity Policy. The Employment Equity Policy relevantly provides, amongst other things, that;*
   (a) it is BHP HBI's policy to provide all employees with a fair and equitable work environment which is free from discrimination, harassment and victimisation;
   (b) each employee has a responsibility to ensure proper standards of conduct are upheld, and to demonstrate courtesy and respect towards others in the work environment; and
   (c) behaviour that is not in line with BHP HBI's Employment Equity Policy will not be tolerated.

   See attachment 2 being a copy of BHP HBI's Employment Equity Policy.
5. *Chalk worked on blue team since it was formed and at the time of the incident was under the direction and control of the blue team leader, Grant Fenwick ("**Fenwick**").*
6. *There are four main shifts that operate at the BHP HBI plant site being blue, red, green and gold team.*
7. *The shift system operates such that blue and red team are diametrically opposed shifts and only have minimal contact between each other at the BHP HBI plant site at shift changeovers at the beginning and end of each roster. See attachment 3 being a copy of the shift roster for blue, red, green and gold team.*
8. *At approximately 5.55am on 24 April 2000 Chalk was on the BHP HBI site for the purpose of commencing his work hours on shift for blue team.*
9. *While on the BHP HBI plant site Chalk assaulted another BHP HBI employee Steven Attkins ("**Attkins**"), an EMP technician on red team, who was leaving the plant site—*
   (a) Chalk punched Attkins in the head region;
   (b) Attkins fell to the ground; and
   *(c) Chalk continued to punch Attkins ("**the Assault**")*

   until grabbed by John Cheape, a fellow BHP HBI employee, at which point Chalk stopped punching Attkins.
10. *Attkins did not retaliate during or after the Assault. At the time of the Assault Attkins did not do anything to provoke Chalk.*
11. *The Assault was subsequently reported by Attkins to Paul Walker ("**Walker**"), the red team leader for BHP HBI.*
12. *Fenwick then requested that Chalk come to Darryl Calvert's, the Human Resource Manager, office for the purpose of discussing the Assault.*

13. *At approximately 8.45 am on 24 April 2000 Chalk subsequently attended at Calvert's office ("**the Interview**").*
14. *Initially present at the Interview were Chalk, the team leaders Walker and Fenwick and Calvert although Walker subsequently left.*
15. *At the start of the Interview Chalk asked if he needed representation, to which Calvert said "no", that this was an incident investigation to get the facts.*
16. *During the Interview Chalk stated that—*
    (a) *he had bumped into Attkins on site, who he said had ruined his life, and reacted by thumping him;*
    (b) *Attkins fell to the ground;*
    (c) *nothing was said by Attkins immediately before the Assault;*
    (d) *Attkins did not provoke the Assault or fight back at the time; and*
    (e) *he had shown a lot of restraint to date.*
17. *During the Interview, Chalk was in a distressed state. Calvert saw this and offered to drive him home.*
18. *After the incident investigation was completed on 25 April 2000, a disciplinary investigation was convened by Carlos Davila ("**Davila**"), the Operations Manager, for 3.00 pm on 25 April 2000 ("**the Disciplinary Investigation**").*
19. *After the Interview, in which Chalk admitted the Assault, Calvert's approach changed. Calvert considered the incident was serious and may require a disciplinary investigation.*
20. *On April 25 2000 Davila, Calvert, Fenwick, Chalk, Richard Whitiker, a colleague of Chalk, and Paul Asplin, an organiser for the Applicant attended at the Disciplinary Investigation.*
21. *At the Disciplinary Investigation Chalk stated that—*
    (a) *he had shown extreme restraint;*
    (b) *John Woolfrey, the previous Vice President BHP HBI, was aware of the situation between him and Attkins and had done nothing to prevent it;*
    (c) *Keren was working with Tom Dreger and was under a lot of stress;*
    (d) *Attkins had gotten her pregnant;*
    (e) *pleas to Woolfrey had gone unheeded;*
    (f) *he was not normally a violent person;*
    (g) *in response to a question from Davila as to what would prevent this from happening again Chalk said a staggered shift start would help the situation as he and Attkins would not see each other; and*
    (h) *he had crossed paths at the BHP HBI plant site with Attkins the day before that day without incident.*
22. *At the Disciplinary Investigation Chalk also claimed that people had been sneering and talking at him about the situation just prior to him bumping into Attkins.*
23. *The Disciplinary Investigation was adjourned for 24 hours until 26 April 2000 in order that Davila could investigate and consider the matters raised by Chalk at the Disciplinary Investigation and consider what the appropriate penalty was.*
24. *When the Disciplinary Investigation reconvened on 26 April 2000 Davila, after considering all the factors, advised Chalk that his employment was terminated with 4 weeks pay in lieu of notice. See attachment 4 being a copy letter of termination dated 26 April 2000."*

3. It can be seen from the agreed statement of facts that the assault by Mr Chalk upon Mr Attkins was not in issue. What was in contest was whether the circumstances giving rise to the incident constituted provocation, and secondly, whether in light of the possession by the respondent of relevant knowledge concerning those events, it took any appropriate steps to avert the potential confrontation that ultimately occurred. Furthermore, the applicant challenged the respondent on the basis that the punishment of dismissal, did not "fit the crime", having regard to all of the circumstances as they arose.
4. Mr Chalk gave evidence. He testified that he became aware that Mr Attkins had an affair with his wife, following which she fell pregnant to him with the child being born in March 2000. This devastated Mr Chalk. He said that Mr Attkins showed total disinterest in the birth of the child, and for some time, denied paternity. Mr Chalk testified that he mentioned his personal problems to Mr Woolfrey, the then Vice President of the HBI operation. This was mentioned in the context of discussions also about his work performance. Apparently, Mr Chalk felt aggrieved that he had not been promoted in his employment, contrary to what he said were undertakings previously given to him by his supervisor. It was Mr Chalk's evidence that he saw Mr Woolfrey about these matters at least twice, possibly three times. Mr Chalk conceded that he did not however, discuss the details of his personal problems with Mr Woolfrey, but did say he was having difficulties at home with his wife. He testified that he also confided in Mr Fenwick about these matters.
5. It was common ground that Mr Chalk worked in the utilities plant and Mr Attkins worked in the gas plant, broadly on opposite sides of the plant operation site. His evidence was that he saw Mr Attkins in the workplace on shift changeover in the "lodge" and in the car park, mainly the latter.
6. Mr Chalk gave evidence about the events of 24 and 25 April 2000. He said that he arrived on his pushbike and parked it in the allocated area. He said that he saw other employees looking at him and laughing at him. Apparently, the fact that Mr Attkins and Mr Chalk's wife had a liaison was common knowledge on the plant. He proceeded inside the main gate. He saw Mr Attkins, whom he described as having "a smug look on his face". Another employee, Mr Cheape, was also present. Mr Chalk said that he hit Mr Attkins. He did not know why he hit him but referred to the culmination of all he had to go through in relation to Mr Attkins affair with his wife and the birth of a child. He testified that he did not regard himself as a violent person prior to the circumstances arising with Mr Attkins.
7. Following the altercation, an investigation was undertaken as set out in the agreed statement of facts above. During this Mr Chalk broke down. He said that he had told Mr Woolfrey about having personal problems but the respondent did nothing about it.
8. There was also evidence that Mr Chalk had an earlier altercation with Mr Attkins at the Finucane Island Club out of hours in or about September 1999. After inviting Mr Attkins outside Mr Chalk testified that Mr Attkins offered him "a free swipe" following which Mr Chalk hit Mr Attkins several times. Another employee and friend, was also present on this occasion. This incident also arose out of Mr Attkins' sexual liaison with Mr Chalk's wife. A further incident occurred in or about November 1999 between Mr Chalk and another employee Mr X. This occurred at work in a small "donga" where Mr Chalk asked Mr X whether he was having or had had a relationship with his wife and Mr X said he had. Mr Chalk then hit Mr X in the face once. There appeared also on the evidence, to have been another incident in or about November 1998, when Mr Chalk also became physical with another employee Mr Y, out of working hours, for the same reason. Mr Chalk said that he lost control of himself on these various occasions and there was no retaliation.
9. Mr Chalk said that he was aware of the respondent's policy in relation to physical violence in the workplace and knew that the company took these matters seriously, which could include the penalty of dismissal.
10. As a result of the inquiry process, Mr Chalk was dismissed. During the course of the process, the respondent did become aware of the incident at the

Finucane Island Club with Mr Attkins, but did not become aware of the other altercations until after the dismissal of Mr Chalk.

11. Mr Whitaker also gave evidence on behalf of the applicant. He has been employed by the respondent as an area co-ordinator in charge of part of the operations workforce. He has been engaged both on green shift and blue shift and worked with Mr Chalk on the latter. Mr Whitaker attended the disciplinary investigation with Mr Chalk on 25 and 26 April 2000. He testified that either he or Mr Chalk raised the issue of a staggered shift start as a possible solution to the difficulties between Mr Chalk and Mr Attkins in the workplace. On the resumption of the disciplinary investigation on 26 April Mr Whitaker was surprised to hear that there was already a staggered start put in place, because to his knowledge, working closely as he did with Mr Chalk, he was not aware of it and had never seen this occur. He also said that from his own knowledge, he was not aware of any assistance provided by the respondent to Mr Chalk, in light of Mr Chalk's personal difficulties.

12. Finally, Mr Whitaker testified that as far as he had known Mr Chalk, he always appeared to be a fairly quiet and mild mannered person, not usually prone to getting angry.

13. The respondent called a number of witnesses. These included Mr Walker, team leader for the operations red team; Mr Attkins; Mr Caletta, an area co-ordinator at the material times; Mr Fenwick, the team leader for the "blue team"; Mr Woolfrey, Vice President operations at the material time, presently project director; Mr Williams, the operations superintendent; Mr Calvert, the human resources manager; and Mr Davila, the operations manager for the respondent.

14. Mr Attkins was employed by the respondent as a GMP technician in the gas plant for approximately three years. He worked in the "red team". He testified that he met Mr Chalk's wife in about June in 1999 at a social function. As a result of this meeting, a short sexual relationship took place but Mr Attkins denied there was any lengthy "affair" between him and Mr Chalk's wife. It was Mr Attkins' evidence that he initially did not know whom the woman was, but shortly thereafter did. He testified that approximately two weeks after their liaison, Mr Chalk's wife told him that she had told Mr Chalk about their relationship. Mr Attkins testified that he subsequently found out later in 1999 that Mr Chalk's wife was pregnant and she said that he was the father of the child.

15. Mr Attkins gave evidence about an incident out of working hours at the Finucane Island Club. He said that this was in or about September 1999 and both he and Mr Chalk went outside of the club following which Mr Chalk accused him of having a sexual relationship with his wife. Mr Attkins said he did not deny this and was abused by Mr Chalk. An altercation took place in relation to which Mr Attkins testified that he gave Mr Chalk "a chance to get a swing at him" for what had occurred. He said that he felt guilty and he thought this would be the end of it. Another employee, Mr Caletta was present at this time and restrained both of them. Somewhat surprisingly, the evidence was that all three of them then left the premises together in the same taxi and travelled to a nightclub.

16. Mr Attkins also gave evidence about the death threat. He said that this occurred prior to Christmas in 1999. Both he and Mr Chalk were in the technicians "humpy" just prior to handover on a shift and Mr Chalk said he wanted to speak with him outside. They went outside and Mr Chalk said, "he wanted to kill me" "if I harmed his family he would kill me." Mr Attkins then reported this incident to Mr Walker. As a result, Mr Walker put in place with Mr Attkins an "informal arrangement" whereby Mr Attkins would leave shift early and arrive for his shift late each day, to avoid Mr Chalk. It was Mr Attkins' evidence that he did this as much as he could although matters arising on the plant sometimes prevented this. Apparently Mr Walker from time to time asked Mr Attkins if the arrangement was working, however, it seems that Mr Walker never asked Mr Attkins what time he was starting or leaving each shift.

17. As to the events of 24 April 2000 and onwards, Mr Attkins gave evidence generally about the assault. He said that on the day, Mr Chalk was extremely aggravated but did not say anything to him at the time that he hit him. It is also to be noted that despite the assault having been described as a "vicious attack" Mr Attkins, on the evidence, did not appear to have suffered any injuries or obvious facial markings as a result.

18. Mr Caletta was employed by the respondent as an area co-ordinator. He was also involved in the respondent's peer support programme for employees with family difficulties etc. Mr Caletta, who was a good friend of Mr Attkins in 1999, gave evidence about the incident at the Finucane Island Club and his involvement on 24 April 2000. As to the April 2000 incident, he said that when he was taking Mr Attkins home in his car, Mr Attkins was upset. Mr Caletta arranged for Mr Walker to go to Mr Caletta's house to discuss the incident with Mr Attkins. Mr Davila was also contacted about the incident at about this time.

19. According to Mr Caletta, the liaisons between Mr Chalk's wife and other employees were common knowledge around the plant. He also testified that he had known Mr Chalk since in or about January 1997 and always found him to be friendly and did not know him to be in any way a violent person.

20. Mr Fenwick had been employed by the respondent as its team leader for "blue team." He testified that he had heard rumours in relation to Mr Chalk's wife, one of which concerned Mr Attkins. Mr Fenwick gave evidence about discussions he had with Mr Chalk concerning Mr Chalk being promoted to a "high impact" position. These discussions continued on from those held with Mr Chalk's previous supervisor, Mr Vardy. Mr Fenwick gave general evidence about his role in the investigation and subsequent disciplinary inquiry following the assault. He testified that during the disciplinary investigation, he recalled Mr Chalk getting quite upset about the matters of which he was speaking and on occasions, had to leave the room. As to Mr Chalk's version of the events, Mr Fenwick said he recalled Mr Chalk saying that he came face to face with Mr Attkins and this led him to explode. He also recalled Mr Chalk saying in the interview that other employees "sniggered" at him on the morning of the incident when he arrived at the plant. Mr Fenwick could not recall whether these employees were spoken to.

21. As to the response by the respondent to the Mr Chalk's circumstances, it was Mr Fenwick's view that it was a mistake for the respondent to not do enough to assist him when it had knowledge of his problems. He testified that if he had knowledge of these matters he would have raised the difficulties with both Mr Chalk and Mr Attkins, counselled them, and put in place a programme to manage the situation. He described the lack of follow up with Mr Chalk in relation to the death threat issue as unusual.

22. Mr Walker testified that prior to the final incident in April 2000 involving Mr Chalk, Mr Attkins came to see him to tell him that at a shift changeover Mr Chalk had made a threat to kill him. He said that Mr Attkins appeared nervous and upset. He discussed this with Mr Attkins and in an endeavour to ensure that it did not occur again, an "informal" process was to be put in place, whereby Mr Attkins would leave early at the end of each shift and start later at its commencement. In both cases, this was to be about 15 minutes. Mr Walker mentioned this to other personnel of the respondent, including it seems, Mr Williams. Importantly and somewhat remarkably, there appeared to have been no contact made either by Mr Walker or anyone else, with Mr Chalk as to either the threat itself, or the arrangement for Mr Attkins to finish early and start later. I say something further about this below.

23. In cross-examination, Mr Walker said that he understood the background involving Mr Attkins and that he had an affair with Mr Chalk's wife and there was an issue of paternity in relation to her child. Mr Walker's evidence as to why he did not take the threat further was that Mr Attkins told him that he did not want to progress it and

furthermore, he thought that if the matter was further progressed, it may only make matters worse between them.

24. Mr Woolfrey testified that in about mid 1999 Mr Chalk approached him at the workplace to discuss his work performance. Apparently, Mr Chalk was concerned that he had not been promoted to a further level as an operator, as undertaken by his then team leader, Mr Vardy. Mr Woolfrey then raised this with other personnel at the respondent, and he was informed that both Mr Chalk and Mr Vardy were working on this matter. This was in turn passed on to Mr Davila.

25. In early January 2000, Mr Chalk again approached Mr Woolfrey about his work performance. Apparently, Mr Chalk's work performance had been declining, and Mr Woolfrey had previously been made aware of this in his earlier discussions. In this meeting, Mr Chalk told Mr Woolfrey that he was having some problems at home and difficulties sleeping. Mr Woolfrey said that Mr Chalk told him that he was having "problems at home between me and my wife." There was no discussion as to the specifics of these problems however Mr Woolfrey indicated that counselling was available if it was needed. Mr Woolfrey said that at this time, he was aware of a rumour that Mr Chalk's wife had had an affair with someone on the respondent's plant. Mr Woolfrey then had further discussions with Mr Williams, advising him of the ongoing concern expressed by Mr Chalk about his promotional prospects and also that if Mr Chalk required counselling, then he should receive it.

26. As to the disciplinary process on 25 and 26 April 2000, Mr Woolfrey was not directly involved. However, on 26 April, he had occasion to see Mr Davila. Mr Davila informed him of the altercation involving Mr Chalk and Mr Attkins and queried Mr Woolfrey as to whether Mr Chalk had spoken to him about having personal problems. It was Mr Woolfrey's evidence that he told Mr Davila that the only issue he had spoken to Mr Chalk about was in relation to his work performance.

27. In cross-examination, Mr Woolfrey conceded that if he had become aware of a death threat in the work place, then those involved should have been interviewed and a full investigation undertaken. Mr Woolfrey also gave some general evidence about staggered shifts and their unsuitability in his opinion, from an operational point of view.

28. Mr Williams has been employed by the respondent as its operations superintendent. He testified that in about mid 1999 Mr Vardy came to see him to discuss some problems he was experiencing with Mr Chalk. This included apparently, Mr Chalk leaving early without explanation, and a general decline in Mr Chalk's work performance. These issues led Mr Williams to make inquiries of others in the workplace, including Mr Walker. Mr Williams was informed that Mr Chalk was having some difficulties in his home life. Mr Williams was aware that Mr Chalk's wife had moved out of their home.

29. In subsequent discussions between Mr Williams and Mr Chalk, Mr Williams was informed that Mr Chalk was having personal difficulties and that his work performance was suffering. Mr Williams testified that he did not want to be made aware of his personal problems, but he did need to discuss how they were affecting his work. There were apparently further discussions over the next six to nine months, between Mr Williams and Mr Chalk about his ongoing work performance.

30. At the respondent's 1999 Christmas party, Mr Williams questioned Mr Walker and Mr Attkins as to why there were only a few employees from his work team present. Apparently Mr Walker informed him that this was because Mr Chalk's wife was going to be present and she was pregnant with Mr Attkins' child. This surprised Mr Williams as he thought at that point that the child belonged to another employee Mr X. Subsequently, in or about January or February 2000, Mr Williams became aware from Mr Walker, that there were difficulties between Mr Chalk and Mr Attkins in communicating on the job, and that Mr Attkins had had a sexual liaison with Mr Chalk's wife. Mr Walker also informed Mr Williams that there had been a previous altercation between Mr Chalk and Mr Attkins out of working hours at the Finucane Island Club. This then alerted Mr Williams to what Mr Chalk's personal problems may have been.

31. It also was Mr Williams's evidence that he had been aware of other rumours that Mr Chalk's wife had had relations with other employees, including Mr X. Mr Williams testified that he did not take any formal steps in relation to these matters, as he thought that the situation was being managed by Mr Walker, with Mr Attkins leaving early and starting late to avoid contact with Mr Chalk. Mr Williams also testified that he did not think that Mr Chalk would assault Mr Attkins at work as the incident at the Finucane Island Club involved alcohol and whilst at work, because they were on different shifts, the potential for contact was minimised.

32. In cross-examination, Mr Williams said that in relation to staggered shifts, whilst they were not desirable, had there been a formal staggered start for Mr Attkins and Mr Chalk, and it had been strictly applied, then the assault may never have taken place. However, Mr Williams did not follow up with his supervision, how the "informal" arrangement was working. This was left to them. Furthermore, Mr Williams conceded that if he had been made aware of the threat by Mr Chalk to kill Mr Attkins, and that threat being real, he would have pursued the matter with Mr Chalk. He said that on becoming aware of it, Mr Walker should have raised the matter with him and he would have got involved and dealt with it. The general thrust of Mr Williams' evidence was that he thought that Mr Chalk's work performance problems were principally work related.

33. The evidence of Mr Williams also was that he thought that staggered shifts as a rule were problematic and that in the circumstances of Mr Chalk, it would be unacceptable to have him back in the workplace following an act of violence committed at work. He expressed concerns in relation to the safety consequences of Mr Chalk and Mr Attkins being in the workplace together.

34. As the respondent's human resources manager, Mr Calvert was involved in the incident between Mr Chalk and Mr Attkins, including the disciplinary inquiry that took place on 25 and 26 April 2000. Mr Calvert gave evidence generally about the process undertaken, some of which was the subject of the agreed statement of facts between the parties. He testified that at the conclusion of the inquiry process, the respondent made the decision to dismiss Mr Chalk because the respondent had an incident that constituted a serious safety breach on site, notwithstanding the extenuating circumstances in terms of the personal difficulties between Mr Chalk and Mr Attkins. Also the subject of Mr Calvert's evidence was a discussion after the dismissal of Mr Chalk, involving Mr X. This referred to the previous workplace incident in November 1999 when Mr Chalk struck Mr X, following discussions between Mr Chalk and Mr X about Mr Chalk's wife.

35. Mr Calvert also gave evidence about the difficulties of introducing a staggered shift arrangement and his concerns for workplace safety if Mr Chalk was reinstated. Also tendered in evidence through Mr Calvert, were the respondent's "swipe card" records, which refer to employee movements in and out of the operations gatehouse, specifically showing the times of entry and exit of Mr Attkins and Mr Chalk in the period 12 January to 24 April 2000.

36. Mr Davila is presently employed by the respondent as operations manager. He testified that on 24 April 2000 he was contacted by Mr Walker to advise of the incident that occurred between Mr Chalk and Mr Attkins. An investigation was then put in train. Mr Davila was not personally involved in the investigation process but was kept informed. As a result, Mr Davila was involved in the disciplinary inquiry. In the period between the meetings on the two days in question, Mr Davila spoke to Mr Woolfrey about Mr Chalk's comment that he had spoken to Mr Woolfrey about his personal problems and that the

respondent did nothing to assist. Mr Woolfrey indicated to Mr Davila that there were no discussions between him and Mr Chalk as to personal matters. Some discussion took place in relation to the possibility of a staggered shift, and Mr Davila was informed that there had been an "informal" procedure put in place whereby Mr Attkins left early and started late.

37. Having considered the circumstances, particularly that Mr Chalk assaulted Mr Attkins without, as Mr Davila put it, provocation, his decision was that on safety grounds, Mr Chalk's employment should be terminated.

38. As to the "informal" arrangement, Mr Davila testified that he did not inquire, nor did he have any knowledge, as to whether this process was effective in keeping both Mr Chalk and Mr Attkins apart in the workplace. He said however, this would have made no difference to his decision to dismiss Mr Chalk. Mr Davila agreed that the personal circumstances of Mr Chalk would make most people very upset and angry. Mr Davila said that if Mr Chalk had had discussions with someone at the respondent about his personal difficulties, then the respondent would have some responsibility to act and this may have led to a different response. As to the death threat issue, Mr Davila testified that he was aware of this and it did form some part of his decision making process to dismiss Mr Chalk, however, he did not raise this matter with Mr Chalk during the disciplinary process. Accordingly, Mr Chalk never had the opportunity of responding to this matter.

39. It also was Mr Davila's evidence that he was satisfied that the respondent had taken action to stop Mr Atkins and Mr Chalk coming into contact in the workplace. In Mr Davila's opinion, the responsibility for the assault lay with Mr Chalk and his conduct posed a serious safety issue for the respondent. He also expressed the view that given Mr Chalk's history, he would be concerned about reinstating him because of the prospect of the recurrence of such incidents. Mr Davila expressed reservations about the practicability of a staggered shift arrangement, similar to the views expressed by other witnesses for the respondent.

Findings and Conclusions

40. It was common ground, as set out in the agreed facts, that an assault did take place in the workplace on 24 April 2000 between Mr Chalk and Mr Attkins. Mr Chalk freely admitted that he struck Mr Attkins in the circumstances as outlined in the statement. It was abundantly clear to the Commission from the evidence that Mr Chalk was under extreme emotional stress by reason of the sexual liaison between Mr Attkins and Mr Chalk's wife that occurred prior to the assault taking place. I have no doubt on the evidence that the birth of a child as a result of this liaison, and the ensuing denial of paternity by Mr Attkins, substantially aggravated Mr Chalk's emotional turmoil. In my view, the circumstances leading up to the assault on 24 April did constitute circumstances of provocation. Indeed, it is difficult to imagine a greater circumstance of provocation between two co-employees.

41. On the evidence I am also satisfied and I find that Mr Chalk did strike another employee Mr X in or about November 1999, which event was not then known by the respondent. I find also that Mr Chalk and Mr Attkins had an altercation at the Finucane Island Club, out of hours, of which incident the respondent was aware as a result of the inquiry process. On this occasion, Mr Attkins invited Mr Chalk "to have a free hit" as he put it, obviously because of the circumstances of his relationship with Mr Chalk's wife. I am not of the view that in all the circumstances of that incident, the respondent can rely upon it in justifying Mr Chalk's dismissal. Nor from the evidence, did it appear that the respondent sought to rely upon it or indeed for that matter, the incident with Mr X, as a basis for the dismissal of Mr Chalk.

42. It was also the case, and I find, that Mr Chalk made a threat to kill Mr Atkins in the workplace. I also find, that upon the respondent being advised of this, it did not, through its supervision, conduct any investigation as to first whether such a threat was actually made and secondly, the reason for it and what steps should be put in place to deal with it. In relation to this matter, I also find that the responsible supervisor, Mr Walker did put in place what was described as an "in formal arrangement" so that Mr Atkins could arrive a little later to start work, and leave work a little earlier each shift. However, I am also satisfied on the evidence, in particular having regard to annexure "DC7" to the witness statement of Mr Calvert and the terms of exhibit R7, that despite this "informal arrangement", Mr Attkins did not regularly start late or leave early, as the arrangement contemplated.

43. I am also satisfied on the evidence and I find that no one from the respondent appeared to follow up on this "arrangement" to ensure that it was being adhered to by Mr Attkins. It seemed on the evidence, that almost total reliance was placed by the respondent upon Mr Attkins to adhere to the arrangement himself. This is so notwithstanding the availability of the detailed records in relation to movement of employees into and out of the respondent's premises, as contained in exhibit R7.

44. In relation to Mr Chalk's personal circumstances and the liaisons between his wife and Mr Attkins, I am satisfied that Mr Chalk did refer to the fact that he was having problems in his personal life involving his wife to Mr Woolfrey and others at the respondent were aware of this. This was certainly the case by early 2000, as the evidence of Mr Williams made plain. Therefore, I am of the view that the respondent had actual knowledge at the material times, that Mr Chalk was experiencing significant difficulties in his personal life, that impacted on him, and others, in the workplace. It was also apparent to me on the evidence that Mr Walker and latterly Mr Williams were aware of the general nature of those personal issues, as relating to liaisons between Mr Chalk's wife and other employees of the respondent, in particular for present purposes, Mr Attkins. In my opinion, there was a clear connection, indisputably, between Mr Chalk's personal difficulties, and the workplace.

45. From these findings, and from the evidence generally, it was clear to the Commission that Mr Chalk needed assistance in dealing with these matters. Whilst on the evidence I am satisfied and I find that Mr Chalk was advised of the availability of counselling, this was a relatively passive response to a matter which in my view, required active intervention by the respondent, because of the clear connection between Mr Chalk's personal difficulties, and the workplace. In my opinion, the respondent had, in such a circumstance, given the propensity for the issues involved to impact on other employees of the respondent, as a part of its duty of care, an obligation to act positively and not passively in this matter.

46. There is in my view a distinction to be drawn between personal circumstances impacting upon an employee, totally unrelated to the workplace and those circumstances where the personal matters involve other employees of the same employer. The circumstances surrounding Mr Chalk, of which on the evidence I am satisfied the respondent was reasonably aware prior to the assault on Mr Attkins on 24 April 2000, required, both in terms of a common law duty of care and probably also statutory responsibility under occupational health and safety legislation, an active response. There was no active response in my view, which adequately addressed the situation.

47. Moreover, the fact of the death threat made by Mr Chalk to Mr Attkins should have, in retrospect, placed the respondent on notice that they were dealing with a most serious issue of personal relationships in the workplace. Whilst the Commission does not wish to be overly critical of the supervisor involved, as no doubt he thought he was taking the correct steps at the time based upon his judgment of the situation, with the benefit of hindsight, the respondent's reaction to this situation was, in my view, wholly inadequate. The respondent did not, on being informed of such a serious matter, investigate it and involve the alleged perpetrator, Mr Chalk. Had this occurred, it might well be the case, that steps formally put in place to manage the situation, could well have averted the ultimate incident leading to Mr Chalk's dismissal.

48. In my opinion, it is quite open to infer on the evidence as a whole, and I do so, that had the respondent then implemented a formalised "stagger", involving both Mr Attkins and Mr Chalk, and accompanied this response by other proactive measures such as workplace counselling, then it would have been more likely than not, that neither Mr Chalk nor Mr Attkins would have come into contact in the workplace at all and the assault which led to the dismissal and the other incidents, may well have never occurred.

49. Furthermore, I am satisfied and I find, that during the disciplinary investigation process, Mr Davila did raise the issue of Mr Chalk's personal problems with Mr Woolfrey. Mr Davila was not advised that Mr Chalk did mention to Mr Woolfrey previously that he was having personal problems with his wife, as Mr Chalk said during the investigation process. In my view, this is not an insignificant matter. Mr Davila, to his considerable credit, admitted that had the respondent had knowledge of the difficulties being experienced by Mr Chalk then it had an obligation to act and to do something about it. On the evidence, this did not properly occur.

50. Undoubtedly, fighting in the workplace can never be condoned. The contemporary law however, is such that a fight in the workplace does not automatically lead to the conclusion that dismissal must follow the event: *Mount Newman Mining Co Pty Ltd v AWU* (1983) 63 WAIG 2397; *William Hull v City of Mandurah* (1998) 81 WAIG 693; *Appeal by Tenix Defence Systems Pty Ltd against decision of Williams SDP, re: Fearnley* (2000) 48 AILR 4-285. From the cases, it is clear that all of the circumstances need to be considered, including whether the employee concerned was provoked, the circumstances of the employee such as his or her work record and length of service, and any other extenuating circumstances: *AWU FIME Amalgamated Union v Queensland Alumina Ltd* (1995) 62 IR 385.

51. In my opinion, having regard to all of the circumstances of this case, in the context of the equity and good conscience of the matter, which good conscience is my good conscience I am of the view that the dismissal of Mr Chalk was harsh, oppressive and unfair. In so concluding, as I have noted, the striking of Mr Attkins on the day in issue was inexcusable. However, it is the extenuating circumstances, as I have found them to be on the evidence, that have, on this occasion, swung the balance in favour of the dismissed employee, thereby rebutting the presumption that in the absence of extenuating circumstances, a dismissal for fighting would not be harsh, oppressive or unfair.

52. The situation obtaining in the workplace between Mr Chalk and Mr Attkins was a "powder keg" prone to explosion at any time. The respondent could have taken steps at any early stage, by active intervention, to avert what eventually occurred. A formalised "staggered" shift was, on the evidence, a response reasonably open to the respondent, in conjunction with other measures that I have already made reference to.

53. I turn now to consider the question of relief. The applicant sought the reinstatement of Mr Chalk. This course was strongly opposed by counsel for the respondent, in the event that the Commission found unfairness. This opposition was founded on the fact that given Mr Chalk's actions to date, there could be no guarantee that a similar incident could not re-occur in the future.

54. As the Commission as presently constituted has observed on previous occasions, the statutory scheme in s 23A of the Act, when read in the context of the Act as a whole, makes it plain that the intention of the legislature in this area was to provide reinstatement as the primary remedy in the event of a finding by the Commission that an employee has been dismissed harshly, oppressively or unfairly. The question of compensation for loss or injury only arises where the Commission is satisfied that reinstatement is impracticable, or that the employer has agreed to pay the compensation.

55. "Impracticable", as used in s 23A of the Act, does not mean impossible, but requires a consideration by the Commission of all of the circumstances of the particular matter and an evaluation of the practicability of a reinstatement order in a commonsense fashion: *Nicholson v Heaven and Earth Gallery Pty Ltd* (1994) 126 ALR 233; *Liddell v Lembke* (1995) 127 ALR 342; *Gilmore and Another v Cecil Brothers FDR Pty Ltd* (1996) 76 WAIG 4434.

56. This aspect of this case has caused me considerable difficulties. I have however, come to the conclusion, not without some oscillation, having regard to the incidents that did occur in the workplace, that it would be impracticable for the Commission to reinstate Mr Chalk. In this regard, I am particularly mindful of the respondent's duty of care obligations, and that there seems to me to be no way of ensuring, on a long term basis, that there may not be a repeat of the same circumstances, perhaps involving another employee.

57. I therefore turn to consider the question of compensation. This matter is to be approached consistent with the principles set out in *Bogunovich v Bayside Western Australia Pty Ltd* (1998) 79 WAIG 8. Given the way in which the parties' cases unfolded, the issue of loss and injury was not dealt with by the parties. The evidence before the Commission was to the effect that Mr Chalk commenced other employment in about late August 2000. That is all that is before me in relation to this question. In my view, Mr Chalk should be compensated for his loss between the date of his dismissal and the commencement of the new employment at this time, and any ongoing loss he has sustained, up to the cap on compensation in s 23A(4) of the Act. I am not persuaded that there was, on the evidence, any basis for a claim for compensation for injury.

58. I therefore direct the parties to confer as to quantum of compensation, in light of the Commission's observations above, within seven days. Any agreed sum will be incorporated into the final order to issue in due course. In the event the parties are unable to agree on quantum, the matter will be re-listed for this issue to be determined by the Commission.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	THE AUSTRALIAN WORKERS' UNION, WEST AUSTRALIAN BRANCH, INDUSTRIAL UNION OF WORKERS, APPLICANT
	v.
	BHP HBI, RESPONDENT
CORAM	COMMISSIONER S J KENNER
DELIVERED	THURSDAY, 2 AUGUST 2001
FILE NO/S	CR 128 OF 2000
CITATION NO.	2001 WAIRC 03419

Result	Application upheld. Order issued.
Representation	
Applicant	Mr M Llewellyn
Respondent	Mr T Power of counsel and with him Mr R Kelly of counsel

Order.

HAVING heard Mr M Llewellyn on behalf of the applicant and Mr T Power of counsel and with him Mr R Kelly of counsel on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby—

1. DECLARES that Mr Alan Chalk was harshly, oppressively and unfairly dismissed from his employment, as an EMP technician, by the respondent on or about 26 April 2000.
2. DECLARES that reinstatement of Mr Chalk is impracticable;

3. ORDERS the respondent to pay to Mr Chalk the sum of $29,217.16 less any amount payable to the Commissioner of Taxation pursuant to the Income Tax Assessment Act 1936 and actually paid.

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

2001 WAIRC 03285

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	TRANSFIELD PTY LTD T/AS TRANSFIELD OPERATIONS AND MAINTENANCE, APPLICANT *v.* THE AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION OF WORKERS — WESTERN AUSTRALIAN BRANCH, RESPONDENT
CORAM	COMMISSIONER S J KENNER
DELIVERED	MONDAY, 16 JULY 2001
FILE NO/S	CR 188 OF 2000
CITATION NO.	2001 WAIRC 03285

Result	Application dismissed.
Representation	
Applicant	Mr C Mitsopoulos as agent
Respondent	Mr T Kucera of counsel

Reasons for Decision.

1. The present matter is one referred pursuant to s 44(9) of the Industrial Relations Act 1979 ("the Act") by which the respondent ("the Union") (deemed to be the applicant as set out in the amended schedule) claims an allowance for employees working in specified confined spaces at the BHP HBI plant in the North West of the State. The claim is for payment of an allowance fixed at a rate of $3.50 per hour, in addition to any other payments made.
2. The applicant in this application, Transfield Pty Ltd trading as Transfield Operations and Maintenance ("Transfield") opposes the claim.
3. The particulars of the claim by the Union are set out in the amended schedule of matters referred for hearing and determination which is in the following terms—

"The Automotive, Food, Metals, Engineering Printing and Kindred Industries Union of Workers—Western Australian Branch who for the purposes of this memorandum will be deemed to be the applicant says its members involved in works on the BHP HBI-DRI Plant are required as part of the duties to enter various vessels on the Plant. When they do so they are required to work in areas that are defined as confined space in Australian Standard 2865. The disability created when such work occurs is greater than that which is compensated by payments already made on site and should have an individual rate fixed for each hour that the employee works in a confined space of $3.50 per hour in addition to any other payment made.

The conditions which give rise to the claim exist in each and every of the following areas of the Plant and will be required to be inspected by the Commission.

<u>Ore Preparation Plant</u>	<u>Ore Dryers</u>
All Screen Stations	*Swirlers*
Rod Mill	*Scrubbers*
Rod Mill Spirals	*Combustion chamber*
Discharge Chutes	*Furnace*
	ID Fans
	Feed Boxers

Reactors
Bucket Elevators

Modfiication Trains 1 & 2	*100 metre level* *67 metre level* *20 metre level* *15 metre level* *Ground level*
Lock Hoppers Upper & Lower	*78 metre level & 24 metre level*
Drum Feeders & Dump Drums on	*73 metre level*
Pressure Vessels	*85 metre level*
All Feed conveyors 7 Discharge chutes & Diverta Cars	
Feed Bin Trains 1 & 2	*20 metre level*
Recycle Gas Cooler	*45 metre level*
Reactor Cyclone Valves	*78 metre level*
Head Chutes	*53 metre level*

MGO Lock Hoppers
Tromells
Screen Agitators
Diverter Gates on de dusting lines
Cooling Conveyors & fans
Gas Plant
GTE Ducting
Reformers
Furnaces
All pressure vessels
HX403 Module 1 Heat exchanger
Inert Gas generator
Flue gas fans
Utilities
Demin Water Vessels
Coaleser Driers

The respondent denies that the disabilities claimed to exist by the union are present in any of the areas of the Plant identified above and say no additional payments are justified over the payments which are currently made on the site which include payment for working in confined spaces. The respondent opposes the issue of any order requiring it pay additional monies for work in the said areas."

Contentions of the Parties

4. The Union's members undertake a range of maintenance tasks at the BHP HBI plant, in the areas identified in the schedule set out above. These employees are said to encounter certain disabilities when performing work. Mr Kucera submitted that these disabilities include discomfort due to cramped conditions, dirt and filth, dust, heat and humidity, and the general anxiety experienced by employees when working in confined spaces. The Union accepted that within the terms of the Transfield Maintenance HBI Agreement 2000 ("the Agreement") there exists a site allowance provision which is in the following terms—

"15.4 Site Allowance

A site allowance of $2.50 per hour (flat) shall be paid for each hour worked on the work site covered by this Agreement. The allowance is paid in lieu of any special rates and provisions and covers all factors associated with the site including but not limited to environmental, dust, heat, confined space, height etc."

5. A clause in identical terms, was also contained in the predecessor to the Agreement, that being the Transfield Maintenance HBI Agreement No. AG 136 of 1997, registered in the Commission on 31 July 1997 ((1997) 77 WAIG 1966). It was the submission of the Union that the present clause 15.4 of the Agreement does not adequately compensate for the disabilities encountered

by employees when working in the confined spaces as set out in the amended schedule.

6. Mr Mitsopolous, as agent for Transfield, strongly opposed the Union's claim. He submitted that the claim was for a new allowance that must be assessed against the established tests for such a matter, under the Commission's Wage Fixing Principles ("the Principles"). Transfield submitted that the present site allowance in the Agreement, was appropriate for a maintenance operation and contemplated all of the relevant disabilities present on the HBI site. Furthermore, and importantly in their submission, it was said by Transfield that there had been no change in the conditions under which work has been performed, since the inception of the maintenance works, to warrant any re-consideration of the site allowance, paid in recognition of all disabilities, including confined space.

7. Mr Mitsopolous submitted that the conditions under which the employees at the HBI site worked, were very similar to conditions existing at other downstream processing plants throughout this State, for example those obtaining in ore preparation plants and gas plants, common to a number of other mining and petrochemical operations. It was submitted by Transfield that hot, dirty and dusty conditions are in existence on the site, but this was to be expected and was contemplated by the parties when entering into the Agreement and its predecessor. Transfield also submitted that to the extent that the claim by the Union flows from any concerns as to the safety of entering into confined spaces, the Commission should apply the well established principle that safety matters should not be commuted to money payments: *Ermani Constructions Pty Ltd v Australian Workers Union, NSW Branch and Anor* (1988) 23 IR 346. On all of these bases, Transfield submitted that the Union's claim should be dismissed.

Evidence

8. The Commission was assisted by detailed on site inspections in relation to the areas the subject of the claim. Furthermore, the Commission has been assisted by evidence adduced on behalf of both the Union and Transfield, in relation to their respective positions concerning the claim. I do not propose to traverse all of the evidence led in the proceedings, but provide the following as a summary of the material evidence.

9. Mr Ferguson is the state secretary of the Union. He gave evidence as to his involvement in particular, on the construction phase of the HBI project. Additionally, he gave evidence in relation to a two stage allowance awarded by the Commission during the construction phase, for welders and others, who worked in certain vessels on site (See (1997) 77 WAIG 3019). In that case, it was concluded that for employees working within the 16 reducing gas reactors and four gas coolers during construction, an additional allowance should apply, for conditions not contemplated by the rate fixed for confined spaces in the then construction industrial agreement. Mr Ferguson also testified that he had been informed by employees at the HBI site about the conditions that they encountered involving excessive heat, dust, and noise in various parts of the plant.

10. Evidence was also adduced on behalf of the Union from Messrs Martinac, Slater and Waiwatai. These witnesses, employees of Transfield in the maintenance work force, gave evidence about the conditions that they encountered in the various areas in which they worked, covered by the claim. Mr Martinac gave evidence about working in areas including the ore dryers; ID fans; swirlers; scrubbers; the combustion chamber; feed boxes; the reactor area including bucket elevators; lock hoppers; drum feeders and the pressure vessels and various conveyors and chutes. He described many of the confined space entry conditions as being very hot and dusty, with the presence of noxious gases on occasions. He also gave evidence of very cramped conditions in which some maintenance work has to be performed, in particular in the reactor area and the lock hoppers. In particular, Mr Martinac described the nature of a confined space entry into the pressure vessels, as being very dusty with the presence of gases. He described these entries as being somewhat frightening and areas that he and others do not like to get into.

11. Mr Martinac also described the type of personal protective equipment ("PPE") that maintenance employees are required to wear. This can extend up to full protective suits and the use of breathing apparatus. In cross-examination, Mr Martinac testified that whilst the conditions under which work had been performed were basically the same as they had been previously, his perception was that there were safety issues in relation to safety systems and a lack of training at the plant. He also gave evidence about his role in the preparation and co-ordination of confined space entries on the site and the permit system for same, including the use of work instructions.

12. Mr Slater has been employed by Transfield since February 1999 and gave evidence about a number of areas including the ore preparation plant; the gas plant; the reactors; trommels; and other areas. The tenor of Mr Slater's evidence was similar to that of Mr Martinac, describing the often hot humid and dirty conditions existing in the various areas of plant identified. He also described the effect of the ambient temperature at the HBI site and the effect of doing maintenance work next to live plant, which exacerbated the heat conditions. Mr Slater also referred to the often cramped position in which some of the maintenance works in these areas have to be conducted.

13. In particular, Mr Slater testified in relation to work done within the absorber columns. He said that this work often involved employees becoming wet with benfield solution, a particularly strong smelling substance with an offensive odour. Whilst Mr Slater described these conditions, he conceded in evidence, as did Mr Martinac, all of the conditions he described have been present in the various work areas he has experienced, since the time of his employment by Transfield. He did testify however, that there had not been in his experience, any improvement in the disabilities experienced.

14. Mr Waiwatai is a part of the crew described as the "reactor rats". The Commission understands this to describe the crew responsible for cleaning of the reactors in a shut down operation. Mr Waiwatai described the cleaning process inside the reactors. This at one stage entailed the cleaning employees wearing full thermal suits, because of the high temperature, even after the reactor vessel had being given sufficient time to cool down. The cleaning process involves suction of product out of the reactor and lancing build-up on the reactor walls. In the latter case, some "hot spots" can still be encountered, resulting in very high bursts of temperature. Mr Waiwatai also described the conditions as extremely filthy and on exiting the reactor the employees are generally covered in black iron ore product that goes throughout their clothing.

15. He testified that in the plenum area of the reactor, the space is confined and employees need to adopt a stooped position to work. Some noxious gases are also present which require the wearing of P2 masks. In cross-examination, Mr Waiwatai also conceded that the work conditions inside the reactor have generally not changed. However, one change has been a new system to significantly reduce the temperature inside the reactor before entry, bringing it down to less than 100 degrees centigrade. Previously apparently, temperatures used to be as high as 600 degrees centigrade at the time of entry. Additionally, employees entering the reactor for cleaning can only stay in the reactor for a limited period up to a maximum of 30 minutes.

16. Transfield called two witnesses. The first witness, Mr Graham, who has been employed at the HBI site as a senior supervisor for Transfield for about four years. He has had some 30 odd years experience in the construction and maintenance industries. This experience included work mainly in the petrochemical industry around Australia and also the nickel industry. Mr Graham's specific area of involvement presently at the HBI plant is in relation to shut down maintenance work in the reactor

bricquetting area. He gave evidence generally about this process. It involves isolation of the reactor train; ventilation of the system; the removal of cyclone valves and the commencement of the cleaning process. He testified that the cleaning process usually starts about 24 hours after the cyclone valves of the reactors have been removed. Once this process commences, in the plenum area, the residue product is lanced to assist in cooling, which takes approximately three to four days.

17. The cleaning process then continues to remove any carry-over ore fines. The cleaning crew then progress down the reactor to the grid level. Mr Graham testified that a significant improvement in the process in his view is the new system that enables the reactor to be cooled down as referred to by Mr Waiwatai in his evidence. Using this system, employees do not now need to wear a full thermal suit as they did previously.
18. Once the cleaning work is completed, any necessary welding work to perch piping is completed. In this regard, Mr Graham said that welders are exposed to a small amount of fumes, but a "de-duster" is used to create a draft in the piping. Mr Graham testified that a normal reactor shut down takes about 30,000 man hours over a 21 day period, involving approximately 10,000 hours in confined spaces. On the basis of approximately 10 shut down's each year, it was Mr Graham's evidence that the cost of the Union's claim, in the reactor area only, would amount to approximately $350,000.00 per annum. Mr Graham testified that he has worked in most, if not all areas of the plant in the commissioning stage and was of the view that the basic operation of the plant is very similar to other process plants in which he has been employed. Whilst in cross-examination Mr Graham agreed generally with many of the disabilities described by the Union's witnesses, he also testified that in the main, the disabilities on the site are not new and there has been no significant change.
19. Mr Hemsley is the senior process safety supervisor at the HBI site. His prime responsibility is to identify and deal with safety hazards on site, including confined space entry. Mr Hemsley outlined in some detail the confined space entry system in operation at the HBI site. Additionally, he was cross-examined in relation to various disabilities existing in certain parts of the plant operation. Mr Hemsley agreed that in many of these confined space entries, there is involved work which is dirty, hot and in some cases, performed in cramped conditions. Additionally, Mr Hemsley said that in the nature of a generic document, work instructions do not anticipate all of the actual conditions experienced when performing a confined space entry job. It was also Mr Hemsley's evidence that from his experience, the only truly unique aspect of the HBI plant is the DRI process. Other processes involving gases and other plant operations were not new and not unique in this State.

Conclusions

20. The Union claim in this matter is that the disabilities existing at the HBI site in relation to confined space entry work, are such that an additional allowance should be provided to employees, to compensate for such disabilities, in addition to the existing allowance prescribed in the Agreement.
21. A significant hurdle that the Union is required to surmount in the present claim is the appropriate test pursuant to the Principles. It is trite to observe, that the Commission is obliged to determine the claim within the confines of the Principles: *Alcoa of Australia Ltd & Electric Power Transmission and Others v the Amalgamated Metal Workers and Shipwrights Union of Western Australia and Electrical Trades Union of Workers of Australia (Western Australian Branch), Perth* (1988) 68 WAIG 1690 at 1691. In the context of the present claim, the claim must satisfy the requirement of Principle 5—Adjustment of Allowances and Service Increments. In short, this requires the claim to be tested against work value changes. This test is that any change in work value must constitute such a significant net addition to work requirements to warrant additional compensation in relation to the work to be performed.
22. This requires in the final analysis, a conclusion that the circumstances under which the relevant work is performed, are not contemplated by the rates of pay or allowances contained in the Agreement and, most importantly, there exists a significant net addition to the conditions under which the work is performed, to warrant a change on work value grounds.
23. Considerable reliance was placed by the Union on the decision of the Commission in *AFMEPKIU v John Holland Construction and Engineering Pty Ltd* (1997) 77 WAIG 3028, noted above in the evidence of Mr Ferguson. In that case, the Commission awarded a separate allowance for employees performing welding and other duties, in certain prescribed vessels on the HBI construction site, as it then was. Significantly, in that case, not only did the claim relate to construction works being then undertaken, but also, was limited in its extent to the reactors and gas coolers then being constructed. The additional payment awarded in that case, also applied to the exclusion of the confined space allowance prescribed under the relevant construction agreement.
24. I have carefully considered all of the evidence and the careful and thorough submissions put by Mr Kucera and Mr Mitsopolous in this matter. I have also taken into account the conditions the Commission observed whilst on inspections at the HBI site. From the evidence and the inspections, I have no doubt that on occasions, employees engaged on maintenance work in some of the confined spaces the subject of this claim, work under quite arduous conditions. I have no doubt that some of the work in question is very dirty and involves considerable heat and humidity. Indeed, there was considerable common ground on the evidence between witnesses for both the Union and Transfield in relation to these matters. This applies in particular in my opinion, to the reactor cleaning crew.
25. However and significantly, to their great credit, the employee witnesses of the Union testified that although these working environment conditions are present, there has been little change in relation to those working conditions, since the operations maintenance phase of the HBI plant commenced. There was also some evidence of an improvement in the temperature of the reactors prior to entry for cleaning purposes.
26. Given the manner in which the present matter has come before the Commission, and the terms of the Principles, the question that must be determined is has there been any change in conditions or circumstances to warrant the creation of a new allowance, which conditions could not be said to have been contemplated within clause 15.4 of the Agreement. As set out above, the present site allowance contemplates all range of disabilities, including confined spaces. It is important to observe that the present site allowance payment is paid as a flat rate for each hour worked on the HBI site, whether or not the particular employee in receipt of it is actually experiencing the particular disabilities set out in clause 15.4 of the Agreement. Allowances such as these, expressed in broad terms to apply to all work performed, are an attempt in an omnibus fashion, to compensate employees for the various disabilities that they may face in the performance of their work, from time to time. As an across the board payment, they are also designed to avoid disputation between work groups as to various disabilities experienced from time to time.
27. Having regard to the requirements of the Principles, which the Commission must do in the context of this claim, whilst I accept, as I have expressed above, that some of the conditions experienced by employees are quite arduous, I am not persuaded on this occasion, that the circumstances of the claim warrant a departure from the existing rights and provisions such that I could conclude there has been a change in work value, in terms of the conditions under which work is performed at the HBI site, such that a new allowance is warranted, which is the test I am obliged to apply.
28. Whilst I also have no doubt that concerns expressed in relation to safety issues by witnesses for the Union were genuinely held views, and they should be commended

for having a strong interest in these matters, it is well established that industrial courts and tribunals should not make any monetary awards in respect of safety issues, rather the parties need to ensure that as far as practicable, those safety hazards are eliminated or minimised: *Ermani*.

29. Therefore in all of the circumstances of this case, I am compelled to conclude that the application must be dismissed.

2001 WAIRC 03284

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	TRANSFIELD PTY LTD T/AS TRANSFIELD OPERATIONS AND MAINTENANCE, APPLICANT
	v.
	THE AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION OF WORKERS — WESTERN AUSTRALIAN BRANCH, RESPONDENT
CORAM	COMMISSIONER S J KENNER
DELIVERED	MONDAY, 16 JULY 2001
FILE NO/S	CR 188 OF 2000
CITATION NO.	2001 WAIRC 03284

Result	Application dismissed.
Representation	
Applicant	Mr C Mitsopoulos as agent
Respondent	Mr T Kucera of counsel

Order.

HAVING heard Mr C Mitsopoulos as agent on behalf of the applicant and Mr T Kucera of counsel on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the application be and is hereby dismissed.

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

2001 WAIRC 03246

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	THE WESTERN AUSTRALIAN BUILDERS' LABOURERS, PAINTERS & PLASTERERS UNION OF WORKERS, APPLICANT
	v.
	OSBORNE PARK HOSPITAL, RESPONDENT
CORAM	COMMISSIONER J F GREGOR
DELIVERED	THURSDAY, 12 JULY 2001
FILE NO	CR 69 OF 2001
CITATION NO.	2001 WAIRC 03246

Result	Direction Issued

Direction.

WHEREAS on the 9th April 2001 a matter of a dispute between The Western Australian Builders' Labourers', Painters and Plasterers Union of Workers (the Union) and Osborne Park Hospital (the Respondent) was not resolved and was referred for Hearing and Determination; and

WHEREAS the matter came on for hearing on 25th June 2001 at which time the Commission allowed intervention by the Australian Manufacturing Workers' Union and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering Electrical Division, WA Branch; and

WHEREAS at the conclusion of proceedings the Commission issued Directions that it would stand the matter over for sixty days for the purposes of hearing a report from the parties and any arguments from them as to the reforming of the Schedule to the Memorandum of Matters for Hearing and Determination if that is necessary at the time; and

WHEREAS the Commission further Directed the Respondent in these proceedings to keep records of any work done by any of the employees concerned on the duties the subject of the Memorandum of Matters for Hearing and Determination; and

WHEREAS the Commission further Directed that the parties will be required to advise the Commission within thirty days of what progress has been made.

NOW THEREFORE pursuant to the powers vested in it by the *Industrial Relations Act, 1979*, the Commission, hereby directs—

1. THAT the matter be stood over for sixty days at which time the Commission will hear a report from the parties and any argument from them as to reforming the Schedule to the Memorandum of Matters for Hearing and Determination.
2. THAT the Respondent in these proceedings keep records of any work done by any of the employees concerned on any of the duties referred to in the Schedule of the Memorandum of Matters for Hearing and Determination under s.44.
3. THAT the parties report to the Commission at the completion of thirty days of any progress.

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

2001 WAIRC 03390

WRITTEN WARNING OVER THE WEARING OF UNIFORMS

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	CONSTRUCTION, MINING, ENERGY, TIMBERYARDS, SAWMILLS AND WOODWORKERS UNION OF AUSTRALIA—WESTERN AUSTRALIAN BRANCH, APPLICANT
	v.
	CITY OF STIRLING, RESPONDENT
CORAM	COMMISSIONER P E SCOTT
DELIVERED	TUESDAY, 31 JULY 2001
FILE NO	CR 78 OF 2001
CITATION NO.	2001 WAIRC 03390

Result	Applicant's name amended

Order.

WHEREAS this is a matter referred for hearing and determination on the 17th day of May 2001; and

WHEREAS by a facsimile dated the 23rd day of July 2001 the Applicant sought to amend the Memorandum of Matters for Hearing and Determination by amending the name of the Applicant to "The Plumbers and Gasfitters Employees' Union of Australia, West Australian Branch, Industrial Union of Workers"; and

WHEREAS the Respondent had no objection to the amendment as sought;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT the name of the Applicant in the Memorandum of Matters for Hearing and Determination be amended to "The Plumbers and Gasfitters Employees' Union of Australia, West Australian Branch, Industrial Union of Workers".

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

2001 WAIRC 03152

TRANSFER OF AN EMPLOYEE

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	AUSTRALIAN LIQUOR, HOSPITALITY AND MISCELLANEOUS WORKERS UNION, WESTERN AUSTRALIAN BRANCH, APPLICANT
	v.
	QUIRK CORPORATE PTY LTD, RESPONDENT
CORAM	COMMISSIONER J H SMITH
DELIVERED	FRIDAY, 29 JUNE 2001
FILE NO	CR 331 OF 2000
CITATION NO.	2001 WAIRC 03152

Result	Declaration that an employee of the Respondent was unfairly transferred and an order made that the Applicant be reinstated to the position of cleaner at Ashburton Primary School.
Representation	
Applicant	Ms D MacTiernan
Respondent	Mr P Robertson as agent

Reasons for Decision.

1 On 20 April 2001, pursuant to s.44 of the *Industrial Relations Act 1979* ("the Act") the Commission referred the following matters for hearing and determination—

1. The Applicant Union claims that the Respondent has unfairly transferred its member Mrs Ellen Jolly from her position as cleaner at Ashburton Drive Primary School to Rossmoyne Primary School.
2. The Applicant Union seeks—
   (a) a declaration that the transfer was unfair;
   (b) an order that the Respondent reinstate Mrs Jolly to the position of cleaner at Ashburton Primary School.
3. The Respondent employer denies the claim and opposes the orders as sought.

Background

2 Mrs Ellen Jolly has been employed by Quirk Corporate Pty Ltd ("the Respondent") as a cleaner for about three and a half years at the Ashburton Drive Primary School at Gosnells ("the school"). At all material times her working hours were five and a quarter hours, five days a week. She was required to start at 5.00am in the morning and finish at 8.00am, then to return at 2.45pm and work until 5.00pm each afternoon. Mrs Jolly testified that the location of the school suited her as it only took her about eight minutes to drive from her home to the school. Not long after Mrs Jolly commenced employment at the school she sustained an injury at work which resulted in her making a claim under the Workers' Compensation and Rehabilitation Act 1981. She sustained a back and shoulder injury. After being off work for a period she returned to work in October 1998 on light duties and then after a period of time she was provided with modified duties. In January 1999 she suffered aggravation and was off work for a period of time. She then resumed modified duties.

3 Ms Meade testified that she knew Mrs Jolly quite well having dealt with her workers' compensation claim and had instigated a programme of light duties for her.

4 During the course of her employment at the school Mrs Jolly's supervisor changed six or seven times. The Respondent's Human Resource Manager, Ms Rhonda Meade, testified that she changed Mrs Jolly's supervisors because she (Mrs Jolly) did not get on with her supervisors. Mrs Jolly conceded in cross-examination that from time to time she had problems with her supervisors.

5 Mrs Jolly gave uncontradicted evidence that from time to time she had difficulty obtaining sufficient equipment and material to carry out her work. She testified that on more than one occasion they ran out of garbage bags for the rubbish bins and chemicals for cleaning. She testified that when this occurred she would telephone her supervisor, a customer service manager, requesting materials for the following day but the materials would not arrive. So she would telephone her supervisor again who would promise that they would be delivered a couple of days later. She said that as a result of the shortage of materials the Deputy Principal, Mr Donald Leyland, or the Principal, Ms Julie Glanville, would question her as to why work had not been completed and she would explain that it was due to a shortage of materials. She said each time she made a request for materials she would record the fact that she had telephoned her supervisor and made the request in the school communication book. Mrs Jolly also testified that when Julie Monahan, (a supervisor) left, the metal urinal brushes used to clean the toilets had all been lost or disappeared and it was not until Mr Colin Hush became her supervisor that they were replaced by the Respondent.

6 Mr Zoran Naumoski testified that he was Mrs Jolly's supervisor for a period of about eight months from February 1999. He said that there were problems with his role and the interaction of Mrs Jolly with the Principal of the school, Ms Glanville. He said he felt she (Mrs Jolly) was given favourable treatment by the school staff. He testified that when he conducted school inspections with Mr Leyland, he (Mr Leyland) would tend to concentrate on the areas where other cleaners cleaned rather than the areas Mrs Jolly cleaned. He said that if her area was not well cleaned Mr Leyland made excuses for her. Mr Naumoski also said that Mrs Jolly used the communication book to communicate with him, which was not the way the book was meant to be used. He said that a supervisor may not read the book for up to two weeks at a time. He said the book was designed for two-way interaction between the school and the cleaners; for the cleaners to report any faults and the school to report any cleaning that was not to standard. When cross-examined, Mr Naumoski conceded that Mrs Jolly was the person who took responsibility for ordering of cleaning materials at the school and that when Mrs Jolly's areas were inspected on average her rating on a 1 to 5 scale would be around 4. He said there may have been some areas and times when she got a rating of 3, which is a weak pass. He conceded, however, that he did not have to attend to Ashburton Drive Primary School more regularly than he did any other primary schools. When asked to explain why Mrs Jolly's relationship with the Principal made his work difficult, he explained that she was considered to be part of the staff of the school rather than part of the staff of the Respondent. He said in particular, Mr Leyland would say from time to time, "Mrs Jolly is not being treated right" or, "Ellen can't do this, Ellen can't do that." He said that no excuses were made for any of the other staff who were cleaners at the school. He said he could not criticise Mrs Jolly, as to do so would be to criticise the school.

7 Mr Naumoski's evidence was contradicted by Mr Leyland. He testified that it was his opinion that the areas cleaned by Mrs Jolly received very high markings and

that during inspections he would usually focus on areas where some difficulties had arisen in the past. He said he regarded Mrs Jolly as the on-site supervisor. He said he would see her usually once a day in the mornings to address any issues that had occurred the day before, such as whether there had been areas of the school that had been broken or entered. He also said Mrs Jolly was always a very busy person who from time to time was called upon to assist in the induction of new cleaners. He expressed the view that she was never antagonistic towards the Respondent's representatives, but she was sometimes frustrated when materials did not arrive as promised.

The Events that led to the Transfer

8 Mrs Jolly testified that on 23 November 2000 she felt ill. She worked the morning shift and went to the doctor after she finished work at 8.00am. She said the doctor informed her she had a urinary tract infection and that she should take two days off work. She said she could not telephone her supervisor from home because she had teenage children who had run up the telephone bill to an excessive amount so her husband had put a code on the phone which only enabled incoming calls to be received. She also said that her husband works night shift and sleeps during the day, so she went back to the school to use the telephone, to telephone her supervisor, to advise that she would be off sick and could not work her shift that afternoon or the next day. She said that when she arrived at the school Mr Leyland spoke to her and asked her what was she doing at the school and that she informed him that she had a urinary tract infection and she needed to phone the Respondent to tell them that she would not be at work that afternoon or the next day. Both Mrs Jolly and Mr Leyland testified that he (Mr Leyland) told her he would telephone on her behalf, as he had to telephone her supervisor on another matter. She went home. Mrs Jolly said she sent a doctor's certificate by facsimile to the Respondent's office. Mr Leyland testified that he telephoned Mrs Jolly's supervisor about 9.00am and passed on a message that Mrs Jolly was ill. He said he could not recall the particular supervisor or the name of the person he spoke to but he rang at about 9.00am and spoke to the person who had been designated at that time as the supervisor of the school. Mr Hush testified that he was the school's Customer Service Manager and Mrs Jolly's supervisor at that time but that he was sharing his duties with Julio as he had just commenced in the position. He said Julio took the call and that he did not receive a message that Mrs Jolly was off sick until sometime later that day. It appears that Mr Hush did not receive the message until late in the afternoon and a replacement cleaner was not arranged to cover Mrs Jolly's shift that afternoon.

9 Mrs Jolly testified that Ms Meade telephoned her the next morning and informed her that she had not followed the correct procedure in notifying her employer that she would be off sick and it was her duty to personally telephone her supervisor. Ms Meade testified that she had previously received several complaints from Mrs Jolly's supervisors that Mrs Jolly had made complaints to, or reported to the Principal rather than her supervisor. Ms Meade testified that she decided to go and meet with Mrs Jolly together with Mr Hush on-site and issue her with a written warning for failing to personally advise her supervisor on 23 November 2000 that she was ill.

10 On 27 November 2000, Ms Meade and Mr Hush met the Applicant in the afternoon at the school. The conversation commenced by Ms Meade asking Mrs Jolly how she was and Mrs Jolly said, "The same as usual." Mrs Jolly had a discussion with Ms Meade about how she had visited various doctors and that she had an 8% disability in one area and a 12% disability in another area of her neck and shoulder. They also discussed the fact that one doctor had told her that he had the same injury as her and that when he took up golf the injury went. She informed Ms Meade that it was taking her longer to carry out her duties each day than her rostered hours so that she did not put stress on her shoulder or back. Mrs Jolly said that Ms Meade told her that she should go to the doctor and ask for a medical certificate. Mrs Jolly testified that Ms Meade then said to her, "I'm going to terminate you. When they ("the insurance company") have to pay your wages, they will want to settle the claim more quickly." Ms Meade told her to go to the doctor the next day and that the doctor would sign her off sick for the rest of the week. In re-examination, Mrs Jolly maintained that Ms Meade used the work terminate, however, she testified that her understanding of the words "stood down" to mean "terminate".

11 Ms Meade testified she had been informed by Mrs Jolly's workers' compensation general practitioner, Dr Lou Le Grange, on several occasions that he had informed the workers' compensation insurer for approximately 18 months that Mrs Jolly would not get better and her duties would aggravate her condition. For some inexplicable reason Dr Le Grange was not prepared to certify Mrs Jolly unfit for work. When Ms Meade spoke to Mrs Jolly on 27 November 2000 she discussed with Mrs Jolly Dr Le Grange's opinion that her duties would aggravate her condition. Ms Meade said that she explained to Mrs Jolly that the Respondent had a duty of care as an employer not to allow her to do duties which would aggravate her condition and she asked her (Mrs Jolly) whether she would like to see Dr Le Grange the next day and obtain a certificate stating she was unfit for work. Ms Meade strongly denied that she informed Mrs Jolly that she was terminated, but she did however, concede that she may have said to Mrs Jolly, "I'll stand you down tonight." Mr Hush gave similar evidence. In particular he testified that when Ms Meade advised Mrs Jolly to go to the doctor to get a medical certificate and Ms Meade told Mrs Jolly that she would be stood down.

12 After Mrs Jolly spoke to Ms Meade and Mr Hush, she locked up the pre-primary area and walked into the staff room where Ms Glanville, Mr Leyland, one of the acting Deputy Principals, two teachers and the P and C President were having a meeting. Mrs Jolly told Ms Glanville that she had been terminated and that she would not be at work tomorrow. She said she spoke to Ms Glanville because the school staff would expect her to turn up the next day to disarm the security alarm as she was usually the first person at the school in the morning.

13 Mrs Jolly was visibly distressed. Ms Glanville asked Mr Leyland to take her outside and talk to her. Mr Leyland testified that Mrs Jolly informed her that she had been dismissed and she was very upset. He said he spoke to one of her supervisors who informed him that he (the supervisor) was waiting for her keys and when he (Mr Leyland) inquired why, he was informed by the supervisor that Mrs Jolly would not longer be working for the company and that she (Mrs Jolly) had been informed of that fact. When cross-examined, Mr Leyland conceded he could not recall whether the supervisor (Mr Hush) had used the word "terminated" but said that the words used by Mr Hush clearly indicated to him that Mrs Jolly had been terminated.

14 Mr Hush testified that after the meeting with Mrs Jolly he went into the staff room of the school to locate the alarm pad and he observed Mrs Jolly talking to the Principal of the school. He said he did not hear the conversation, but an hour later he was summoned to the staff room by Ms Granville and Mr Leyland. He said he was accused of sacking Mrs Jolly. He said that he informed them both that Mrs Jolly had not been sacked, that she had been stood down by Ms Meade. He said that Ms Granville yelled and shouted at him and accused him of "setting up" Mrs Jolly. Mr Hush testified that he informed Ms Granville that he was new to the company having only started that month. Ms Granville in her evidence gave an entirely different version of events of that meeting. She testified that the meeting was congenial and that she asked Mr Hush why the keys needed to be changed and that he (Mr Hush) informed her that Mrs Jolly had been terminated.

15 Mr Hush said he then attempted to speak to Mrs Jolly and Mrs Jolly informed him that she did not want to talk to him and that if any correspondence was to be entered into, it should be through a lawyer.

16 Mr Hush reported his version of events to Ms Meade. When she was informed she was very angry and formed the view that Mrs Jolly had lied to the Principal and the Deputy Principal by informing them that she had been terminated. The next day she made a decision to terminate Mrs Jolly's employment on the grounds that she had lied. The next morning Mrs Jolly went to Dr Le Grange. During the course of that visit, Dr Le Grange telephoned Ms Meade. Ms Meade testified that she informed Dr Le Grange that Mrs Jolly had not been terminated that night before but that morning she had been terminated for lying. She said that Dr Le Grange re-iterated his previous opinion that her injury was aggravated by her work but under workers' compensation laws he could not certify her as unfit for work, because she was fit to do modified duties.

17 On 28 November 2000 Mr Hush and Mr Hush's supervisor, Mr Naumoski, met with Mrs Glanville and Mr Leyland. Mr Naumoski said Ms Glanville and Mr Leyland were upset. He said they informed him that Mrs Jolly had been sacked but his understanding was that she had not been sacked. He said Ms Glanville was really abrupt and made threats that they (the school) would try to get rid of them (the Respondent). I understand from his evidence that Ms Glanville indicated that the school would take some steps to bring the cleaning contract to an end. Mr Hush gave similar evidence about the events that occurred at that meeting. Ms Glanville gave evidence of a different version of events. She said that Mr Naumoski and Mr Hush informed her that Mrs Jolly had been terminated by mutual agreement. She denied being angry or making threats to bring the contract to an end. For some reason Mr Leyland was not asked by either party to give evidence about this particular meeting.

18 Mrs Jolly contacted the Union on 28 November 2000 and spoke to an organiser Mr Gordon Mitchell. Mr Mitchell gave evidence that Mrs Jolly advised him that she had been terminated by the Respondent on 27 November 2000 because the Respondent did not want her to work on-site anymore because of the workers' compensation issue and because she was unfit to do the job. Mr Mitchell telephoned Ms Meade. He said that Ms Meade advised him that Mrs Jolly had been stood down or suspended the day before but now she had been dismissed because of what had occurred at the school after she (Ms Meade) had spoken to Mrs Jolly. Mr Mitchell testified that as the conversation proceeded, Ms Meade suggested she would look at whether Mrs Jolly could work at an alternative site and she would put this to the Respondent's directors. An offer was made to Mrs Jolly on 4 December 2000 that she be transferred to Rossmoyne Primary School. Ms Meade testified that it was the Union who suggested that Mrs Jolly be transferred to another school and that she agreed to, "Sell that position to the Directors." Initially the transfer was rejected by Mrs Jolly. Finally, she agreed to the transfer on the basis that the Union would try and resolve the dispute with the Respondent. However, this condition was not conveyed to Ms Meade.

19 Mrs Jolly attended work at Rossmoyne Primary School on 7 December 2000. Mr Hush visited her at the school on that day and attempted to give to her two reports which contained warnings in relation to her alleged failure to advise her supervisor that she was sick on 23 November 2000 and a further warning in relation to the events that occurred on 27 November 2000. Mrs Jolly refused to accept the reports. Mr Hush read them to her. Mrs Jolly then went on stress leave and did not return to work until the end of January 2001. Following a conference in the Commission, Ms Meade arranged a transfer to a school that was closer to Mrs Jolly's home and she was transferred to Ranford Primary School in February 2001.

20 Mrs Jolly testified that it took her 40 minutes to drive from her home to Rossmoyne Primary School and 15 minutes to drive from her home to Ranford Primary School.

21 The Respondent argues that Ms Meade only agreed to put to her directors that Mrs Jolly be transferred to another school and that the termination be revoked as a compromise of the Union's right to make an application to the Commission in relation to Mrs Jolly. The s.44 conference file reveals that an application was filed in the Commission on the same day that Mrs Jolly agreed to be transferred to Rossmoyne Primary School. The Applicant contends that at all material times Mrs Jolly only agreed to the transfer if the issue was pursued in the Commission. Even if I accept Ms Meade's evidence that it was the Union that suggested the transfer, there is no evidence before the Commission that the Union agreed to forgo its rights to make any application to the Commission to hear and determine this matter.

22 The Union submits—

"1. The employer in denying the claim that the transfer was unfair will argue that Quirk's was exercising its management prerogative to transfer Mrs Jolly at the time it did. They will state that not only was the transfer justified in terms of this discretion but that it was additionally justified as a means to save its contract with the school as Mrs Jolly's presence there was threatening the viability of the contract.

2. We state that the actions of the employer went beyond a sense of reasonableness and management prerogative. The removal of Mrs Jolly was merely retribution for perceptions of her relationship with the administration of the school and ultimately for what can probably be best characterised as a misunderstanding on the afternoon of the 27th November 2000.

3. Mrs Jolly did nothing personally that threatened the contract. It was shown in evidence that she worked diligently to maintain cleaning standards at Ashburton Drive PS which is the key criteria for the retention of the contract with the Education Department.

…

24. In consideration of all the above factors, we state that—

- There were no substantive reasons to justify the transfer
- That management of Quirk's made unfounded conclusions in relation to Mrs Jolly's performance and interaction at Ashburton Drive PS. Her work was found to be above standard. There was no proof of the allegations that she did not support her employer.
- That the management of Quirk's contributed significantly to the misunderstandings with Mrs Jolly and the school administration on the 27 November and did not take reasonable steps to remedy that dispute.

25. The actions of the employer and the resultant transfer had a number of implications for Mrs Jolly—

- The Employer provoked the situation by creating uncertainty in the first place.
- The belief that she had been terminated on the 27th November 2000 caused Mrs Jolly considerable upset.
- The actual termination of employment on the 28th November for allegedly lying exacerbated the angst of Mrs Jolly. The employer made no attempt to contact her to rectify the situation.
- The removal from an environment she knows and the work had been modified according to her rehabilitation needs was not satisfactory.
- The travel which was first incurred was expeditional to the job which motivated Mrs Jolly to first seek employment. This has been modified but still additional actual cost and additional time.

The travel: $60.00 extra per week, now $30.00

- Extra time in the first instance this was additional: two hours per day then extra 30 minutes per day."

23 The Respondent submits—

"45. Para 22: The transfer was not punishment for a misunderstanding—it was the result of the Respondent having had enough of dealing with problems at Ashburton that they saw as emanating from Jolly—while Ronnie had terminated Jolly, the union through Gordon got involved, the compromise of a transfer rather than termination was suggested, explored and agreed upon."

Findings of Fact

24 Having heard all of the evidence given in these proceedings, I make the following findings—

a. The only real issue in dispute in relation to what occurred in the meeting on 27 November 2000 between Mrs Jolly and Ms Meade and Mr Hush, was whether Ms Meade informed Mrs Jolly that she had been terminated. I do not accept Mrs Jolly's evidence that Ms Meade used the word terminated. Where her evidence departs from Ms Meade's, I prefer the version of events given by Ms Meade. There was a misunderstanding by Mrs Jolly about what Ms Meade said at the meeting and that Mrs Jolly thought when Ms Meade said she was "stood down", she had been terminated. When this scenario was put to Mr Hush in cross-examination he conceded following his conversation with Ms Glanville it was clear that Mrs Jolly had misunderstood what Ms Meade had said. However, when it was put to Mr Hush that as a supervisor he should have sought to rectify the misunderstanding, he gave uncontradicted evidence that Mrs Jolly advised him that she would not communicate with any members of the staff from the Respondent and any correspondence should go to her lawyer.

b. In relation to the reporting of her illness on 23 November 2000, I accept the Applicant's contention that Mrs Jolly took reasonable steps to report the fact that she was ill to her employer. Mr Leyland gave uncontradicted evidence that he had spoken to the school Supervisor that morning. Mr Hush says the Supervisor was Julio. Mr Hush could not recall when Julio related the message to him. In the absence of any evidence from Julio, I accept the Applicant's submission that there was an internal breakdown of communication which resulted in a failure by the Respondent to take steps to replace Mrs Jolly for the afternoon shift.

Conclusion

25 I am of the view that the transfer of Mrs Jolly was unfair for the following reasons—

a. During the period of her employment at the school the cleaning standard of Mrs Jolly was routinely above standard.

b. Other than the events that occurred on 27 November 2000, there is no reliable evidence before the Commission that Mrs Jolly threatened the viability of the Respondent's contract with the school. In particular, Mr Naumoski in cross-examination conceded that his assertion that Mrs Jolly had undermined her employer was only a perception, as he could give no direct evidence that this had occurred.

c. There was uncontradicted evidence before the Commission that there were frequently problems with equipment and cleaning materials required to carry out the cleaning of the school. It is apparent that the lack of materials was a source of dissatisfaction to Mr Leyland and Ms Glanville.

d. I accept the Applicant's submission that one of the contributing factors to the decision being made by the Respondent to transfer Mrs Jolly from the school was the matter of reporting of her absence on 23 November 2000. For reasons set out above, I am of the view that her conduct on that day was not unreasonable.

26 Although I have concluded that the transfer of Mrs Jolly was unfair, I am of the view that Mr Leyland and Ms Glanville by their actions contributed to the transfer by treating Mrs Jolly as the "on-site" supervisor when she did not hold such a position. Whilst it is clear that Mrs Jolly wrongly formed the view that "stood down" meant that she was terminated, I am of the view that Mrs Jolly should not have refused to discuss the matter with Mr Hush, after Mr Hush spoke to Mr Leyland and Ms Glanville that afternoon. Perhaps if Mrs Jolly had discussed the matter with Mr Hush then the misunderstanding could have been cleared up on that afternoon.

27 I will make the orders sought by the Union in the memorandum of matters referred to the Commission for hearing and determination. However, I make an informal recommendation that clear reporting instructions for Mrs Jolly should be drafted by the Respondent, in consultation with the Union. It is also my view that (subject to the rules of procedural fairness), if any issues arise in the future in relation to the failure by Mrs Jolly to comply with reporting instructions or where the Respondent's representatives find it difficult to raise issues with Mr Leyland or Ms Glanville in respect of Mrs Jolly's performance, the Respondent would not be prohibited by the orders or by what is expressed in these reasons for decision from taking steps to transfer Mrs Jolly to another workplace.

2001 WAIRC 03195

TRANSFER OF AN EMPLOYEE

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	AUSTRALIAN LIQUOR, HOSPITALITY AND MISCELLANEOUS WORKERS UNION, WESTERN AUSTRALIAN BRANCH, APPLICANT *v.* QUIRK CORPORATE PTY LTD, RESPONDENT
CORAM	COMMISSIONER J H SMITH
DELIVERED	FRIDAY, 6 JULY 2001
FILE NO	CR 331 OF 2000
CITATION NO.	2001 WAIRC 03195

Result	Declaration that an employee of the Respondent was unfairly transferred and an order made that the Applicant be reinstated to the position of cleaner at Ashburton Primary School.
Representation	
Applicant	Ms D MacTiernan
Respondent	Mr P Robertson as agent

Order.

HAVING heard Ms D MacTiernan on behalf of the Applicant and Mr P Robertson as agent for the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby—

1. DECLARES that Mrs Ellen Jolly was unfairly transferred from her position as a cleaner at Ashburton Primary School.
2. ORDERS that the Respondent reinstate Mrs Jolly to the position of cleaner at Ashburton Primary School within seven (7) days of the date of this order.

(Sgd.) J. H. SMITH,
[L.S.] Commissioner.

2001 WAIRC 03320

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	THE PLUMBERS AND GASFITTERS EMPLOYEES' UNION OF AUSTRALIA, WEST AUSTRALIAN BRANCH, INDUSTRIAL UNION OF WORKERS, APPLICANT
	v.
	JAKO INDUSTRIES PTY LTD, RESPONDENT
CORAM	COMMISSIONER J F GREGOR
DELIVERED	FRIDAY, 20 JULY 2001
FILE NO	CR 303 OF 2000
CITATION NO.	2001 WAIRC 03320

Result	Dismissed
Representation	
Applicant	Mr S. Doherty appeared on behalf of the applicant
Respondent	Mr K. Dwyer appeared on behalf of the respondent

Reasons for Decision.

1 At the conclusion of a conference held on 30th November 2000 pursuant to the powers vested in it in s.44 of the Industrial Relations Act, 1979 (the Act) the Commission referred a dispute which had not been resolved by the parties for hearing and determination.

2 The dispute is delineated in the Schedule to the Memorandum of Matters for Hearing and Determination Under Section 44 (the Memorandum) in the following way—

> *On or about 9th August 2000 Jako Industries dismissed Anthony Beetham by giving him one weeks' notice.*
>
> *The Plumbers and Gasfitters Employees' Union of Australia, West Australian Branch, Industrial Union of Workers say the dismissal is unfair and seek orders for reinstatement.*
>
> *Jako Industries say that the termination was brought about by a diminution in the work available as a result it was necessary to reduce site staff. This and this alone was the only reason why the employment of Mr Beetham was terminated. The respondent says there has been no unfairness in its decision and no order for reinstatement should issue.*

The matter was first heard on 28th March 2001 at which time Mr Doherty who appeared for the Applicant Union sought leave to amend the Memorandum by seeking orders for compensation in lieu of reinstatement. There was no objection to the amendment and it was granted.

3 This dispute concerns an alleged unfair dismissal of a member of the Union, Anthony James Beetham. Mr Beetham is a qualified first class sheet metal worker. He told the Commission he applied for a job with Jako Industries (the Respondent) in that classification in March 2000. After an interview, ten days later on 3rd April 2000 he was employed.

4 During the interview Mr Beetham says he was given information which was important in convincing him that he ought to work for the Respondent. He was told by Mr Valko Anthony Jakovich (Vic Jakovich) the Respondent managed its affairs so that being laid off when it had no contracts was not a real possibility. The history of the Respondent had been that for almost twenty years it had not had to lay off any employee due to a downturn of work, it was something that Respondent avoided at all costs. The Applicant was taken for a tour of the workshop during which time he was shown work which had been done by employees when there was no work on site. This was very important to the Mr Beetham because he had been a subcontractor, and was looking for a loan to buy a house for which the lender needed assurance of long term employment. The words of encouragement he received from Vic Jakovich left him confident that the offer of employment had long term implications.

5 Mr Beetham started work at the same time as another tradesman, Mr David Sharples. During the first two weeks of employment he worked in the workshop, he assumed, to test his skills. He worked on site one day in that period and later on various other sites where the Respondent had tradesmen employed. Mr Beetham was told by Mr Peter Jakovich (Peter Jakovich), another principal of the firm, that the Respondent was considering appointing him as a leading hand at the Murdoch Health Campus St John of God Murdoch site which was one of the Respondent's most important jobs.

6 Important in the events which followed was the possession by Mr Beetham of a safety card commonly known in the industry 'a green card'. The card certifies that the holder has undergone an industry safety induction. It equips the holder with knowledge about basic site safety and what is expected of employees on site, its purpose is to promote safety awareness.

7 After Mr Beetham had finished working on the Murdoch site he had a discussion in the office with Vic Jakovich who showed him drawings of a number of projects for which the Respondent had bid, although Mr Jakovich did not say that any work had been won he was confident that some would be. From the conversation Mr Beetham gained the impression he would be a team leader or leading hand on those jobs.

8 Mr Beetham was sent to His Majesty's Carpark site where the Respondent had been engaged to work on ducts. Specifically the work was to cut holes in the ducts, Mr Beetham was told the Levels of the building on which he was to work, and was instructed to start cutting holes and get them ready for a grill fit.

9 It is unclear how long Mr Beetham was on the site but very shortly after the work began both he and his workmate suffered respiratory problems. The ducts were old and full of deposited material. When Mr Beetham cut holes with electric shears this material sprayed around and he became coated with it. According to Mr Beetham initially the incident was not of great concern because a lot of the work in the building industry has a high level of dust and discomfort. It was not until the next morning when Mr Beetham realised that both he and Mr Sharples had the same symptoms and decided they should do something about it. He says in accordance with the training he had received he brought the matter to the attention of the site safety representative. This person was the builders site safety representative, Mr Beetham approached him because he thought he had an obligation under the 'green card' to do so. Mr Beetham also requested that a sample of the dust be taken.

10 The incident was raised with the site Project Manager employed by the builder, Keywest. Mr Beetham later learned the Project Manager had raised the matter with the Respondent. This started what he described as a nasty chain of events for himself. Vic Jakovich rang Mr Beetham saying he would come to site immediately. When Vic Jakovich arrived he asked what had happened and was told by Mr Beetham words to the effect "there was thick muck in the ducts [that] should be tested." Both he and Mr Sharples were anxious to find out to what they had been exposed. Mr Jakovich instructed both employees to leave the area and work on another level.

11 Mr Beetham says that Vic Jakovich said words to the effect that if he did not want to do the job, all he had to do was ring and someone else would do it. His response was that it was not that he did not want to do the job, he had never refused to do it at all, what he wanted was the dust to be tested. The discussion with the builder and the safety rep and Mr Jakovich was not satisfactory from Mr Beetham's point of view. Their comments made him feel like they regarded him as a nuisance, so three quarters of the way through the meeting he left it. As far as he was concerned it was not for him as an employee to discuss the matter with the builder, his employer and the safety rep. He was concerned at the treatment he received for raising what he considered to be a safety issue.

12 The events caused Mr Beetham to ask Peter Jakovich where he and his workmate would be going next. The response was that the Respondent may have to look at putting the pair on holidays. He told Peter Jakovich that he did not believe that was necessary because he had been shown what other work was coming up. He became annoyed and admits he threw his helmet on the ground and stormed off. Nothing was said later in that afternoon when Mr Beetham and Mr Sharples went back to the workshop.

13 The next morning while they were loading their vehicle Peter Jakovich asked to see Mr Beetham. While in the office Peter Jakovich showed him graphs and explained that the Respondent did not have as much work as it had thought and that he was going to be laid off. Mr Beetham admits that he did not want to hear what was being said and told Peter Jakovich he did not want to know the ins and outs of the business but he did want to know what the Respondent had planned for him. He was told that Peter Jakovich would let him know later in the morning.

14 Mr Beetham says that he told Peter Jakovich that he thought the Respondent was not being fair to him, he felt he was being victimised because he was dismissed just a day after he had raised the safety issue. He drove to the site and told his workmate that Peter Jakovich was going sack him that morning. Mr Beetham had never been sacked before, he felt humiliated by it, especially after the Respondent had expounded upon its long history of keeping people employed. Having described the Respondent's operation as a family, that men had been there for eighteen years and never been stood down, to treat him differently was humiliating and unfair. He was embarrassed because he had to tell people he was sacked by the Respondent who is well known in the industry for keeping people employed for long periods.

15 When Peter Jakovich came to the site to tell Mr Sharples he would be dismissed, Mr Beetham stood away from the conversation. But he became so annoyed that when Peter Jakovich was finished Mr Beetham said to him that it would be in the Respondent's best interest to pay him out and let him finish after the day's work.

16 Mr Beetham described his thoughts as the sickest feeling that he has ever experienced during a day at work. He went back to the workshop and made a point of shaking hands with every one of the workshop employees because he had a good rapporte with them.

17 Mr Beetham says after his dismissal he applied for work at United Insulation, but did not get the job. He suspected interference by the Respondent because he had every reason to believe at the conclusion of the interview that he would be employed. The same thing happened on two other occasions when he sought employment. In the time since he left the employment of the Respondent he has had only irregular work.

18 The Commission took evidence on behalf of the Respondent from Vic Jakovich who is the Managing Director of the Respondent. He explained that the Respondent is a mechanical contractor providing air conditioning and mechanical services, medical gases for hospitals, hotels, shopping centres, tertiary institutions operating broadly across the commercial industrial sector. The company has been in business for thirty years Vic Jakovich role was to market the company and manage the day to day running, dealing with its clients, managing engineers, project engineers and hiring employees.

19 At the time Mr Beetham was engaged the Respondent had 46 employees in its construction division and a service and an administration department, each employing 10 persons. By the time Mr Beetham was dismissed the construction workforce had dropped to 19 and by the time of the hearing the combined workforce was down to 24.

20 When Mr Beetham was hired the Respondent anticipated it would have work on three major projects. By reference to Exhibit K1 Vic Jakovich traced the affect of fluctuating work demands on the business. In April 2000 the company had been forced to ask many of its workers to take leave. This had been necessary during the time leading up to and in the 11 weeks following the termination of Mr Beetham. The reason was this was necessary was that principal contractors were not able to make available the work for which the Respondent had successfully tendered. It was unable to get authority to start work on other projects.

21 At the time Mr Beetham was made redundant the first stage of St John of God Hospital was finished. The work at His Majesty's Carpark consisted of only 1 week for two men. This was the reason behind the removal of Mr Beetham and his workmate from the site. There was additional work on the site but the client decided that it would not proceed for commercial reasons. Work at King Edward Hospital, Majestic Keys or Ellenbrook had not started.

22 After Mr Beetham commenced he was given an opportunity to demonstrate his skills which he did to a satisfactory standard. He was doing a good job and it was decided that he should be given an opportunity at St John of God Hospital. At the time he was transferred the Respondent had lost three projects it had been promised and others had been delayed. In the circumstances the Respondent faced large decreases in manpower hours required on site. In the 18 weeks from the time Mr Beetham was made redundant 13 of the 18 site employees were put on leave which is an indication of the measures the Respondent had to take to maintain the skill base of the organisation. The decision to retrench was made for the good of the organisation and not for a particular individual. The fact of the matter is someone had to be made redundant and Mr Beetham and Mr Sharples were chosen because of the short period of service with the company.

23 Mr Vic Jakovich said that he never promised Mr Beetham that he would be engaged forever. Vic Jakovich admitted to being optimistic and encouraging but fluctuations are the reality of the construction industry in the last 10-12 years these had been more down than up. It was admitted that Mr Beetham was told that the Respondent avoided, as much as was possible, hiring and firing of people. It wanted employees to stay on but Vic Jakovich conditioned every employment contract by making it clear that he could not and did not promise work forever. He admitted that he did say work that had been done in the workshop during the times site activities were curtailed. Some projects which the company was promised did not materialise and there was nothing it could do about that.

24 Vic Jakovich totally rejected allegations of victimisation. He claimed safety is very important to the Respondent, it is very safety conscious and is a safety quality accredited organisation. Job safety procedures are rigidly followed. The correct process for handling the problem that Mr Beetham had encountered would have been to report back to the Respondent who would have then dealt with it. Even though he did not do so as soon as the safety problem was raised the Respondent made it clear to the builder that it was not prepared to allow its employees work on the ducting unless it was certified safe.

25 The Commission heard evidence on behalf of the Respondent from Peter Jakovich, who is the Construction Manager and Director, he is a partner of Vic Jakovich and has been for thirty years. His role is to look after the construction sites and the planning and liaison with site operatives. He received a phone call from the builder's site Project Manager regarding duct contamination and immediately went to the site. When he met with Mr Beetham he appeared to be annoyed. Mr Jakovich says that he decided that he would go and see the job safety representative and the Project Manager to sort out the problem.

26 Mr Vic Jakovich gave evidence that he would have preferred Mr Beetham to raise the matter with him and he was disappointed that he did not. The reason for this was the relationship with the builder is very important to the Respondent and if the matter had been directly reported to him he could have handled that side of the business arrangement in a better way. Mr Jakovich recalled he asked Mr Beetham whether he wanted to do

the job or not but did so out of respect. He never had any problems with Mr Beetham but if he did not want to do the job Mr Jakovich wanted to know so he could make arrangements to ensure that ultimately the job was completed.

27 The Respondent was in a position where within two weeks of the time Mr Beetham left its employment all the site work ran out. This means that the employment relationship could not have lasted any longer than that in any event.

28 The Commission also heard evidence from Mr Gregory Anthony Piscitelli, who is a Project Manager for United Insulation Company. He was called to give evidence about whether or not there had been influence from the Respondent concerning non appointment of Mr Beetham to a position with United Insulation. He denied that he had ever been called by either of the Jakovich brothers telling him not to give Mr Beetham a start, he made his own decision about whether he would employ him or not, he did not because he was over confident, he knew everything, he could do everything. On the other hand Mr Piscetelli did know Mr Sharples and hired him because he did not have these deficiencies.

29 The Respondent claims there was no unfairness in the dismissal. There was a genuine redundancy, there can not be any sustainable claim for compensation by way of loss because it is clear the employment could not have continued beyond 9th August.

30 The Respondent had labour in excess of its requirements. There was not enough work for its existing staff, it was confronted with a downturn and had an excess number of employees. It assessed its options and decided to retrench two of them. It was conceded by Mr Dwyer, who appeared for the Respondent that, if an employer terminates for redundancy it could be unfair if it is judged that there was an abuse of the employer's right to terminate, but there was not in this case. The Respondent had clearly established on the evidence before the Commission that there was a need for redundancy and after that the onus to prove unfairness in the termination falls upon the Applicant Union. That onus is compounded because the comparative test means that the Applicant Union must show that the employer's decision to select Mr Beetham was unfair by comparison to them not selecting some other employee. There was no attempt in the proceedings by the Applicant Union to do that at all. The Union's case can be categorised as an allegation that the termination was a fabricated retrenchment orchestrated because Mr Beetham raised safety concerns and this indirectly led to the shut down of the project on which he was working. By implication that created difficulties for the Respondent in a commercial sense.

31 These assertions go against the strong evidence that work was evaporating. The documentary evidence supported by the evidence of Vic Jakovich specifically identified the lost projects. The Respondent had tried to diminish the impact by use of annual leave and redeployment, but this had been to no avail. According to Mr Dwyer it is uncontrovertible that this was a bona fide redundancy, the onus is on the Applicant Union to establish some one else should have gone in the place of Mr Beetham but no attempt was made to demonstrate there was flawed selection. If there was no warning of redundancy and that created unfairness that should be viewed against the context of the rapidly deteriorating situation in the building industry, a situation which is notorious.

32 The submissions on behalf of the Applicant Union were extremely brief they boil down to the contention that what happened to Mr Beetham was unfair because he had been told by the Respondent that they do not sack people, yet they sacked him. Nothing was ever raised about his attitude or that he had done anything wrong. The dismissal is unfair because there was an expectation given to Mr Beetham that he would have continued employment, he felt humiliated when he was dismissed because it was the first time it had ever happened to him. He finds it difficult to separate that he raised an issue of safety and the very next day he was dismissed. The complaint was not fabricated, the dismissal was unfair because of the way it was done.

33 The Commission is required to assess the evidence. It makes findings of fact and is to apply the test laid down in *Undercliffe Nursing Home v Federated Miscellaneous Workers Union of Australia (1985) 65 WAIG 385*. An employer has the right to hire and fire his employees. The right is not to be interfered with by the tribunal unless the right is abused. The fundamental test is whether there has been a fair go all round. This matter involves redundancy, the established authorities to be applied are *AMWU v The Australian Shipbuilding Industries WA Pty Ltd (1987) 67 WAIG 733* and *Gromark Packaging v Federated Miscellaneous Workers Union of Australia (1993) 73 WAIG 220*. The tests in these authorities are so well known they need not be repeated.

34 Also in contention is the method by which the dismissal took place, it is suggested on behalf of the Applicant that it lacks procedural fairness. The question, is does this lack of procedural fairness taint the whole of the dismissal such that on an overall assessment there was unfairness? Kennedy J said in *Shire of Esperance v Moritz (1991) 71 WAIG 891 "should an employer, bring about a dismissal, adopt procedures which were unfair to the employee is an element in determining whether the dismissal was harsh or unjust"*. In other words the failure to be procedurally fair is but one matter to be weighed in the balance.

35 It must be said immediately that there is certainly a coincidence in time between Mr Beetham reporting safety matters and him being made redundant through lack of work. He could be forgiven for thinking there was a connection between the two, particularly when he had been at pains to ascertain the likely length of the time that he would be employed.

36 He was satisfied with assurances given to him by Vic Jakovich that there was work on the books and that for many years the Respondent had not been forced to make anyone redundant. It had done more than was normal in the building industry to preserve its long term workforce by giving them work around its premises during slack periods not because the work was necessary to be done but to retain its skilled labour pool.

37 The Commission had the opportunity to observe the witnesses give their evidence, I have no difficulty at all with the truth of the statements made by Mr Beetham in fact there was little controversy between him and the Respondent about the sequence of the events. It cannot be said that he constructed a story to fit the outcome that he desires.

38 The Commission heard evidence from Vic and Peter Jakovich, both of them appeared to give their evidence honestly. There is no reason to conclude that either of them or Mr Piscitelli did anything other than tell the Commission a truthful version of their memory of the events. In these circumstances the Commission has to consider the evidence that has been put before it and make an assessment on the balance of probabilities as to what was the most likely chain of events. Then it has to apply the established tests to the events recognising that the onus rests upon the Applicant to establish that he was unfairly dismissed once the evidentiary onus upon the employer to establish that the selection for redundancy was a valid one is discharged.

39 The circumstantial evidence in favour of Mr Beetham's assertions is strong, that is he applied for a job wanting some long term arrangement. The words said to him by the Respondent seem to indicate that a job with them would achieve that desire. He started to work with the Respondent, and undertook a safety induction. He took the induction seriously and, when a safety issue arose which appeared to him to be genuine, and there is no evidence anywhere in the proceedings to say it was not, he raised it with the safety representative on site and then through a chain of events it was eventually reported to his employer. It could be said that in doing so he was wrong in that he should have raised his complaint with his employer first. However the employer was not directly

represented on site, if Mr Beetham did make an error perhaps it is that before he had told the safety representative, he should have made some attempt to tell the Respondent so that it did not find out about it through the Project Managers. This would have saved it the commercial embarrassment which later occurred.

40 What happened with the safety issue though is not crucial. It is clear that when Vic Jakovich came to the site he did so with the intention of clearing up the safety matter, he took every action that needed to be taken on the spot to resolve the issue. I believe his evidence when he said that the fact that Mr Beetham raised the safety matter did not lead to his dismissal. I find that Vic Jakovich was not happy about the process that Mr Beetham went through, but the unhappiness relates more to its commercial effects than being upset with him for any other reason.

41 Insofar as redundancy is concerned the Commission has before it strong evidence that the Respondent was having difficulty maintaining its workforce over the relevant period Exhibit K1 shows this very clearly. This is supported by Exhibit K2 which shows the number of construction and factory personnel who were employed as of 9th August 2000 and who subsequently left. If the Respondent is guilty of anything it is over selling to Mr Beetham its ability to provide ongoing work.

42 Its explanation for this conduct is that it had a number of projects for which it had tendered and for which it had been successful. In the normal course of events those projects would have come on stream and on site personnel could have been retained, but for a range of reasons as explained in the evidence that did not happen. The projects were delayed until sometime after the Applicant left and it was only then that additional staff were required. The Respondent reached a stage where according to its evidence, which I accept, it could not continue to carry the existing workforce. This is not an unusual situation in the building industry, in fact the rates of pay in the industry have traditional recognition for lost time between jobs, in other words employees are paid in advance for lost time. I do not accept the argument of the Applicant Union that the building industry can be categorised the same as any other industry in this respect. It is clearly a casual industry, it is known as such, the rates of pay reflect it and persons who work in it know well and understand the ebbs and flows of the availability of employment.

43 What the Respondent in this case tried to do was iron out those ebbs and flows by maintaining its key workforce for as long as it could. It is open to find that it reached the end of the road and had to take action to reduce its workforce. The Respondent applied a simple but legitimate test, the Applicant and his workmate were the last two employed and they received their notice. I accept the evidence of Vic Jakovich supported by the documentary evidence that even if I am wrong about this, the work would have finished within two weeks. It is clear that after two weeks there was a time when no site work was available at all.

44 It is open to find that the Respondent was placed in a situation by a downturn in work where it had to reduce its workforce. It selected Mr Beetham and his workmate and it established the need to do so. It has therefore discharged the onus of establishing the fact of the redundancy. The question is whether the dismissal is on balance unfair, that is, has there been a fair go all round.

45 The superficial view would be that the coincidence between the safety report and the termination was so strong that the two must be linked. In my view a detailed analysis of the evidence shows that not to be the case. The Respondent though would have to be seen as being imprudent to strongly suggest to Mr Beetham that he may have ongoing employment even though I accept Mr Vic Jakovich's evidence that he conditioned the whole of the conversation that he had with Mr Beetham about what the Respondent does for its employees. If the Applicant had not been listening carefully he could well have missed the caveat that I find Vic Jakovich added to what he said.

46 The building industry is notorious for its ebbs and flows of work it is also notorious that at the current time it is at a very low ebb particularly in industrial commercial sector and that many builders have had to lay off employees. The Commission as constituted is aware of this through its day to day work in the building industry. An employer cannot be expected to maintain its workforce in situations where its income has shrunk to very low levels, it is entitled to ensure its ongoing viability. As far as I can distil from the evidence there is no causal link between the termination for redundancy and Mr Beetham's report on the safety issue. I reach this conclusion not without some careful consideration and the outcome is one of fine balance. In such circumstances the Applicant has to prove that he was unfairly dismissed, he has not done so to my satisfaction in that he has not been able to establish that there has not been a fair go all round and the application will be dismissed.

2001 WAIRC 03318

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	THE PLUMBERS AND GASFITTERS EMPLOYEES' UNION OF AUSTRALIA, WEST AUSTRALIAN BRANCH, INDUSTRIAL UNION OF WORKERS, APPLICANT
	v.
	JAKO INDUSTRIES PTY LTD, RESPONDENT
CORAM	COMMISSIONER J F GREGOR
DELIVERED	FRIDAY, 20 JULY 2001
FILE NO	CR 303 OF 2000
CITATION NO.	2001 WAIRC 03318

Result Dismissed

Order.

HAVING heard Mr S. Doherty on behalf of the Applicant and Mr K. Dwyer on behalf of the Respondent, the Commission pursuant to the powers conferred on it under the *Industrial Relations Act, 1979,* hereby orders—

THAT the application be, and is hereby dismissed.

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

PROCEDURAL DIRECTIONS AND ORDERS—

2001 WAIRC 03412

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	ALAN STEWART HARROD, APPLICANT
	v.
	SILVICULTURE MANAGEMENT PTY LTD, RESPONDENT
CORAM	COMMISSIONER J H SMITH
DELIVERED	WEDNESDAY, 1 AUGUST 2001
FILE NO	APPLICATION 1854 OF 2000
CITATION NO.	2001 WAIRC 03412

Result Application for discovery granted
Representation
Applicant Mr T Crossley as agent
Respondent Mr B Stokes as agent

Order.

HAVING heard Mr T Crossley as agent for the Applicant and Mr B Stokes as agent for the Respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

(1) THAT the Applicant shall give informal discovery of the documents listed in Schedule A within his possession custody or power by 5.00pm on Thursday,

(2) 2nd August 2001;

(3) THAT the Applicant produce to the Commission on Monday 6th August 2001, copies of any bank statement accounts showing deposits from the Western Australian Department of Agriculture from the date of commencement of the Applicant's employment with the Respondent to the present.

(Sgd.) J.H. SMITH,
[L.S.] Commissioner.

SCHEDULE A

1. Copies of the Applicant's tax returns lodged with the ATO for all periods of employment with the Respondent and to the present.

2. Copies of all pay slips or other records showing all receipts from the Western Australian Department of Agriculture from the commencement of employment with the Respondent to the present inclusive.

3. Copies of all and any contracts of employment, letters of appointment and/or schedule of Terms and Conditions of Employment between the said Department of Agriculture and the Applicant from the commencement of employment with the Respondent to the present.

4. Copy of any resume setting out the Applicant's employment history.

5. Documents showing pay details of all monies received by the Applicant from the Respondent.

6. Applicant's Vehicle Log Book and Time Sheets for work done by the Applicant for the Respondent.

2001 WAIRC 03251

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES GAVIN GEORGE WELLS, APPLICANT
v.
JOHN REYBURN t/a NICHOLSON CLEMENT SOLICITORS, RESPONDENT
CORAM COMMISSIONER A R BEECH
DELIVERED THURSDAY, 12 JULY 2001
FILE NO APPLICATION 226 OF 2001
CITATION NO. 2001 WAIRC 03251

Result Order issued.
Representation
Applicant Mr G. Wells on behalf of himself as the applicant.
Respondent Mr S. Stocks on behalf of the respondent.

Order.

WHEREAS an application was lodged in the Commission pursuant to section 29 of the *Industrial Relations Act 1979*;

AND WHEREAS Mr Wells made a further application pursuant to regulation 81 of the *Industrial Relations Commission Regulations 1985*;

AND WHEREAS that application was listed in Chambers on 9 July 2001;

AND WHEREAS the Commission is of the opinion that an order should now issue;

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

THAT the respondent produce to Mr Wells for his inspection during the week commencing 9 July 2001 at the premises of Nicholson Clement in Mandurah—

(1) the financial records in the respondent's possession, custody or control that relate to the calculation of Mr Wells' bonus entitlements for the period between 6 July 1998 to 30 January 2001 inclusive; and

(2) any documents in its possession, custody or control that relate to any deduction or discount from Mr Wells' bonus entitlement due on the "Roberts" and "Stacey" files.

(3) Any contemporaneous notes of calculations made in relation to Mr Wells' bonus entitlements.

(4) The Nicholson Clement Personnel file for Mr Wells, with its contents.

(5) Any contemporaneous notes or near contemporaneous records of each of the meetings in the office boardroom of Nicholson Clement between John Reyburn, Frederick Bathurst and Gavin Wells in December 1999.

(6) Any unexecuted annual written contract of employment between Nicholson Clement and Gavin Wells for the 2000 calendar year.

(7) All of the travel vouchers of Gavin Wells with respect to which he has not received reimbursement, including vouchers for files contained in the list supplied by the respondent in its letter to the Commission dated 26 June 2001.

(8) The Combined Matter Ledger printouts for each of the file matters to which any such voucher related, current to 20 July 2001.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

2001 WAIRC 03247

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES WARREN IAN JONES, APPLICANT
v.
PAULOWNIA SAW MILLING, TIMBER SUPPLIERS AND MANUFACTURING PTY LTD, RESPONDENT
CORAM COMMISSIONER P E SCOTT
DELIVERED THURSDAY, 11 JULY 2001
FILE NO/S APPLICATION 37 OF 2001
CITATION NO. 2001 WAIRC 03247

Result Application to stay proceedings granted

Order.

HAVING heard Wojtowicz Kelly on behalf of the applicant and Curthoys & Co 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 to stay proceedings until the resolution of the criminal proceedings against the Applicant is granted.

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

2001 WAIRC 03301

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	ALAN TELFORD, APPLICANT *v.* NOSKAB PTY LTD , RESPONDENT
CORAM	COMMISSIONER P E SCOTT
DELIVERED	TUESDAY, 17 JULY 2001
FILE NO	APPLICATION 2031 OF 2000
CITATION NO.	2001 WAIRC 03301

Result	Order regarding interlocutory matters issued

Order.

WHEREAS this is an application pursuant to Section 29(1)(b)(i) and (ii) of the Industrial Relations Act 1979; and

WHEREAS on the 9th day of July 2001 the Commission convened a conference for the purpose of dealing with interlocutory and scheduling matters between the parties; and

WHEREAS during the conference the Commission issued Orders in relation to the matter;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

1. THAT no later than the 23rd day of July 2001, the Respondent shall file and serve answers to the Applicant's request for further and better particulars at paragraphs 1 to 5 inclusive of the request made on the 17th day of January 2001.
2. THAT within 14 days of the receipt of the Respondent's answers to the Applicant's request for further and better particulars referred to in Order 1 above, the Applicant shall file and serve answers to the Respondent's request for further and better particulars made on the 4th day of July 2001.

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

NOTICES—
Union matters—

NOTICE

FBM No. 3 of 2001

NOTICE is given of an application by The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch and The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers for the amalgamation of those organisations to form a new organisation to be known as "**The Construction, Forestry, Mining and Energy Union of Workers"**.

The application is made pursuant to Section 72 of the Industrial Relations Act 1979.

The rules of the proposed new organisation relating to the qualification of persons for membership are set out below—

"4—Eligibility For Membership

4.1 The Union shall consist of an unlimited number of persons who are:

(a) over the age of 16 years and who are employed or usually employed as builders' labourers on or about any building or assisting any bricklayer, mason, plasterer, carpenter, plumber or any trades person engaged in building operations or employed on any making or contracting job in wood, stone, brick, concrete, iron or steel or combination of those or other materials incidental to building construction, and any labourer engaged in the construction, repair, demolition or removal of buildings or as scaffolder, rigger, gear hand, gantry hand or crane hand, or as dogman, or as drainer on all building contracts, and any labourer excavating ground for foundations and basements of buildings, or levelling ground on a proposed building site, or doing concrete work, tar paving or asphalt work, or mortar or concrete mixing in connection with or incidental to the foregoing operations;

(b) provided that no person employed in any of the vocations or callings mentioned in subrule (1)(a) of this Rule shall be eligible for membership if he or she is eligible to be a member of the Australasian Society of Engineers, Industrial Union of Workers, Western Australian Branch, the Electrical Trades Union of Workers of Australia Western Australian Branch Perth, the Amalgamated Engineering Union Workers, Perth Branch, or the Amalgamated Engineering Union of Workers, Kalgoorlie Branch.

4.2 In addition to the foregoing, the Union shall consist of an unlimited number of persons who are employed, or who are usually employed in the painting and decorating industry applying paint or its substitutes, or any preparation, by any means, the purpose of which is of a decorative or protective character for residential, commercial or industrial purposes (excluding the application of bitumen or like substance to roads and like surfaces), which industry shall be deemed to include the painting of buildings and structures (residential, commercial and industrial), aircraft, machinery, ships and small vessels of every description (including prefabricated work on any of the aforementioned, wholly or in part) and general painting, together with plastic relief workers, paper hangers, wall coverers, decorators, grainers, marblers, varnishers, enamellers, gilders, lacquerers, spray workers, sign, profile, scenic, mural and pictorial artists, or persons engaged in the removing of paints and/or their substitutes and the preparation of all work and materials used in the painting trade and branches thereof, including paint mixers together with glaziers, vitrolite cutters and fixers, ticket writers, cycle enamellers, liners, writers, and sprayers, and shall include foremen and sub-foremen in the industry.

4.3 And in addition to the foregoing the Union shall consist of an unlimited number of persons who are employed, or who are usually employed as:

(a) Plasterers—the work of a plasterer shall mean and be deemed to be, all internal and external plastering, and cementing, including rendering with all forms of plaster, asbestos fibre, finishing all kinds of plaster and plastic acoustic work, water proofing work in cement, plaster or patent materials, by manual or mechanical means, including wood lathing and metal lathing, or any similar substitute that may be used as a ground for plaster work, such as sackett board; the affixing of plain and ornamental tiles on walls and floors, the fixing of fibrous plaster or any other kind of plaster required to be finished off with plastered joints; the top dressing of all concrete work finished in cement also cement floors, walls and ceilings, rough cast; and fixing plaster, cement, or patent plaster ornaments; and in the use of materials appertaining to the trade or calling of plasterers;

(b) Wall and Floor Tilers;

(c) Wall and Ceiling Fixers;

(d) Fibrous Plaster Workers—Persons engaged in:

(i) Architectural modelling;

(ii) The manufacture of architectural ornaments of plaster and fibrous plaster;

(iii) The manufacture of fibrous plaster goods;

(iv) The fixing of manufactured plaster goods and fibrous plaster columns and acoustic tiles and the fixing of fibrous plaster on the walls and/or ceilings of buildings;

(v) The preparation of designs and ground work and the making of models and/or moulds whether of gelatine, plaster, wax, rubber or cement, subject to the making of such models and/or moulds being incidental to the fibrous plaster industry;

(vi) Any phase or phases of item (i) to (v) inclusive;

(e) Manufactured Cement Goods Workers—Persons engaged in—

(i) Architectural modelling;

(ii) the manufacture of architectural ornaments of cement;

(iii) the manufacture of portable articles of reinforced cement or concrete, cement pressed work, baths, washtubs, troughs, sinks, pillars, ornaments and other miscellaneous goods, including floor beams, partition blocks, lintels, cornices and balusters, subject to and without limiting the generality of subrule (1) and (2) of this Rule, excluding the manufacture of cement bricks, pipes and/or building blocks, except where such work is performed in the establishment of manufacturers of fibrous plaster, plaster and/or cement goods, and excluding workers employed by the Fremantle Harbour Trust and the Minister controlling Harbours and Rivers.

(iv) the manufacture of cast stone and terrazzo where such work is performed in the establishments of manufacturers of fibrous plaster, plaster/or cement goods.

(v) any phase or phases of items (i) to (iv) inclusive;

(f) plaster mill workers—persons engaged in the manufacture of plaster of paris.

4.4 The Union shall also consist of all workers employed in timberyards, sawmills, box factories, plywood and veneer mills, particle board factories, timber fibre board factories, turnery and joinery establishments and saw servicing establishments or in the timber industry generally.

Provided that no worker—

(a) who is eligible to be a member of any of the following industrial unions of workers as constituted at the date of the registration of the constitution of the United Timber Yards, Sawmills and Woodworkers Employees' Union of Western Australia, that is to say of—

(i) The United Furniture Trades Industrial Union of Workers WA;

(ii) Electrical Trades Union of Workers of Australia (Western Australian Branch), Perth

(iii) The Western Australian Shop Assistants and Warehouse Employees' Industrial Union of Workers, Perth;

(iv) Federated Clerks' Union of Australia Industrial Union of Workers, WA Branch; or

(b) who is employed in box factories, plywood and veneer mills, saw serving establishments and eligible to join the Transport Workers' Union of Australia, Industrial Union of Workers, Western Australia Branch; or

(c) who is employed in the South West Land Division of the State of Western Australia to within a radius of forty five (45) kilometres from the GPO Perth

shall be eligible for or shall be admitted to membership of this Union by reason of anything contained in this subrule 4.4.

4.5 The Union shall also consist of an unlimited number of persons employed, or usually employed in the State of Western Australia as carpenters and/or joiners (including ships' carpenters and joiners, carpenters employed on jetties, and wharves, dams and bridges) and joinery assemblers and roof tile fixers and bricklayers, stoneworkers, stonemasons, marble masons, stone, marble or slate polishers, stone marble or slate machinists and stone, marble or slate sawyers and labourers in the industry of monumental masonry and foreman, subforemen, or apprentices to or in any of the foregoing trades provided that no foreman tradesman or subforeman tradesman (except acting foremen tradesmen or acting sub-foremen tradesmen) who is eligible for membership of The Foremen (Government) Industrial Union of Workers, WA as at the 11th Day of December 1986 shall be eligible for membership of the Union.

4.6 The Union shall also admit to membership any person who is employed, or usually employed in the State of Western Australia including all islands bounding the whole coastline of the State in any of the following capacities—

Engine drivers, steam boiler and gas producer firemen, trimmers or fuelmen or tour guides in power houses, engine cleaners, greasers, boiler cleaners, crane drivers, dynamo attendants in power houses, stationary motor drivers, electric power sub-station attendants, power house switchboard attendants, electric locomotive drivers, railway shunters, locomotive observers, railway car and wagon examiners (not being tradesmen) and railway messengers. Provided that, in respect of the vocations referred to in this subrule 4.6, employees of the Western Australian Government Railways Commission and persons eligible for membership of the Coal Miners Industrial Union of Workers of Western Australia employed in the coal mining industry within the State of Western Australia shall not be eligible for membership of the Union.

4.7 The Union may admit to membership all other persons whether employees in the foregoing callings or vocations or not as have been appointed or elected officers of the Union, provided that no person shall be a member who is not an employee within the meaning of the Industrial Relations Act (WA) 1979 as amended.

This matter has been listed before the Full Bench on Wednesday, 26 September 2001.

A copy of the application and the rules of the proposed organisation may be inspected at my office, AXA Centre, 16th floor, 111 St George's Terrace, Perth.

Any organisation registered under the Industrial Relations Act 1979, or any person who satisfies the Full Bench that he has a sufficient interest or desires to object to the application may do so by filing a notice of objection in accordance with the Industrial Relations Commission Regulations 1985.

2 August 2001.

R. C. LOVEGROVE,
Deputy Registrar.