CUMULATIVE DIGEST

MATTERS REFERRED TO IN DECISIONS OF THE INDUSTRIAL APPEAL COURT, INDUSTRIAL RELATIONS COMMISSION AND INDUSTRIAL MAGISTRATES COURT CONTAINED IN VOL. 87 PART 2, SUB PARTS 1 - 9.

Digest Headings

* Denotes New Heading

Industrial Appeal Court
Full Bench
Commission In Court Session
President
Industrial Magistrate
Public Service Appeal Board
Public Service Arbitrator
Commissioner
Board of Reference
Police Appeal

Page

Editor's Note: The Registrar wishes to advise that as from January 2004, the format of the "Cumulative Digest" published at the back of the Western Australian Industrial Gazette has changed to incorporate "Catchword Phrases", please refer to the Notice at (83WAIG3937).

All documents within the above headings are in chronological order.

INDUSTRIAL APPEAL COURT

Industrial law - Failure to comply with award - Cost of proceedings before Industrial Magistrate's Court - Costs recoverable if proceedings frivolous and vexatious - Meaning of "the proceedings" in Industrial Relations Act 1979 (WA)-Anthony Raymond Fisk -v- Kenji Auto Parts Ltd T/AS SSS Auto Parts (WA) - IAC 3 of 2007 - Industrial Appeal Court - Wheeler J (Deputy Presiding Judge)/Pullin J/Le Miere J - 4/7/2007 2443

FULL BENCH

Industrial Law (WA) - Appeal against declaration of the Commission - Application for conference pursuant to s44 of the Industrial Relations Act 1979 (WA) (as amended) - Dispute about application of clause of agreement - Interpretation of industrial agreements - Jurisdiction to interpret agreements in s44 application, given specific procedure in s46 - Appeal allowed due to lack of jurisdiction - The Liquor, Hospitality and Miscellaneous Union, Western Australian Branch -v- The Roman Catholic Bishop of Bunbury Chancery Office and Others - FBA 40 of 2006 - Full Bench - The Honourable M T Ritter, Acting President/Commissioner P E Scott/Commissioner S J Kenner - 27/06/2007 1148

Industrial Law (WA) - Appeal against decision of the Commission - Application for compensation for alleged harsh, oppressive or unfair dismissal - Extension of time not allowed - Issues to be determined at hearing at first instance - Whether denial of natural justice or procedural fairness - Effect of notice of hearing - Representation by registered agent - Whether procedure was unfair - Effect of conditional and invalid signed letter of resignation by appellant - Repudiation of an employment contract - Effect of an invalid notice - Acceptance of repudiation - Appeal allowed - Wayne Shortland -v- Lombardi Nominees Pty Ltd T/A Howard Porter - FBA 28 of 2006 - Full Bench - The Honourable M T Ritter, Acting President/Chief Commissioner A R Beech/Commissioner J L Harrison - 25/06/2007 1158

Industrial Law (WA) - Appeal against decision of the Industrial Magistrate's Court - Alleged non-compliance with Minimum Conditions of Employment Act 1993 (WA) and Long Service Leave Act 1958 - Whether entitlement to annual leave and long service leave - Whether person was an employee or independent contractor - Contents of income tax returns - Issues relating to the formation of a partnership - Purpose for which the partnership was formed - Gaining a taxation benefit due to a partnership - Concern about representations made in tax returns - Referral to the Australian Taxation Office - Whether factual findings about agreed increase in salary level supportable - Concept of an assignment of a contract of employment - Whether breach of Minimum Conditions of Employment Act 1993 established - FBA 35 of 2006 dismissed - FBA 36 of 2006 allowed - Glenn Kershaw -v- Sunvalley Australia Pty Ltd - FBA 35 of 2006 and FBA 36 of 2006 - Full Bench - The Honourable M T Ritter, Acting President/Senior Commissioner J H Smith/Commissioner P E Scott - 13/06/2007 1169

Industrial Law (WA) - Registrar directed by Commissioner to commence enforcement action - Application for leave to discontinue enforcement proceedings under the Industrial Relations Act 1979 (WA) - Whether a Commissioner has the power to revoke a direction to the Registrar - Consideration of application of s3 and s48 of the Interpretation Act 1984 (WA) - Relevant authorities examined - Nature of the power to direct examined - Limits of administrative discretionary powers considered - Statutory construction - Issue of "functus officio" - Duty of courtesy of counsel - Application for leave to discontinue dismissed - The Registrar -v- Liquor, Hospitality and Miscellaneous Union, Western Australian Branch - FBM 1 of 2007 - Full Bench - The Honourable M T Ritter, Acting President/Commissioner P E Scott/Commissioner S Wood - 6/06/2007 1199

Industrial Law (WA) - Conference listed pursuant to s84A(4)(b) of the Industrial Relations Act 1979 (WA) (as amended) - Letter requesting dismissal of action received from applicant's solicitor - Application dismissed - The Registrar -v- Liquor, Hospitality and Miscellaneous Union, Western Australian Branch - FBM 1 of 2007 - Full Bench - The Honourable M T Ritter, Acting President/Commissioner P E Scott/Commissioner S Wood - 26/06/2007 1226

Industrial Law (WA) – Appeal against order of the Commission – Application pursuant to s44 of the Industrial Relations Act 1979 (WA) – Appellant asserted termination of state school teacher unfair – Termination and appeal rights of a state school teacher – Interaction of the Public Sector Management Act 1994 (WA) and the Industrial Relations Act 1979 – Rule in Browne v Dunn discussed – Settlement belatedly reached between parties – Effect of notice of discontinuance filed by appellant – Appeal dismissed - The State School Teachers' Union of W.A. (Incorporated) -v- Director General, Department of Education and Training - FBA 2 of 2007 - Full Bench - The Honourable M T Ritter, Acting President/Senior Commissioner J H Smith/Commissioner S J Kenner - 10/09/2007 2548

Industrial Law (WA) - Application to alter rules of organisation relating to membership - Reasons for seeking alteration of membership due to issues relating to WorkChoices legislation - Extension of coverage to Main Roads' engineers - Whether advertised notice of alteration was authorised by membership - Submissions received on whether statutory criteria in s55(4)(a) of the Industrial Relations Act 1979 (WA) complied with - Potential overlap with CSA resolved by negotiation - Application granted - The Association of Professional Engineers, Australia (Western Australian Branch) Organisation of Employees -v- n/a - FBM 5 of 2007 - Full Bench - The Honourable M T Ritter, Acting President/Senior Commissioner J H Smith/Commissioner S M Mayman - 20/08/2007 2556

CUMULATIVE DIGEST—*continued*

Page

FULL BENCH—*continued*

Industrial Law (WA) - Application to adjourn hearing of appeals - Decision in another appeal likely to determine some grounds in present appeals - Appeals adjourned - Reasons given extempore. - Integrated Group Ltd t/as Integrated Workforce -v- Construction, Forestry, Mining and Energy Union of Workers and Skilled Rail Services Pty Ltd - FBA 7 of 2006 - Full Bench - The Honourable M T Ritter, Acting President/Senior Commissioner J F Gregor/Commissioner S M Mayman - 5/10/2007 2769

Industrial Law (WA) - Appeal against decision of the Commission – Alleged harsh, oppressive or unfair dismissal – Declaration by Commission that respondent was unfairly dismissed and order for compensation made – Appellant seeks variation of the amount of compensation ordered – Evidence of witnesses on issue of casual employment – Issues relating to assessing witness credibility/reliability –Issues regarding mitigation and compensation – Failure to mitigate and nominal damages – Relevant authorities examined – Employer's onus regarding mitigation – Assessing compensation – Additional submissions required - Merredin Customer Service Pty Ltd as Trustee for Hatch Family Trust t/a Donovan Ford/Merredin Nissan and Donovan Tyres -v- Roslyn Green - FBA 39 of 2006 - Full Bench - The Honourable M T Ritter, Acting President/Commissioner P E Scott/Commissioner S Wood - 17/08/2007..... 2771

Industrial Law (WA) - Appeal against amount of compensation ordered to be paid by appellant for unfair dismissal - Principles regarding mitigation and compensation - Parties ordered by Full Bench to file additional written submissions about amount of loss to be found - Additional submissions of respondent not taken into account - Information/Evidence not before Commission at first instance - Allowance made for period of adjustment - Economic factors considered - Inference of ready employment - Four weeks compensation for loss - Merredin Customer Service Pty Ltd as Trustee for Hatch Family Trust t/a Donovan Ford/Merredin Nissan and Donovan Tyres -v- Roslyn Green - FBA 39 of 2006 - Full Bench - The Honourable M T Ritter, Acting President/Commissioner P E Scott/Commissioner S Wood - 4/10/2007..... 2789

Industrial Law (WA) - Appeal against decision of Commission - "Application" of appellant to adjourn jurisdictional hearing at first instance declined - Whether matter is in the public interest that an appeal should lie to the Full Bench - Requirements of s49(2a) of the Industrial Relations Act 1979 (WA) examined - Leave to appeal granted - Grounds of appeal unnecessarily prolix - Issues relating to s78B notices under the Judiciary Act 1903 (Cth) - Duty of the Commission when s78B(1) is engaged - Upon which party does the obligation to issue s78B notices lie - Whether a hearing date should be vacated pending the determination of an appeal in another case - Consideration of fairness and justice to the parties in delaying a hearing - Efforts to communicate with respondent who did not appear - Appeal allowed - Appellant directed by Full Bench to issue notices pursuant to s78B - MRTA of WA Inc -v- Panagouta Tsakisiris - FBA 12 of 2007 - Full Bench - The Honourable M T Ritter, Acting President/Senior Commissioner J H Smith/Commissioner J L Harrison - 25/09/2007..... 2795

Industrial Law (WA) - Appellant wishing to speak to the minute regarding timeframe for issuing s78B notices - Extension of time not granted - Order issued in the same terms as minute. - MRTA of WA Inc -v- Panagouta Tsakisiris - FBA 12 of 2007 - Full Bench - The Honourable M T Ritter, Acting President/Senior Commissioner J H Smith/Commissioner J L Harrison - 3/10/2007 2810

Industrial Law (WA) - Application to alter rules of organisation relating to its name - Alteration of name to reflect changing nature of industry and effect alignment with national organisation - Name change consistent with names of other state based organisations - Statutory criteria not complied with - Application not authorised in accordance with rules - Notice defective - Application dismissed - The Electrical and Communications Association of Western Australia (Union of Employers) -v- N/A - FBM 2 of 2007 - The Honourable M T Ritter, Acting President/Commissioner S Wood/Commissioner S M Mayman - 22/08/2007..... 2899

Industrial Law (WA) - Appeal against decision of Industrial Magistrate's Court - Alleged breach of Transport Workers (Passenger Vehicles) Award 1978 - Claim pursuant to s83(1) Industrial Relations Act 1979 (WA) - Claimant appointed under Public Sector Management Act 1994 (WA) - Whether the award applied to an industry or to a vocation - Employed as a bus driver or a tour guide - Validity of appointment as industrial officer under Public Sector Management Act - Meaning of industry or industries to which the award applied - Appointment of industrial inspector - Appointment of public service officers other than executive officers - Whether Claimant was a casual employee under the award - Indicia of casual employment - Test of "Centurion Industries" - Context specific nature of a casual worker, casual employee or casual employment - Determining casual worker status under the award - Concept of "as and when required" as part of casual employment - Meaning of "engaged and paid as such" as part of casual employment - Whether the de-facto officers doctrine applied - Whether Claimant had "colourable title" to the office - Application of presumption of regularity test - Whether there was underpayment of wages - Whether failure to pay rate of wage prescribed by the award is a continuing breach - When the obligation to pay a casual worker arises - Payment of pre-judgement interest, disbursements, penalty for breach and amount due - Appeals 5 and 6 of 2007 dismissed - Appeals 7 and 8 of 2007 allowed. - Christine Anne Miles & Richard Glinton Miles t/as Milesaway Tours -v- Warren Graham Milward - FBA 5 of 2007 and FBA 6 of 2007 and FBA 7 of 2007 and FBA 8 of 2007 - Full Bench - The Honourable M T Ritter, Acting President/Senior Commissioner J H Smith/Commissioner S Wood - 13/09/2007 2991

COMMISSION IN COURT SESSION

State Wage order – Commission's own motion – Minimum wage for employees under Minimum Conditions of Employment Act 1993 – Award rates of wage – Award minimum wage – Arbitrated Safety Net Adjustment – State wage principles – coverage of jurisdiction – Industrial Relations Act 1979 s.50A - On the Commission's own motion -v- . - APPL 1 of 2007 - Commission in Court Session - Chief Commissioner A R Beech/Senior Commissioner J H Smith/Commissioner P E Scott/Commissioner S J Kenner/Commissioner S M Mayman - 13/06/2007 1487

Rate for adult apprentices, rounding of wage rates and allowances - On the Commission's own motion -v- . - APPL 1 of 2007 - Commission in Court Session - Chief Commissioner A R Beech/Senior Commissioner J H Smith/Commissioner P E Scott/Commissioner S J Kenner/Commissioner S M Mayman - 21/06/2007..... 1503

PRESIDENT

Industrial Law (WA) - Application pursuant to s66 of the Industrial Relations Act 1979 (WA) - Alleged breach of organisation rules - Witnesses and evidence - Objections to evidence and application for further discovery Industrial Law (WA) - 3 alleged breaches of rules - Whether applicant appointed in accordance with rule "subject to the same conditions and restrictions as an Officer appointed under the Public Service Act" - Whether rule capable of practicable operation - Employment of public service officers pursuant to the Public Service Act 1978 (WA), Public Service Award 1992, Public Sector Management Act 1994 (WA), Workplace Agreements Act 1993, and agency specific agreements - Overtime allowances Industrial Law (WA) - Whether failure by organisation to provide financial resources to applicant to fund applications before Commission - Necessity to provide fair process Industrial Law (WA) - Remedies sought - Construction of the rules of an organisation - Nature of jurisdiction and powers of President under s66 - Statutory context Industrial Law (WA) - Whether jurisdiction to deal with "implied rules" and make "compensatory orders" for old breaches of rules Industrial Law (WA) - Conflict of interest of Workplace Delegate - Orders made in relation to other issues - Application otherwise dismissed - Stephen Darrow Stacey -v- Civil Service Association of Western Australia (Incorporated) - PRES 5 of 2006 - President - The Honourable M T Ritter, Acting President - 28/06/2007..... 1229

Industrial Law (WA) - Application to stay decision of the Commission relating to adjournment of jurisdictional hearing - Impact of similar matter on appeal to Industrial Appeal Court - Stay application principles - Consequences of granting a stay - Urgency of stay application - Section 78B notices under Judiciary Act 1903 (Cth) - Application granted - MRTA of WA Inc -v- Panagouta Tsakisiris - PRES 2 of 2007 - President - The Honourable M T Ritter, Acting President - 28/08/2007 2577

Industrial Law (WA) - Application to stay operation of order - Instituting an appeal - Stay of order principles - Appeal against order allowing referral out of time - Appeal heard - Substantive hearing to take place next day - Delay in seeking stay - Balance of convenience considerations - Inconvenience hardship and cost to parties - Consequences of granting stay - Application granted - Julie-Anne Friessbourg -v- William Thomas John Valli - PRES 4 of 2007 - President - The Honourable M T Ritter, Acting President - 7/11/2007..... 3042

CUMULATIVE DIGEST—*continued*

Page

INDUSTRIAL MAGISTRATE

Employee employed under section 179 of Corruption and Crime Commission Act 2003; Government Officer; Termination; Whether there was a redundancy as defined by section 40(2) of the Minimum Conditions of Employment Act 1993; Reclassification; Action that is likely to have significant effect on an employee; Nature of employer's obligation to inform and discuss; Whether offer to discuss is sufficient; Whether discussions held at the employees initiative cures any failure on the part of the employer to comply with section 41 of the Minimum Conditions of Employment Act 1993 - Glenn James Ross -v- Corruption and Crime Commission - M 20 of 2007 - Industrial Magistrate - INDUSTRIAL MAGISTRATE G. CICCHINI - 26/07/2007 2450

Section 83 of the Industrial Relations Act 1979 (the IR Act); Minimum Conditions of Employment Act 1993; - Glenn James Ross -v- Corruption and Crime Commission - M 20 of 2007 - Industrial Magistrate - INDUSTRIAL MAGISTRATE G. CICCHINI - 31/07/2007 2460

Minimum Conditions of Employment Act 1993; Claim for minimum wages and conditions; Whether a contract of employment; Whether an employer/employee relationship; Volunteer; Unpaid work experience; Intention of the parties - Michael Tkacz -v- Watson H J & Associates - M 87 of 2005 - Industrial Magistrate - INDUSTRIAL MAGISTRATE G.N. CALDER - 28/08/2007 2601

Industrial Agreement; Alleged breach of Industrial Agreement; Failure to pay salary and allowances retrospectively; "Employee"; Whether Industrial Agreement applied to past employees. - Jim Victor Pooley; Alan Joseph Gordon; James Michael Nevin -v- Commissioner of Police - M 47 of 2007 and M 48 of 2007 and M 52 of 2007 - Industrial Magistrate - INDUSTRIAL MAGISTRATE P HOGAN - 22/11/2007 3089

PUBLIC SERVICE APPEAL BOARD

Industrial Law - Termination of employment - Appeal against decision of respondent to terminate appellant's employment - Whether the appellant was harshly, oppressively or unfairly summarily dismissed - Principles applied - Appeal Board satisfied serious breach occurred warranting termination of employment for gross misconduct - Appeal dismissed - Industrial Relations Act 1979 (WA) s 23A, s 29(1)(b)(i), s 80I, Young Offenders Regulations 1995 Division 3, Part 8, Reg 53(2), Reg 54(a)(b)(c)(d)(e), Young Offenders Act 1994 s 11(1a)(a), s 11(1b) Young Offenders Amendment Act 2004 s 6(3), s 11, s 11(1a)(1), Schedule 1, clause 2(1), Public Sector Management Act 1994. - William Amourous -v- Commissioner for Corrections, Department of Corrective Services - PSAB 9 of 2006 - Public Service Appeal Board - Commissioner S J Kenner - 29/05/2007 1468

Industrial law (WA) - Appeal against decision to dismiss - Appellant pleaded guilty and convicted of stealing - Dismissal result of conviction - Whether PSAB could go behind fact of conviction - Whether fresh evidence admissable - PSAB unable to go behind conviction - Appellant's position required honesty and integrity - Dismissal justified - Appeal dismissed - Industrial Relations Act 1979 (WA) s 80I - Equal Opportunity Act 1984 (WA) s 50(d) - Public Sector Management Act 1994 (WA) s 92 - Arthur Lewis Ninyette -v- Director General Department of Education and Training - PSAB 6 of 2006 - Public Service Appeal Board - Commissioner P E Scott - 11/09/2007 2731

PUBLIC SERVICE ARBITRATOR

Matter regarding salary of a government officer - Delegated authority of officer offering salary level - Whether Arbitrator has jurisdiction - Jurisdiction found - Industrial Relations Act 1979 (WA) s 80E(1), (2), and (7) - Public Sector Management Act 1994 (WA) ss 21 and 97(1)(a) - Public Sector Management (Examination and Reivew Procedures) Regulations 2001 (WA) - Recruitment, Selection and Appointment Standard (WA) - The Civil Service Association of Western Australia Incorporated -v- Director General Department for Community Development - PSACR 24 of 2006 - Commissioner P E Scott - 3/08/2007 2523

Matter remitted to the Arbitrator by the Full Bench to hear and determine - Preliminary issue of implications of the Full Bench decision - The Statement of Principles provide no impediment to a hearing of the matter - Jurisdiction of Arbitrator is to hear as an industrial matter - Industrial Relations Act 1979 (WA) s 44 - Statement of Principles - Approved Procedure 1 - Health Services Union of Western Australia (Union of Workers) -v- Director General of Health in right of the Minister for Health as the Metropolitan Health Service at Path West Laboratory Medicine WA - PSACR 15 of 2006 - Commissioner P E Scott - 30/07/2007 2526

Industrial law - Application for interim orders - Whether Commission satisfied that interim orders should be made - Interim orders made to allow parties to further progress range of matters in issue between them - Industrial Relations Act 1979 (WA) s 44 - Director General, Department for Community Development -v- Civil Service Association of Western Australia (Incorporated) - PSAC 11 of 2006 - Commissioner S J Kenner - 28/06/2006 2644

Public Service Arbitrator - Appeal against respondent's decision to suspend applicant's member without pay - Disciplinary investigation complete but for applicant's member's response - Investigation deferred pending criminal charges at applicant's request - Whether suspension should be without pay - Applicant's member held senior position - Allegations of a serious nature - Opportunity to respond to decision to suspend without pay would not have altered the outcome - Suspension without pay justified - Industrial Relations Act 1979 (WA) ss 6, 26(1)(a) and (c), 44 and 80 - Interpretation Act 1984 (WA) s 52(1)(a) - Public Sector Management Act 1994 (WA) - Minimum Conditions of Employment Act 1993 (WA) - Hospital and Health Services Act 1927 (WA) - Health Services Union of Western Australia (Union of Workers) -v- Director General of Health in right of the Minister for Health as the Metropolitan Health Service, the South West Health Board and the WA Country Health Service - PSACR 28 of 2006 - Commissioner P E Scott - 30/11/2007 3120

COMMISSIONER

Agreement - Application for registration of an Agreement - Application for an order as to specified matters on which agreement has not been reached - Order issued - Industrial Relations Act 1979 (WA) s 6, 3s 26 s 41, s 42G - Fire and Emergency Services Authority of Western Australia and United Firefighters union Australia West Australian Branch -v- (Not applicable) - AG 68 of 2006 - Commissioner J L Harrison - 22/05/2007 1283

Agreement - Application for registration of an Agreement - Application for additional clause that terms in agreement that are retrospective also apply to former employees - Jurisdiction considered - No Jurisdiction to include new clause - Application dismissed - Industrial Relations Act 1979 (WA) s 42G - Fire and Emergency Services Authority of Western Australia and United Firefighters Union of Australia West Australian Branch -v- (Not applicable) - AG 68 of 2006 - Commissioner J L Harrison - 20/06/2007 1347

Application for variation of the Prison Officers'Award - Award varied - The Western Australian Prison Officers' Union of Workers -v- Minister for Corrective Services - APPL 115 of 2005 - Chief Commissioner A R Beech - 15/06/2007 1349

Industrial Law - Termination of employment - Harsh, oppressive and unfair dismissal - Liberty to apply for costs granted - -Relevant principles applied - Costs by way of disbursements ordered - Industrial Relation Act 1979 s 27(1)(c), Workplace Relations Act 1996 (Cth) - Lorraine Rose Allen -v- The Aboriginal Legal Service of Western Australia Inc - U 550 of 2006 - Commissioner S J Kenner - 26/06/2007 1353

Termination of employment - Harsh, oppressive and unfair dismissal - Principles applied - Applicant unfairly dismissed - Application upheld – Compensation ordered - Industrial Relations Act 1979 (WA) s 29(1)(b)(i) - Eugene D'Monte -v- Q-Mac Electronics Pty Ltd - U 300 of 2005 - Commissioner J L Harrison - 25/06/2007 1357

Industrial law (WA) - Claim of denied contractual entitlements - Whether Workplace Relations Amendment (Workchoices) Act 2005 applied at the time of application - Whether the applicant was covered by the Federal or State award - Whether the State award rate of pay is an over award contractual entitlement - Application filed before Workchoices introduced - Workchoices provides no impediment to Commission's jurisdiction - Further submissions required - Industrial Relations Act 1979 (WA) s 29(1)(b)(ii) - Workplace Relations Act 1996 (Cth) s.4 and ss.16(1) and (2) - Commonwealth of Australia Constitution Act 1901 (Cth) s.109 - Workplace Relations Amendment (Workchoices) Act 2005 (Cth) - Workplace Relations Regulations 2006 (Cth) s.1.2(2) - Hospital Salaried Officers (Nursing Homes) Award 1976 (WA) - Private Hospital and Nursing Homes (ALHMWU) Interim Award 1996 (Cth) - Private Hospital and Residential aged Care (Nursing Homes) Award 2002 (Cth) - Barbara Hogan -v- Director of Nursing, Moran Health Care Armadale Nursing Centre - B 92 of 2005 - Commissioner P E Scott - 27/03/2007 1371

CUMULATIVE DIGEST—*continued*

Page

COMMISSIONER—*continued*

Termination of employment - Harsh, oppressive and unfair dismissal - Principles applied - Applicant unfairly dismissed - Application upheld - Compensation ordered - Industrial Relations Act 1979 (WA) s 29(1)(b)(i) - Sharon Whittle -v- Em-Tech (Incorporated) trading as Workability Employment Strategies - U 157 of 2005 - Commissioner J L Harrison - 26/06/2007 1381

Employee discipline - Disciplinary action - Application for order that disciplinary action against two teachers be declared void - Actions did not constitute conduct that warranted warning - Lack of procedural fairness - Application upheld - Order issued that warning letters be declared void - Industrial Relations Act 1979 s 44 - Independent Education Union of Western Australia,Union of Employees -v- Good Shepherd Catholic School - CR 201 of 2005 - Commissioner J L Harrison - 25/06/2007 1406

Termination of employment - Harsh, oppressive and unfair dismissal - Alleged breach of discipline - Principles applied - Allegation not substantiated - Employee unfairly dismissed - Order made for reinstatement – Industrial Relations Act 1979 s 44(9), School Education Regulations 2000 r 39, Public Sector Management Act 1994 s 78, s 80, s 81 and s 86 - The State School Teachers Union of W.A. (Incorporated) -v- Director General, Department of Education and Training - CR 15 of 2006 - Commissioner J L Harrison - 14/06/2007 1426

Termination of employment - Harsh, oppressive and unfair dismissal claim - Whether Commission has jurisdiction to hear and determine the Applicant's claim - Trading activities of the Respondent considered - Commission not satisfied the Respondent is a consitutional corporation - Industrial Relations Act 1979 (WA) s 29(1)(b)(i); Local Government Act 1995 (WA) ss 2.5 to 6.50, Division 5 of Part 6, and Division 6 of Part 6; Workplace Relations Act 1996 (Cth) s 4, s 6, s 16 and s 16(1); Australian Constitution (Cth) s 51(xx) and s 109 - Jacqueline Ann Bysterveld -v- Shire of Cue - U 1 of 2007 - Senior Commissioner J H Smith - 20/07/2007 2462

Termination of employment - Harsh, oppressive and unfair dismissal - Principles applied - Lack of procedural fairness -Closure and Sale of Business - Application dismissed - Industrial Relations Act 1979 (WA) s29(1)(b)(i) - Guan Jun Chen -v- Kwinana Chinese Restaurant - U 60 of 2007 - Commissioner S Wood - 24/07/2007 2479

Industrial law - Application to adjourn substantive application - Applicant failed to attend proceedings due to illness - Principles applied - Discretion exercised to grant an adjournment - Order issued - Industrial Relations Act 1979 (WA) s 27(1)(a) - MATTI JOHN DESPOT -v- DEBONNE HOLDINGS PTY LTD T/A BASSENDEAN HOTEL, ROCKWOOD HOTEL, NINETEEN THIRTY RESTAURANT - APPL 495 of 2004 - Commissioner S J Kenner - 5/11/2004 2482

Contractual benefits claim for commission - Juridictional challenge - Juridiction ousted by s 16(1) of the Workplace Relations Act 1996 (Cth) - Contract relied upon entered into by the parties prior to the commencement of Workplace Relations Amendment (Work Choices) Act 2005 (Cth) - Claim made that some payments were due after reform commencement - Contractual benefits claims within jurisdiction - Industrial Relations Act 1979 (WA) S 22B, s 23(1), s 26(1)(a), s 26(2), s 27, s 29(1)(b)(ii), s 32, s 34, s 35 and s 36; Workplace Relations Act 1996 (Cth) s 4(1), s 5, s 16(1) and s 16(2); Workplace Relations Regulations 2006 (Cth) reg 1.2 of div 2 of pt 1 of ch 2 - John Ralph Forster -v- AUSTRALIA Imperial FinancIAL services pty ltd - B 556 of 2006 - Senior Commissioner J H Smith - 16/05/2007 2485

Industrial Law (WA) - Termination of employment - Harsh, oppressive and unfair dismissal upheld - Principles applied - Industrial Relations Act 1979 (WA) s29(1)(b)(i) - Principles for loss applied - Kerrina May Beverly Kilby -v- The Pioneer Bakery - U 21 of 2007 - Commissioner S M Mayman - 10/04/2007 2501

Industrial law (WA) - Claim of harsh, oppressive and unfair dismissal - Applicant reported incident to external body without discussing with employer - Whether breach of fudiciary relationship - Struck at the heart of the employment relationship - Dismissal justified - Application dismissed - Industrial Relations Act 1979 (WA) s 29(1)(b)(i) - Jennifer Joy Reid -v- Hendrik Swanepoel - U 545 of 2006 - Commissioner P E Scott - 1/08/2007 2506

Application to adjourn listing of proceedings - within discretion of the Commission - Panagouta Tsakisiris -v- MRTA of WA Inc - U 543 of 2006 - Commissioner S M Mayman - 23/07/2007 2516

Termination of employment - Harsh, oppressive and unfair dismissal - Application out of time - whether applicant dismissed - Industrial Relations Act 1979 s 29(3), s 29(1)(b)(i) - William Thomas John Valli -v- Julie Anne FriesSbourg J.A.F. Promotions - U 38 of 2007 - Commissioner S Wood - 17/07/2007 2519

Industrial Law – Termination of employment - Harsh, oppressive and unfair dismissal - Costs by way of disbursements ordered - Error in calculation of costs order - Commission's power pursuant to s 27(1)(m) Industrial Relations Act 1979 simular to 'slip rule' - Order corrected - Industrial Relation Act 1979 s 27(1)(m), s 35, s 35(3), s 36. - Lorraine Rose Allen -v- The Aboriginal Legal Service of Western Australia Inc - U 550 of 2006 - Commissioner S J Kenner - 8/08/2007 2614

Industrial Law (WA) - Alleged Denied Contractual Entitlements - Whether Commission has jurisdiction - Respondent is a constituational corporation - Application Dismissed - Industrial Relations Act 1979 (WA) ss 29(1)(b)(ii) and 32 - Workplace Relations Act 1996 (Cth) s 16 - Lindsay Don Chambers -v- Blancoa Pty Ltd as trustee for the Paceway Trading Trust, Trading as Paceway Mistubishi - B 95 of 2007 - Commissioner P E Scott - 5/09/2007 2617

Industrial Relations Act 1979 s.29(1)(b)(i) and (ii), s29AA (3), (4) and (5) - Jurisdictional challenge - Constitutional corporation - Workplace Relations Act 1996, s5(1), s6(1)(a), s16(1)(a)- Workplace Relations Regulations 2006 (Cth) reg 1.2 and 1.4 of div 2 of pt 1 of ch2 - Christopher Monaghan -v- Monadelphous Engineering Associates - U 105 of 2007 - Commissioner S Wood - 18/07/2007 2628

Occupational Safety and Health Act 1984 - Further Review of WorkSafe Western Australia Commissioner's Notice - Revocation of WorkSafe Western Australia Commissioner's Notice - Imminent and Serious - Principles applied - Make such other decision as seems fit s 51(5)(c) - Principles applied - The Original Croissant Gourmet -v- Worksafe Western Australia Commissioner - OSHT 1 of 2007 - Commissioner S M Mayman - 16/08/2007 2735

Application to correct or amend an order granting leave to discontinue - agreement made to compromise claim - respondent claims agreement lapsed when order made to discontinue - power to amend order to reflect the terms of the compromise agreement considered -Industrial Relations Act 1979 (WA) s 26, s 27(1)(l), s 27(1)(m) s 35(1), s 35(3) and s 35(4) - Mark Costa -v- The Chief Executive Officer of the City OF Bayswater - U 258 of 2006 - Senior Commissioner J H Smith - 7/09/2007 2835

Industrial law (WA) - Termination of employment - Claim of harsh, oppressive or unfair dismissal - Application referred outside of 28 day time limit - Dismissal before legislation introduced to allow Commission to extend time - Whether the Commission's power to extend time retrospective - Presumption against retrospective application - No power to extend time - Application for extension of time dismissed - Industrial Relations Act 1979 (WA) s 29(1)(b)(i), (2) and (3) - Labour Relations Reform Act 2002 (WA) s 139 (2) - Kevin Turner -v- Pathwest Formerly Pathcentre - U 110 of 2007 - Commissioner P E Scott - 2/10/2007 2848

Industrial law - Termination of employment - Harsh, oppressive and unfair dismissal - Whether Commission has jurisdiction - Principles applied - Commission satisfied respondent is a constitutional corporation - Claim beyond Commission's jurisdiction - Application dismissed - Industrial Relations Act 1979 (WA) s 29(1)(b)(i), Commonwealth Constitution s 51(xx) - Joe Visser -v- Compleat Angler & Camping World Rockingham - U 118 of 2007 - Commissioner S J Kenner - 4/10/2007 2850

Contractual benefits claim – Entitlements under statutory contract of employment – Whether provisions of an award or industrial agreement override provisions of a statutory contract of employment preserved by the Workplace Agreements Act 1993 – Industrial Relations Act 1979 (WA) s 29(1)(b)(ii), s 7, s 34, s 41, s 46, s 80E, s 80G, s 80G and s 114; Workplace Agreements Act 1993 (WA) s 4H, s 4I, s 4J and s 19; Interpretation Act 1984 (WA) s 18, s 29 and s 37; Labour Relations Reform Act 2002 (WA) Part 3 s 99; Public Sector Management Act 1994 (WA) s 64(1)(a) - John Martin Wall, Trevor James Ward -v- Chief Executive Officer, Department of Agriculture and Food - B 44 of 2007 and P 1 of 2007 and B 45 of 2007 and P 2 of 2007 - Senior Commissioner J H Smith - 24/08/2007 2853

Entitlements under statutory contract of employment – Industrial Relations Act 1979 (WA) s 29(1)(b)(ii), s 7, s 34, s 41, s 46, s 80E and s 80I; Workplace Agreements Act 1993 (WA) s 4H - JOHN MARTIN WALL -v- Chief Executive Officer, Department of Agriculture and Food - B 44 of 2007 and B 45 of 2007 and P 1 of 2007 and P 2 of 2007 - Senior Commissioner J H Smith - 13/09/2007 2872

CUMULATIVE DIGEST—*continued*

Page

COMMISSIONER—*continued*

Industrial law - Termination of employment - Harsh, oppressive and unfair dismissal - Acceptance of referral out of time - Application referred outside of 28 day time limit - Relevant principles to be applied - Commission satisfied applying principles that discretion should not be exercised - Commission satisfied that respondent is a trading corporation - Claim beyond Commission's jurisdiction - Acceptance of referral out of time not granted - Industrial Relations Act 1979 (WA) s 29(1)(b)(i), s 29(2), s 29(3) - Kalma Joy Wyatt -v- Realtown Pty Ltd t/as Medina Tavern - U 140 of 2007 - Commissioner S J Kenner - 10/09/2007 2878

Contractual benefits claim - Entitlements under a contract of employment - Claim for education expenses - Application granted in part - Industral Relations Act 1979 (WA) s 29(1)(b)(ii). - Sharlene Bysouth -v- Carmelo Borrello and Margaret Jean Borrello both as trustee for The C & M J Borrello Family Trust trading as Donnelly River Wines - B 92 of 2007 - Senior Commissioner J H Smith - 31/10/2007 2928

Termination of employment – Harsh, oppressive and unfair dismissal – Duty of mutual trust and confidence – Employee breached duty – Employer failed to assess Applicant's duties – Applicant unfairly dismissed – Industrial Relations Act 1979 (WA) s 29(1)(b)(i); Workplace Relations Act 1996 (Cth) s 4; Minimum Conditions of Employment 1993 (WA) s 10. - Jacqueline Ann Bysterveld -v- Shire of Cue - U 1 of 2007 - Senior Commissioner J H Smith - 12/10/2007 2933

Contractual benefits claim - Whether applicant dismissed - Reasonable notice - Federal Work Choices legislation - Industrial Relations Act 1979, s 29(1)(b)(ii) - Norm Phillips -v- Belminco Pty Ltd t/a West End Steelworks - B 75 of 2007 - Commissioner S Wood - 19/07/2007 2945

Denied contractual benefits - Notice on termination- Jurisdiction - Post Work Choices not within jurisdiction - Industrial Relations Act 1979 (WA) s26, s29(1)(b)(ii) - Norm Phillips -v- Belminco Pty Ltd t/a West End Steelworks - B 75 of 2007 - Commissioner S Wood - 23/10/2007 2947

Termination of employment - Harsh, oppressive and unfair dismissal - Whether dismissal was summary - Applicant alleged to have mishandled incident reports - Procedural fairness considered - Principles applied - Applicant unfairly dismissed - Order made for reinstatement - Industrial Relations Act 1979 (WA) s 29(1)(b)(i) - Thomas Quinn -v- Kalgoorlie Consolidated Gold Mines Pty Ltd - U 260 of 2005 - Commissioner J L Harrison - 21/09/2007 2953

Industrial law - termination of employment - harsh, oppressive and unfair dismissal - application referred outside of 28 day time limit - relevant principles to be applied - referral out of time dismissed - Industrial Relations Act 1979 (WA) - Petra Czarniak -v- Murdoch University - U 125 of 2007 - Commissioner S M Mayman - 20/11/2007 3095

Industrial law - Termination of employment - Harsh, oppressive and unfair dismissal - Acceptance of referral out of time - Application referred outside of 28 day time limit - Relevant principles to be applied - Commission satisfied applying principles that discretion should be exercised - Acceptance referral out of time granted - Industrial Relations Act 1979 (WA) s 29(1)(b)(i), s 29(2), s 29(3) - Pauline Johnstone -v- Ms Mina Bodnaras CARE OF At Home Furniture - U 139 of 2007 - Commissioner S J Kenner - 10/09/2007 3098

Industrial law - Termination of employment - Harsh, oppressive and unfair dismissal - Whether Commission has jurisdiction - Principles applied - Commission satisfied respondent is a constitutional corporation - Claim beyond Commission's jurisdiction - Application dismissed - Industrial Relations Act 1979 (WA) s 29(1)(b)(i), Commonwealth Constitution s 51(xx) - Pauline Johnstone -v- Zu Hause Pty Ltd as trustee for the Gerhold Family Trust t/a At Home Furniture, Rockingham - U 139 of 2007 - Commissioner S J Kenner - 11/10/2007 3100

Contractual benefits claim - contract of employment - application upheld - Industrial Relations Act 1979 (WA) s 29(1)(b)(ii) - Lloyd Mercer -v- Hal John Walton t/a Nitro Spraying Services - B 87 of 2007 - Commissioner S M Mayman - 13/11/2007 3102

Contractual benefits claim - Promise to pay subject to funds - Jurisdiction – Trading corporation - Industrial Relations Act 1979, s26(1)(a), s29(1)(b)(ii) - Workplace Relations Act 1996, s5(1), s6(1)(a), s16(1)(a)– Workplace Relations Regulations 2006 (Cth) reg 1.2(2) of div 2 of pt 1 of ch2. - Jo-anne J Murray -v- Thermoelectric Applications Pty Ltd - B 90 of 2007 - Commissioner S Wood - 16/11/2007. 3105

Termination of employment - harsh, oppressive and unfair dismissal claim - whether Commission has jurisdiction to hear and determine the applicant's claim - trading activities of the respondent considered - Commission not satisfied the respondent is a constitutional corporation - Industrial Relations Act 1979 (WA) s 29(1)(b)(i); Workplace Relations Act 1996 (Cth) s 4, s 6, s 16 and s 16(1); Australian Constitution (Cth) s 51(xx) and s 109 - Darren Brett Pillage -v- Coogee Chemicals Pty Ltd - U 127 of 2007 - Commissioner S M Mayman - 12/11/2007 3115

Contractual benefits claim - Jurisdiction – Trading corporation - Industrial Relations Act 1979, s29(1)(b)(ii) – Federal Workplace Relations Act 1996 – s5, s6 and s16(1)(a) - Maria White -v- MDM Nominees Australia Pty Ltd - B 133 of 2007 - Commissioner S Wood - 21/11/2007 3118