



# Western Australian Industrial Gazette

PUBLISHED BY AUTHORITY

Sub-Part 9

WEDNESDAY 24 DECEMBER, 2008

Vol. 88—Part 2

THE mode of citation of this volume of the Western Australian Industrial Gazette will be as follows:—

88 W.A.I.G.

CUMULATIVE CONTENTS AND DIGEST APPEAR AT THE END OF THIS PUBLICATION

## FULL BENCH—Unions—Application for Alteration of Rules—

2008 WAIRC 01598

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

### FULL BENCH

<b>CITATION</b>	:	2008 WAIRC 01598
<b>CORAM</b>	:	THE HONOURABLE M T RITTER, ACTING PRESIDENT SENIOR COMMISSIONER J H SMITH COMMISSIONER J L HARRISON
<b>HEARD</b>	:	THURSDAY, 30 OCTOBER 2008
<b>DELIVERED</b>	:	THURSDAY, 13 NOVEMBER 2008
<b>FILE NO.</b>	:	FBM 4 OF 2008
<b>BETWEEN</b>	:	THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED Applicant AND N/A Respondent

#### CatchWords:

Industrial Law (WA) - Application pursuant to s62(2) of the *Industrial Relations Act 1979* (WA) for the Full Bench to authorise registration of alteration to registered rule - Qualification for membership rule - Application made following refusal of earlier application due to ambiguity and uncertainty - Statutory framework of s62(2) applications - Statutory criteria satisfied - Defect in earlier application rectified - Application granted.

#### Legislation:

*Industrial Relations Act 1979* (WA) – s55, s55(2), s55(3), s55(4), s55(4)(a), s55(4)(b), s55(4)(c), s55(4)(d), s55(4)(e), s55(5), s55(6), s56, s58(3), s62(2), s62(4)

*Public Sector Management Act 1994* (WA)

*Public Service Act 1978* (WA)

#### Result:

Application granted.

**Representation:**

Counsel:

Applicant : Mr W Claydon

Solicitors:

Applicant : Not applicable

**Case(s) referred to in reasons:**

Stacey v Civil Service Association of Western Australia Incorporated (2007) 87 WAIG 1229

The Civil Service Association of Western Australia Incorporated (2008) 88 WAIG 194

**Case(s) also cited:**

Nil

*Reasons for Decision***RITTER AP:****The Application**

1 This is an application pursuant to s62(2) of the *Industrial Relations Act 1979* (WA) (*the Act*) which was filed on 11 August 2008. The applicant, as a registered organisation under *the Act*, seeks the authorisation of the Full Bench for the Registrar to register an alteration to its qualification for membership rule.

**The History to the Application and the Alteration Sought**

2 The application seeks to rectify the problem which led to an earlier application being refused by the Full Bench in *The Civil Service Association of Western Australia Incorporated* (2008) 88 WAIG 194 (*Re CSA*). In turn, that application arose out of my reasons in the s66 application, *Stacey v Civil Service Association of Western Australia Incorporated* (2007) 87 WAIG 1229. In that decision I noted that the membership rules of the applicant still made reference to the *Public Service Act 1978* (WA), despite its repeal and replacement by the *Public Sector Management Act 1994* (WA) (*the PSMA*). I made an order to the effect that within a specified period of time the council and executive of the applicant take steps to alter this ((2007) 87 WAIG 1282). The problem in *Re CSA* was that the applicant sought to amend the rule in a way which created ambiguity and uncertainty. (See *Re CSA* at [27]-[28]).

3 If the alteration sought in the present application is authorised and registered, rule 6(a)(1) will relevantly become:

**“6 - MEMBERSHIP**

- (a) Membership shall be confined to any person who is:
- (1) employed as a public service officer under and within the meaning of the Public Sector Management Act 1994 (WA); or  
...

4 In the first application, instead of the phrase “public service officer” being in the proposed rule, the word “officer” appeared. This was problematic because the *PSMA* does not apply to someone simply described as an “officer”.

**Present Application Corrects Error**

5 The present application corrects that problem and in my opinion should be allowed if the relevant statutory criteria have been satisfied.

**Statutory Criteria**

6 As I have said the application is made under s62(2) of *the Act*. Pursuant to s62(4) of *the Act*, s55, s56 and s58(3) of *the Act* “apply, with such modifications as are necessary, to and in relation to an application by an organisation for alteration of a rule of a kind referred to in subsection (2)”.

**The Applicant’s Rules About Alteration**

7 As will be set out below, s55(4)(a), in conjunction with s62(4) of *the Act*, provides that the Full Bench shall refuse a rule alteration application unless it has been authorised by the organisation in accordance with its rules. Rule 9 is the relevant rule and is as follows:

**“9 - ALTERATION OF CONSTITUTION**

- (a) No amendment, addition to, variation, rescission, or substitution of this Constitution and Rules shall be made unless:
- (i) it has been passed by a majority of two thirds of the members eligible to vote and voting at a special general meeting convened for the purpose of considering such changes, provided that the quorum for such a meeting shall be one percent (1%) of financial members at the date of calling the meeting, or
- (ii) it has been approved by a simple majority of members voting in a referendum conducted in accordance with Rule 21, or

- (iii) it has been passed by a majority of two thirds of the members of the Council in attendance and voting at a meeting of the Council, provided that notice of the proposed amendment, addition to, variation, rescission, or substitution has been posted to each Council member, at least twenty one (21) days prior to the meeting;

and unless a notice of the proposed alteration and the reasons therefore, is posted or delivered to each and every financial member of the Association.

- (b) Should a special general meeting convened in accordance with sub-rule 9(a)(i) lapse for want of a quorum, the proposed changes shall be considered by the next meeting of Council, in accordance with sub-rule 9(a)(iii).
- (c)
  - (i) In the notice to members referred to in subrule (a) members are to be informed that they or any of them may object to the proposed alteration by forwarding a written objection to the Registrar to reach him no later than 21 days after the date of receipt of the notice.
  - (ii) In the notice to members referred to in subrule (a) and with respect to any proposed alteration of the rule relating to the qualification of persons for membership of the union, members are to be informed that they or any of them may object to making of the application for the proposed alteration and/or object to the proposed alteration by forwarding a written objection to the Registrar to reach him no later than 21 days after the date of receipt of the notice.
- (d) No alteration to any of the rules of the Association shall be or become effective until the Registrar has given to the Association a certificate that the alteration has been registered.
- (e) Any amendment, addition, variation, recession or substitution to the Constitution and Rules shall be published in the Civil Service Journal upon receipt by the Association from the Registrar of the certificate referred to in subrule (d) of this rule."

**8** I will later assess whether the requirements of rule 9 have been satisfied.

**Satisfaction of Sections 55(2) and 55(3) of the Act**

**9** Section 55(2) of *the Act* provides that the Registrar is to publish in the Western Australian Industrial Gazette (the WAIG), a notice of the application, the relevant rules and the entitlement to object to the application. This requirement was satisfied by the publication of a notice in the WAIG on 24 September 2008. There was no objection filed with the Commission.

**10** Section 55(3) of *the Act* provides that an application will not be listed for hearing before the Full Bench until after the expiration of 30 days from the date of publication. This occurred in that the application was not heard until 30 October 2008.

**Satisfaction of Section 55(4) of the Act**

**11** Section 55(4) of *the Act* provides that the Full Bench shall refuse an application by an organisation unless it is satisfied that:

- “(a) the application has been authorised in accordance with the rules of the organisation;
- (b) reasonable steps have been taken to adequately inform the members —
  - (i) of the intention of the organisation to apply for registration;
  - (ii) of the proposed rules of the organisation; and
  - (iii) that the members or any of them may object to the making of the application or to those rules or any of them by forwarding a written objection to the Registrar,

and having regard to the structure of the organisation and any other relevant circumstance, the members have been afforded a reasonable opportunity to make such an objection;

- (c) in relation to the members of the organisation —
  - (i) less than 5% have objected to the making of the application or to those rules or any of them, as the case may be; or
  - (ii) a majority of the members who voted in a ballot conducted in a manner approved by the Registrar has authorised or approved the making of the application and the proposed rules;

- (d) in relation to the alteration of the rules of the organisation, those rules provide for reasonable notice of any proposed alteration and reasons therefor to be given to the members of the organisation and for reasonable opportunity for the members to object to any such proposal; and
- (e) rules of the organisation relating to elections for office —
  - (i) provide that the election shall be by secret ballot; and
  - (ii) conform with the requirements of section 56(1),
 and are such as will ensure, as far as practicable, that no irregularity can occur in connection with the election.”

12 Rule 9(a), quoted above, provides for three alternative methods by which an “amendment” to the rules may be made. The present application is based upon compliance with rule 9(a)(iii). The facts supporting this contention are set out in two statements of Ms Toni Beverly Walkington, the general secretary of the applicant dated 11 August 2008 and 28 October 2008 respectively. The second statement merely corrected two dates in the first statement. It is unnecessary to otherwise refer to that statement and so I will simply refer to the first statement as the statement of Ms Walkington.

13 The uncontradicted evidence of Ms Walkington, in her statement, establishes in accordance with rule 9(a)(iii):

- (a) Notice of the proposed “amendment” was posted to each council member at least 21 days prior to a meeting on 23 April 2008. The notice was posted to council members on 31 March 2008.
- (b) As recorded in the minutes of the council meeting, attached to Ms Walkington’s statement, the meeting on 23 April 2008 was quorate. Rule 12(j)(iii) provides that a quorum for a council meeting is a “majority of those entitled to attend and vote at the meeting”. Item 1 of the minutes of the meeting on 23 April 2008 lists those who were present as being the president and chair, branch secretary, branch assistant secretary, two vice presidents, treasurer, 11 other councillors and the executive officer. The executive officer present is not a member of council. Accordingly 17 council members attended the meeting. The total number of members of council is not numerically fixed by the rules of the applicant. This is because rule 12(a)(vi) provides that the council includes councillors “who are members of the electorate they represent, elected by the financial members in such electorate ...”. Rule 12(c) and (d) describe the basis upon which electorates are determined. The statement of Ms Walkington does not expressly say how many members of council there were at the time of the relevant meeting. It says however that the notice of the proposed amendment was sent to all members of council and the meeting was to be held on 23 April 2008. An attached list shows the names of 30 members of council to which the notice was sent. If there were 30 members of council then more than half attended the meeting. There is therefore no reason to doubt Ms Walkington’s assertion in her statement that the meeting was quorate.
- (c) The “amendment” was passed by a majority of two-thirds of the members of the council in attendance and voting at the meeting on 23 April 2008. The minutes of the meeting record the unanimous passing of the following resolution:

“Amend Rule 6(a)(1) – re: Membership by deleting the words underlined below and replacing those words by reference to “a public service officer under and within the meaning of the Public Sector Management Act”. The deletion is underlined as follows:

“*Membership shall be confined to any person who is:*

- (1) *employed as an officer under and within the meaning of the Public Service Act 1978-1980; or”*

**Rule 6(a)(1) will then read:**

“*Membership shall be confined to any person who is:*

- (1) *employed as a public service officer under and within the meaning of the Public Sector Management Act 1994 (WA); or”*

- (d) Notice of the proposed “amendment” and the reasons for this were then posted or delivered to each financial member of the applicant in the June 2008 edition of “the CSA Journal”. A copy of the relevant page from the journal was attached to Ms Walkington’s statement. Ms Walkington said the journal was posted to each member’s last known address, being the current address contained in the applicant’s register of members. Ms Walkington said copies of the journal were lodged with Australia Post for distribution to members on or about 10 June 2008. Ms Walkington said members would have received their copy on 11, 12 or 13 June 2008 or thereabouts depending upon whether they resided in metropolitan or country areas.
- (e) The notice to members contained in the June 2008 CSA Journal set out the proposed “amendments” to the rules and how rule 6(a)(1) would read if the “amendments” were made. The notice then set out the following:

**“Rationale:**

The proposed amendment to Rule 6(a)(1) is required as the rule provides eligibility of the CSA membership

to persons employed under the Public Service Act 1978-1980. This Act was repealed in 1994 by the Public Sector Management Act (WA), which is still in force. Therefore, there is a requirement to replace the old reference with a reference to the Public Sector Management Act (WA).

#### **Objections**

In accordance with the Rules of the Association any objections to the proposed alteration should be forwarded to the Registrar, Western Australian Industrial Relations Commission, 111 St George's Terrace, Perth WA 6000. They should be received by the Registrar no later than 21 days after receipt of this notice."

- 14 I am satisfied by the statement of Ms Walkington and the attached documents that there has been compliance with each of s55(4)(a), (b), (c) and (d) of *the Act*. Section 55(4)(e) is not relevant to the application.

#### **Satisfaction of Sections 55(5) and 55(6) of the Act**

- 15 Section 55(5) of *the Act* is about rules relating to membership which would permit enrolment of people who could be members of another organisation. This subsection is not relevant to the application.
- 16 Section 56, about secret ballots and the like, is also not relevant to the application; and nor is s58(3) of *the Act*.

#### **Conclusion on Statutory Criteria**

- 17 I am therefore satisfied that each of the statutory criteria have been satisfied.

#### **Determination of the Application**

- 18 In addition in my opinion it is appropriate to authorise the Registrar to register the alteration in accordance with the application. This is for the reasons I set out in *Stacey* at [416]-[417] and contained in the rationale contained in the notice in the June 2008 CSA Journal quoted above.

#### **Minute of Proposed Order**

- 19 In my opinion it is appropriate to publish a minute containing the following order:

1. The Full Bench authorises the Registrar to register the alteration to the rules of the applicant as published in the Western Australian Industrial Gazette on 24 September 2008.

- 20 If the applicant wishes to speak to the minute, this should be by way of written submissions filed within three days of the publication of the minute.

#### **SMITH SC:**

- 21 I have had the benefit of reading the reasons to be published by the Acting President. For the reasons his Honour gives, I agree the application should be granted and a minute of proposed order should be issued in the form proposed by him.

#### **HARRISON C:**

- 22 I have read the Reasons for Decision of his Honour, the Acting President and I agree with those reasons and have nothing to add.

**2008 WAIRC 01601**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED

**APPLICANT**

**-and-**

(NOT APPLICABLE)

**RESPONDENT**

**CORAM**

FULL BENCH

THE HONOURABLE M T RITTER, ACTING PRESIDENT

SENIOR COMMISSIONER J H SMITH

COMMISSIONER J L HARRISON

**DATE**

FRIDAY, 14 NOVEMBER 2008

**FILE NO/S**

FBM 4 OF 2008

**CITATION NO.**

2008 WAIRC 01601

---

**Decision** Application granted  
**Appearances**  
**Applicant** Mr W Claydon

---

*Order*

This matter having come on for hearing before the Full Bench on 30 October 2008, and having heard Mr W Claydon on behalf of the applicant, and reasons for decision having been delivered on 13 November 2008, it is this day, 14 November 2008, ordered that:

1. The Full Bench authorises the Registrar to register the alteration to the rules of the applicant as published in the Western Australian Industrial Gazette on 24 September 2008.

By the Full Bench  
(Sgd.) M T RITTER,  
Acting President.

[L.S.]

**2008 WAIRC 01599**

**WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

**FULL BENCH**

**CITATION** : 2008 WAIRC 01599  
**CORAM** : THE HONOURABLE M T RITTER, ACTING PRESIDENT  
CHIEF COMMISSIONER A R BEECH  
COMMISSIONER S WOOD  
**HEARD** : MONDAY, 20 OCTOBER 2008  
**DELIVERED** : THURSDAY, 13 NOVEMBER 2008  
**FILE NO.** : FBM 3 OF 2008  
**BETWEEN** : THE INDEPENDENT EDUCATION UNION OF WESTERN AUSTRALIA, UNION OF  
EMPLOYEES  
Appellant  
AND  
(NOT APPLICABLE)  
Respondent

---

CatchWords:

Industrial Law (WA) - Application pursuant to s62(2) of the *Industrial Relations Act 1979* (WA) for the Full Bench to authorise registration of alteration to registered rule - Whether relevant rule about qualification for membership - Proposed rule about mechanics of processing membership applications - Jurisdiction of the Full Bench to make authorisation - Application dismissed.

*Legislation:*

*Industrial Relations Act 1979* (WA) - s62, s62(1), s62(2), s62(3).

*Result:*

Application dismissed

**Representation:**

Counsel:

Applicant : Mr N Briggs and with him Ms M Cook

Solicitors:

Applicant : Not applicable

---

**Case(s) referred to in reasons:**

Construction, Mining and Energy Workers Union of Australia, Western Australian Branch v The Operative Plasterers and Plaster Workers Federation of Australia (Industrial Union of Workers) Western Australian Branch (1990) 70 WAIG 281

Re State School Teachers Union of W.A. (Incorporated) [2008] WAIRC 01597

Stacey v Civil Service Association of Western Australia Incorporated (2007) 87 WAIG 1229

**Case(s) also cited:**

Nil

*Reasons for Decision***RITTER AP:**

- 1 The applicant, as a registered organisation under the *Industrial Relations Act 1979* (WA) (*the Act*), seeks, under s62(2) of *the Act*, the authorisation of the Full Bench for the Registrar to register an alteration purportedly about its qualification for membership rule. I have used the word purportedly because as will be set out, in my opinion the alteration sought is not a rule of such a character and therefore the Full Bench does not have the jurisdiction to consider the application.
- 2 Section 62 of *the Act* sets out two alternative methods for the Commission to authorise the registration of alterations to the rules of registered organisations. (See *Construction, Mining and Energy Workers Union of Australia, Western Australian Branch v The Operative Plasterers and Plaster Workers Federation of Australia (Industrial Union of Workers) Western Australian Branch* (1990) 70 WAIG 281, per Brinsden J at 287 (Franklyn J agreeing at 288; Kennedy J contra at 288) and *Re State School Teachers Union of W.A. (Incorporated)* [2008] WAIRC 01597). The applicability of the method depends upon the character of the rule alteration sought. Subsection 62(1)-(3) of *the Act* relevantly provide:

**“62. Alteration of registered rules**

- (1) Upon and after the registration of rules in accordance with section 58(1), an alteration to those rules by the organisation concerned shall not be or become effective until the Registrar has given to the organisation a certificate that the alteration has been registered.
- (2) The Registrar shall not register any alteration to the rules of an organisation that relates to its name, qualifications of persons for membership, or a matter referred to in section 71(2) or (5) unless so authorised by the Full Bench.
- (3) Subject to section 71(8), the Registrar shall not register an alteration to any rule unless, after consulting with the President, he is satisfied that —
  - (a) the application has been authorised in accordance with the rules of the organisation;
  - (b) reasonable steps have been taken to adequately inform the members —
    - (i) of the proposal for alteration and the reasons therefor; and
    - (ii) that the members or any of them may object to the proposed alteration by forwarding a written objection to the Registrar,
 and, having regard to the structure of the organisation, and any other relevant circumstance, the members have been afforded a reasonable opportunity to object to the alteration; and
  - (c) less than 5% of the members of the organisation has objected to the proposed alteration or a majority of the members who voted in a ballot conducted in a manner approved by the Registrar has authorised or approved the proposed alteration.”

- 3 The present application sought an alteration of the rules of the application as follows:

“An application is made by [the applicant], an organisation/association registered under the *Industrial Relations Act 1979* for the registration or alteration to the name/rules of the organisation/association, the particulars of which are attached to this Form. ...”

- 4 Attached to the application was a “Schedule of Amendments”. This was set out as follows:

**“Rule 6 – ADMISSION TO MEMBERSHIP**

**Delete subrules (1) and (4) of current Rule 6 – ADMISSION TO MEMBERSHIP**

- (1) Any person desirous of becoming a member of the Union shall forward to the Secretary an application in the form hereinafter prescribed signed by the applicant provided that no error, omission or want of form in connection with any person's application for membership shall invalidate that membership.
- (4) The application form referred to in subrule (1) of this Rule shall be provided by the Secretary and shall in general require information concerning the applicant's name in full, address, employer, position in which the applicant is employed and in all cases shall require the signature of the applicant. The Secretary shall advise the applicant in writing of the financial obligations arising from membership and the circumstances and manner in which a member may resign.

**Insert new subrule (1) as follows:**

- (1) (a) Any person desirous of becoming a member of the Union shall forward or cause to be forwarded to the Secretary an application in either paper or electronic form. In accordance with subrule (4) receipt of the application shall be confirmed by the Branch in writing within seven business days.
- (b) A person shall apply to the Union through:
  - (i) An application for membership on a form approved by the Secretary;
  - (ii) An application for membership by telephone; or
  - (iii) An application for membership via internet or email.
- (c) An error or omission in the form of the applicant shall not invalidate the membership of the applicant.

**Insert new subrule (4) as follows:**

- (4) (a) The application form approved by the Secretary shall in general require information concerning the applicant's name, address, employer, address of employer and position in which the applicant is employed.
- (b) The Secretary shall advise the applicant in writing of the financial obligations arising from membership and the circumstances and manner in which a member may resign."

5 An initial application to register the alteration now sought as well as other alterations sought under s62(1) and s62(3) was referred to me by a Deputy Registrar by way of consultation pursuant to s62(3) of *the Act*. Upon my review of the application, I thought it possible that the alteration sought to rule 6 could be construed to be an application to alter "qualification for membership". Accordingly it seemed that the most prudent course was for the Deputy Registrar to inform the applicant that it should make an application for authorisation to the Full Bench under s62(2) of *the Act*. This would allow the Full Bench to consider the issue. This occurred, as set out above.

6 At the hearing of the application, the applicant's advocate made it clear that he did not submit the alteration was to "qualification for membership" but the application was made as a matter of prudence due to the information received from the Commission.

7 The word "qualification" has a somewhat broad and flexible meaning. It is defined in *The Macquarie Dictionary* (3<sup>rd</sup> ed, 1991) in this way:

**"qualification** *noun* 1. a quality, accomplishment, etc., which fits for some function, office, etc. 2. a required circumstance or condition for acquiring or exercising a right, holding an office, or the like. 3. the act of qualifying. 4. the state of being qualified. 5. modification, limitation, or restriction, an instance of this: *to assert a thing without any qualification.*"

8 It might be argued that the proposed rule alters the qualification for membership in that there will be a change to the things which a putative member can and needs to do to be considered for and in that sense "qualify" for membership. I do not however favour the argument. In my opinion the proposed rule alteration seeks to amend the mechanics for the making and processing of membership applications as opposed to the qualities, conditions or characteristics of the employees who might become members. In my opinion it is the latter which falls within s62(2) of *the Act*.

9 *The Act*, as a whole, legislates for the Commission to have fairly tight control over the constitution, registration, rules and compliance with the rules of an organisation. (See *Stacey v Civil Service Association of Western Australia Incorporated* (2007) 87 WAIG 1229 at [264]-[266]). The content of and division between the alternative methods of authorisation in s62(2) and s62(3) of *the Act* are consistent with this. The division is based upon the legislature's perception of those types of alterations which are sufficiently serious to warrant the scrutiny, consideration and authorisation of the Full Bench. For example an alteration to qualification for membership is clearly a matter of importance, not only for the organisation and their



existing and possible future members, but for other organisations and employers and the functioning of *the Act* as a whole. The present proposed alteration is not of this ilk; instead it is about, as I have said, the mechanics of becoming a member.

- 10 The outcome therefore and unfortunately, is that the application must be refused on the basis of a lack of jurisdiction. It is regrettable as the applicant has made the application, quite properly, based on information from the Commission about the most prudent course to take.
- 11 The application to alter the rule can however be allowed under s62(3) of *the Act*. To hopefully short circuit the process and for the benefit of the Registrar and the applicant, having considered the application I cannot see any reason why the alteration which is sought cannot be authorised.
- 12 The order which the Full Bench must make however is that the application is dismissed.

**BEECH CC:**

- 13 I have read the Reasons for Decision of his Honour, the Acting President and I agree with those reasons and have nothing to add.

**WOOD C:**

- 14 I have read the Reasons for Decision of his Honour, the Acting President and I agree with those reasons and have nothing to add.

**2008 WAIRC 01595**

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
<b>PARTIES</b>	THE INDEPENDENT EDUCATION UNION OF WESTERN AUSTRALIA, UNION OF EMPLOYEES	<b>APPLICANT</b>
	-and- (NOT APPLICABLE)	
		<b>RESPONDENT</b>
<b>CORAM</b>	FULL BENCH THE HONOURABLE M T RITTER, ACTING PRESIDENT CHIEF COMMISSIONER A R BEECH COMMISSIONER S WOOD	
<b>DATE</b>	THURSDAY, 13 NOVEMBER 2008	
<b>FILE NO/S</b>	FBM 3 OF 2008	
<b>CITATION NO.</b>	2008 WAIRC 01595	

<b>Decision</b>	Application dismissed
<b>Appearances</b>	
<b>Applicant</b>	Mr N Briggs and with him Ms M Cook

*Order*

This matter having come on for hearing before the Full Bench on 20 October 2008, and having heard Mr N Briggs and with him Ms M Cook on behalf of the applicant, and reasons for decision having been delivered on 13 November 2008, it is this day, 13 November 2008, ordered that:

1. The application is dismissed.

[L.S.]

By the Full Bench  
(Sgd.) M T RITTER,  
Acting President.

2008 WAIRC 01597

## WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

## FULL BENCH

**CITATION** : 2008 WAIRC 01597

**CORAM** : THE HONOURABLE M T RITTER, ACTING PRESIDENT  
CHIEF COMMISSIONER A R BEECH  
COMMISSIONER S J KENNER

**HEARD** : WEDNESDAY, 1 OCTOBER 2008

**DELIVERED** : THURSDAY, 13 NOVEMBER 2008

**FILE NO.** : FBM 7 OF 2007

**BETWEEN** : THE STATE SCHOOL TEACHERS' UNION OF W.A. (INCORPORATED)  
Applicant  
AND  
N/A  
Respondent

## CatchWords:

Industrial Law (WA) – Application made under s62(2) of the *Industrial Relations Act 1979* (WA) to authorise registration of alteration of rules of a registered organisation – Qualification for membership rule – Statutory framework of s62(2) applications – Alteration included extending membership to independent contractors – Intention of the legislature was against an organisation consisting of employees and independent contractors - Application to invoke s58(3) - Whether applicable application granted with excision of objectionable rule.

## Legislation:

*Industrial Relations Act 1979* (WA) - s6(e), s7, s23(1), s44(6), s44(7), s44(8), s44(9), s44(10), s47(5), s49(j), s51(O), s51(R), s53, s55, s55(1)(b), s55(2), s55(3), s55(4)(a), s55(4)(b), s55(4)(c), s55(4)(d), s55(4)(e), s55(5), s56, s58(3), s59(2), s61, s62, s62(2), s62(3), s62(3)(b), s62(4), s66(8), s71(1), s72A, s72B, s73(14), s76, s80H(6), s83B, s96A, s96D-G, s96I

## Result:

Application granted

**Representation:**

## Counsel:

Applicant : Mr T Borgeest (of Counsel), by leave

## Solicitors:

Applicant : Slater & Gordon Lawyers

**Case(s) referred to in reasons:**

Actors Equity of Western Australia (Union of Employees) (1998) 78 WAIG 316

Australian Railways Union of Workers, (WA Branch) and The West Australian Locomotive Engine Drivers', Firemen's and Cleaners' Union of Workers (1979) 79 WAIG 972

Construction, Mining and Energy Workers Union of Australia, Western Australian Branch v The Operative Plasterers and Plaster Workers Federation of Australia (Industrial Union of Workers) Western Australian Branch (1990) 70 WAIG 281

Kershaw v Sunvalley Australia Pty Ltd (2007) 87 WAIG 1169

The Civil Service Association of Western Australia (Incorporated) (1995) 75 WAIG 867

The Electrical and Communications Association of Western Australia (Union of Employers) (2007) 87 WAIG 2899

The Small Business Association of Western Australia (Union of Employers) (2002) 82 WAIG 2418

Western Australian Prison Officers' Union of Workers (1995) 77 WAIG 3196

**Case(s) also cited:**

Nil

*Reasons for Decision***RITTER AP:****Introduction**

- 1 This is an application pursuant to s62 of the *Industrial Relations Act 1979* (WA) (*the Act*). The applicant seeks the authorisation of the Full Bench for the Registrar to register an alteration to its rules which relates to the qualification of persons for membership.

**The Application**

- 2 The application particularised the proposed alterations by way of attachments. There were four attachments being:
- (1) The rules of the applicant incorporating and showing in distinctive characters the alteration of the rules for which authorisation/registration is sought.
  - (2) An extract from the minutes of the meeting of the State Council of the applicant on 18 and 19 November 2006 containing the text of each alteration.
  - (3) A copy of the notice given to members in accordance with s62(3)(b) of *the Act* including a statement as to how the notice was disseminated to members.
  - (4) The agenda for the State Council meeting on 18-19 November 2006 which was circulated prior to it taking place.

**Advertisement and Lack of Objection**

- 3 Pursuant to s62(4), s55(2) and s55(3) of *the Act*, the application, a copy of the affected rules and notice of the entitlement to make an objection were published in the Western Australian Industrial Gazette. The date of publication was 27 August 2008. The application was not listed for hearing until the expiration of 30 days after that. No notice of objection has been filed with the Commission.

**Statutory Declaration**

- 4 The application was supported by a statutory declaration of Mr David Kelly, the general secretary of the applicant, made on 14 May 2008. The statutory declaration set out the processes by which the applicant has moved towards the authorisation of the rule alterations by the Full Bench.

**The Proposed Alterations**

- 5 The relevant proposed alteration is to rule 4 – Membership. Set out below is a copy of the proposed rule set out in the form contained in attachment 1 to the application. As in that document, the proposed alterations are shown by the underlining and striking through of text:

**“4 – MEMBERSHIP**

The State School Teachers' Union of W.A. (Incorporated) shall consist of an unlimited number of persons employed or usually employed in the following categories:-

**(a) FULL MEMBERS:**

- (i) Teachers employed by the ~~Education Department of Western Australian~~ Department of Education and Training or by any institution providing technical and further education in Western Australia and teachers employed in pre-school centres in Western Australia provided that such teachers hold or are enrolled for the purpose of obtaining a teaching academic qualification.
- (ii) Any person employed by any of the employers or in any of the places referred to in sub-rule (a) (i) of this rule who is employed as an education officer, guidance officer, counsellor or demonstrator.
- (iii) Teachers employed in a temporary capacity by a technical and further education institution.
- (iv) Teachers employed by and in a Community College in Western Australia.
- (v) School teachers who are employed on a part-time (fractional) basis in the supervision and/or coordination of student teachers during their periods of practice teaching in schools provided that they are eligible for membership of the Union within one of the preceding paragraphs of this subrule.
- (vi) Any person elected to an office in the State School Teachers' Union of Western Australia.

- (vii) Any employee of the SSTUWA (Inc) provided that such persons are not eligible for membership of the Australian Municipal, Administrative, Clerical and Services Union of Employees, W.A., Clerical and Administrative Branch.
- (viii) Persons who are qualified to be and desire to be employed in any of the categories of persons specified in the preceding subrules of this rule.
- (ix) Without limiting the generality of the other parts of this rule or being limited thereby, independent contractors who, if they were employees performing work of the kind which they usually perform as independent contractors, would be eligible for membership of the Union.

Notwithstanding ~~the above~~ subparagraph (viii) above, any person who is not registered with the relevant employer as available for work, has not worked as a teacher for at least two years or who no longer has a contract of employment with the relevant employer shall not be eligible for membership under sub-rule 4(a).

- (b) **HONORARY LIFE MEMBERS:** Any teacher or any employee of the Union who has rendered long and meritorious service to the Union may, upon retirement, be appointed as an Honorary Life Member. For the purpose of such an appointment it shall be necessary that nominations be received and approved by the Executive and published in the W.A. Teachers' Journal or The Western Teacher at least three months prior to the opening of State Council.
- (c) **HONORARY MEMBERS:** Exchange teachers who are members of a teachers' organisation in the State or country from which they have come may be appointed by the Executive as Honorary Members of this Union.
- (d) **SPECIAL CATEGORY MEMBERSHIP:** Persons who are not trained teachers but who because of their special expertise are placed in charge of a class in any area of the educational service may become Special Category Members.
- (e) **RETIRED TEACHER MEMBERS:** Teachers retired from the ~~Education Department of W.A.~~ Department of Education and Training because of age or invalidism may be admitted as Retired Teacher Members at the discretion of the Executive.
- (f) **ASSOCIATE MEMBERS:** The following persons are eligible:-
  - (i) Retired employees of the Union.
  - (ii) Former members, including all categories who are not eligible for any other form of membership."

#### The Applicant's Rules about Amendment

- 6 Alteration to the rules of the applicant is provided for in rule 38. That rule is itself subject to an application to alter, although not one which requires the authorisation of the Full Bench. Set out below is rule 38 in the form in which it appears in attachment 1 to the application:

#### "38 - ALTERATION OF CONSTITUTION RULES

- (a) Notice of proposed alterations or amendment of, additions to or excisions from ~~this Constitution~~ these Rules must be forwarded to the General Secretary by the close of business on a date to be determined and published by Executive prior to each State Council and copies of the same shall be published in the agenda of the relevant State Council.
- (b) No clause of ~~this Constitution~~ these Rules shall be altered, added to, amended or excised, nor shall any new clause be made, except by a majority of not less than two-thirds of the delegates ~~present and~~ voting at a properly constituted meeting or session or postal ballot of State Council.
- (c) State Council may endorse an alteration to the ~~Constitution~~ Rules in words and form different to that which have been published in the agenda provided that the words and form do not change the original intention of the proposed alteration.

- (d) Notwithstanding anything in (a), (b) or (c) above, Executive is empowered and required to re-number or re-letter paragraph, sub-rules, and rules to preserve numerical or alphabetical order provided that the order of paragraphs, sub-paragraphs, sub-rules or rules, is not altered.
- ~~(e) Not Registered.~~
- (fe) As soon as practicable after the completion of each State Council, all decisions made by State Council concerning ~~Constitutional rule~~ Amendments shall be placed in the Western Teacher or such other publication and distributed to all worksites. Such publication shall inform worksites of:
- (i) the change endorsed by State Council;
  - (ii) the reasons for the change;
  - (iii) the intention of the Union to apply to the WA Industrial Relations Commission to register those proposed alterations to ~~the Constitution~~ these Rules as decided by State Council;
  - (iv) their right to object to the proposed alteration by forwarding a written objection to the Registrar of the WA Industrial Relations Commission.
- (gf) If any ~~Constitutional rule~~ amendments referred to in sub-rule (fe,) are matters which must be referred to the Full Bench in accordance with Section 62(2) of the Industrial Relations Act 1979, members shall also be informed of their separate and additional right to object to the making of the application to the Full Bench.”

7 Also relevant are the powers of State Council to alter the rules which are contained in rule 23(b)(i) as follows:

“(b) Powers

State Council shall have power to control and manage the business and affairs of the Union subject always to these Rules and without limiting the generality of this power shall have power to:

- (i) Subject to the requirements of these rules, make, amend or rescind these rules.”

- 8 Rule 23(e) provides that a quorum for State Council is “one-third of the total number of delegates who would have been permitted to attend, had they been elected in accordance with” rule 23. Rule 23(a) provides for the constitution and election of delegates to State Council. It is unnecessary for the purposes of this application to descend into the detail of that sub-rule.
- 9 Rule 24 contains the “Powers of Executive”. The officers who comprise the Executive are set out in rule 25. Relevantly subrules 24(a) and (b) (as contained in attachment 1) are:

**“24 - POWERS OF EXECUTIVE**

- (a) Subject to sub-rule (b) of this Rule the Executive shall control the affairs of the Union in accordance with ~~this Constitution~~ these Rules.
- ~~(b) (i) Executive shall abide by and conform to all decisions and directions of State Council.~~
- ~~(ii) That should any circumstances arise in the post State Council period which, in the opinion of Executive, may have resulted in a State Council Decision other than that arrived at, A Referendum of the full Union membership must be held before the original State Council Decision can be varied.~~
- (b) Between meetings of State Council, the Executive shall exercise all powers of State Council subject to the following:
  - (i) that the Executive is subject to and bound by decisions of State Council; and
  - (ii) that the Executive may not exercise State Council’s powers with respect to rule alteration, imposition of levies, determination of entrance fees and subscriptions, or any other matter expressly reserved by resolution of State Council.”

**The Evidence**

- 10 The facts relevant to the application, set out in the statutory declaration of Mr Kelly, are as follows. Mr Kelly deposed that in accordance with rule 38(a) and (c) and rule 24(d), the agenda for the meeting of State Council on 18-19 November 2006 was circulated to all delegates more than three weeks prior to the meeting. The agenda included the text of the rule alteration

proposals which were to be put to State Council. A copy of the agenda was attached to the statutory declaration. The relevant rule alteration was item "SC 54" on the agenda. The agenda set out the terms of the proposed alterations and the full text of rule 4 if the alteration was made.

- 11 Mr Kelly said the State Council meeting on 18-19 November 2006 was quorate in accordance with rule 23(e). The assertion was supported by the minutes of the meeting which were attached to the statutory declaration. Mr Kelly said there were 142 delegates entitled to attend State Council plus 17 members of Executive, giving a total of 159 members of State Council. A list of the members of the Executive and the delegates to State Council were attached to the statutory declaration. The list records there were 52 apologies received from delegates otherwise entitled to attend the meeting. The minutes do not expressly record that a quorum of one third of 159 or 53 members of State Council were present. Mr Kelly said however that he was present at the meeting and administrative staff of the applicant, under his direction, registered delegates as they arrived. They maintained a running tally of the number of attendees. When that tally exceeded one third of the persons eligible to attend, the president of the applicant was informed so that formal business could commence. The president then declared that a quorum had been achieved. Mr Kelly said that a significant number of delegates also arrived at the meeting after the quorum had been declared.
- 12 Mr Kelly said the proposal to alter rule 4 achieved the required majority of not less than two thirds of the delegates present and voting in accordance with rule 38(c). This was recorded in the minutes of the State Council meeting. The minutes do not contain the actual number of votes cast for and against the rule change resolutions. Mr Kelly said he was present when the resolutions were voted upon. He said each resolution was carried by an overwhelming majority, well in excess of the two thirds requirement.
- 13 With respect to the notification requirement in rule 38(f), Mr Kelly said this was satisfied by the circulation of a notice to members. This was done in a document called "Special Supplement to Western Teacher – January 2007" which was published and circulated together with the January 2007 edition of the applicant's journal called "Western Teacher". Mr Kelly said the journal was generally, including on this occasion, distributed by mail to each member of the applicant. The supplement included a copy of the rule alterations which are the subject of this application together with an explanation of the purpose of the alterations. A copy of the relevant pages of the supplement was attached to the statutory declaration. With respect to SC 54 about membership, the supplement said the reason for the change was as follows:

"The proposed changes to the membership rule is intended to bring the eligibility of requirements of the SSTUWA into closer alignment with those of the WA Branch of the Australian Education Union. This is a pre-condition for making an application to the Western Australian Industrial Commission for an order that the WA Branch of the AEU be identified as a 'counterpart federal body' to the SSTUWA."

- 14 Mr Kelly also declared that the Executive of the applicant at its meeting on 26 and 27 October 2007 resolved to authorise the making of the application to the Commission to obtain registration of the rule alterations made by State Council at the meeting on 18-19 November 2006. The statutory declaration included an extract of the minutes of the Executive meeting which recorded attendees and two apologies. There were 17 attendees present including Mr Kelly. Mr Kelly's statutory declaration also included the terms of the relevant resolution from the minutes of the Executive meeting. This said the meeting had carried a resolution approving and authorising the making of an application for the registration of "amendments" to the rules of the applicant, being those rule amendments approved by State Council on 19 November 2006 by resolutions SC 53 to SC 72 inclusive; excluding SC 64. The resolution noted the application was filed in the Registry of the Commission on 18 October 2007. The resolution said the Executive's approval of the application was intended to have retrospective operation.

### The Statutory Framework

- 15 In his written and oral submissions to the Full Bench, counsel for the applicant addressed the relevant statutory preconditions to the Full Bench authorising the alteration under *the Act*. To understand these submissions and to further consider the application I will set out s62, s55 and s58(3) of *the Act*.

#### "62. Alteration of registered rules

- (1) Upon and after the registration of rules in accordance with section 58(1), an alteration to those rules by the organisation concerned shall not be or become effective until the Registrar has given to the organisation a certificate that the alteration has been registered.
- (2) The Registrar shall not register any alteration to the rules of an organisation that relates to its name, qualifications of persons for membership, or a matter referred to in section 71(2) or (5) unless so authorised by the Full Bench.
- (3) Subject to section 71(8), the Registrar shall not register an alteration to any rule unless, after consulting with the President, he is satisfied that —
  - (a) the application has been authorised in accordance with the rules of the organisation;
  - (b) reasonable steps have been taken to adequately inform the members —

- (i) of the proposal for alteration and the reasons therefor; and
  - (ii) that the members or any of them may object to the proposed alteration by forwarding a written objection to the Registrar,
- and, having regard to the structure of the organisation, and any other relevant circumstance, the members have been afforded a reasonable opportunity to object to the alteration; and
- (c) less than 5% of the members of the organisation has objected to the proposed alteration or a majority of the members who voted in a ballot conducted in a manner approved by the Registrar has authorised or approved the proposed alteration.
- (4) Sections 55, 56 and 58(3) apply, with such modifications as are necessary, to and in relation to an application by an organisation for alteration of a rule of a kind referred to in subsection (2).”

...

**“55. Requirements attaching to organisation seeking registration**

- (1) An organisation seeking registration under section 53 or 54 shall lodge in the office of the Registrar —
  - (a) a list of the officers of the organisation with their addresses;
  - (b) 3 copies of the rules of the organisation; and
  - (c) the prescribed form of application.
- (2) When the organisation has complied with the requirements of subsection (1) the Registrar shall publish in the required manner —
  - (a) a notice of the application;
  - (b) a copy of such rules of the organisation as relate to the qualification of persons for membership of the organisation and, without limiting the generality thereof, including any rule by which the area of the State within which the organisation operates, or intends to operate, is limited; and
  - (c) notice that any person who objects to the registration of the organisation and who, having given notice of that objection within the time and in the manner prescribed, satisfies the Full Bench that he has a sufficient interest in the matter, may appear and be heard in objection to the application.
- (3) An application under this section shall not be listed for hearing before the Full Bench until after the expiration of 30 days from the day on which the matters referred to in subsection (2) are first published.
- (4) Notwithstanding that an organisation complies with section 53(1) or 54(1) or that the Full Bench is satisfied for the purposes of section 53(2) or 54(2), the Full Bench shall refuse an application by the organisation under this section unless it is satisfied that —
  - (a) the application has been authorised in accordance with the rules of the organisation;
  - (b) reasonable steps have been taken to adequately inform the members —
    - (i) of the intention of the organisation to apply for registration;
    - (ii) of the proposed rules of the organisation; and

- (iii) that the members or any of them may object to the making of the application or to those rules or any of them by forwarding a written objection to the Registrar,  
and having regard to the structure of the organisation and any other relevant circumstance, the members have been afforded a reasonable opportunity to make such an objection;
- (c) in relation to the members of the organisation —
  - (i) less than 5% have objected to the making of the application or to those rules or any of them, as the case may be; or
  - (ii) a majority of the members who voted in a ballot conducted in a manner approved by the Registrar has authorised or approved the making of the application and the proposed rules;
- (d) in relation to the alteration of the rules of the organisation, those rules provide for reasonable notice of any proposed alteration and reasons therefor to be given to the members of the organisation and for reasonable opportunity for the members to object to any such proposal; and
- (e) rules of the organisation relating to elections for office —
  - (i) provide that the election shall be by secret ballot; and
  - (ii) conform with the requirements of section 56(1),  
and are such as will ensure, as far as practicable, that no irregularity can occur in connection with the election.
- (5) Notwithstanding that an organisation complies with section 53(1) or 54(1), the Full Bench shall refuse an application by the organisation under this section if a registered organisation whose rules relating to membership enable it to enrol as a member some or all of the persons eligible, pursuant to the rules of the first-mentioned organisation, to be members of the first-mentioned organisation unless the Full Bench is satisfied that there is good reason, consistent with the objects prescribed in section 6, to permit registration.

...

#### **58. Registration of organisation**

...

- (3) On an application for the registration of an organisation the agent or representative of the applicant may request the Full Bench to authorise the rules of the organisation to be registered in terms that exclude certain persons or classes of persons from the description of persons who would have been eligible for enrolment as members of the organisation under the rules as lodged under section 55(1)(b) and, if so requested, the Full Bench may authorise the Registrar to register the rules in those terms.”

16 Section 62(4) refers to s56 of *the Act* in addition to s55 and s58(3). Section 56 is not however relevant to the present application. Section 56 is about rules providing for secret ballots. These rules are not touched upon in the application.

#### **Submissions About Statutory Requirements**

17 The submissions of the applicant addressed the requirements of s62(3) of *the Act*. This subsection refers to consultation between the Registrar and the President about the registration of rule alterations. Although there is some ambiguity, the practice at the Commission has been that this subsection involves a different procedure to that set out in s62(2) of *the Act*



where the authorisation of the Full Bench is required. That is the requirements of s62(3) of *the Act* are not relevant to an application like the present. Instead s62(4) by reference to ss55, 56 and 58(3) contains the requisite criteria. The practice is endorsed by the Industrial Appeal Court decision of *Construction, Mining and Energy Workers Union of Australia, Western Australian Branch v The Operative Plasterers and Plaster Workers Federation of Australia (Industrial Union of Workers) Western Australian Branch* (1990) 70 WAIG 281 (*The Ceiling Fixers' Case*) per Brinsden J at 287 (Franklyn J agreeing at 288; Kennedy J contra at 288). In the present application submissions were also made about s55, s56 and s58(3). It is the submissions about these sections which I consider to be relevant.

- 18 **Firstly**, it was submitted that s55(4)(a) was complied with in that the alteration to the rules application was authorised in accordance with the rules of the applicant because:
- (a) The alterations were approved by State Council.
  - (b) State Council has power to amend the rules (rule 23(b)(i) and rule 38).
  - (c) Notice of the proposed rules alterations were published in the agenda which was circulated not less than three weeks in advance of the meeting of State Council (rule 38(a) and rule 23(d)(i)).
  - (d) Approval for all alterations was given by a two thirds majority of State Council (rule 38(b)).
- 19 **Secondly**, with respect to s55(4)(b), the applicant submitted reasonable steps had been taken to adequately inform members of the matters there set out. The facts deposed to in the statutory declaration of Mr Kelly were cited in support.
- 20 **Thirdly**, with respect to s55(4)(c), the applicant submitted there were no objections to the making of the application.
- 21 **Fourthly**, it was submitted that s55(4)(d) and (e) were irrelevant to the present application.
- 22 **Fifthly**, with respect to s55(5) it was submitted that “no organisation has come forward to assert that such overlapping [between the eligibility criteria of the applicant and another organisation registered under *the Act*] would follow the registration of the rule alterations which are the subject of the present application, and to object to approval”. The applicant accepted that the absence of such an objection was not conclusive proof of the absence of any overlapping, but the applicant said it was not aware of any overlapping that would follow as a consequence of the registration of the rule alterations.
- 23 Each of these submissions are accepted. As discussed at the hearing however the terms of the rule alterations sought are problematic.

#### The Proposed Rule Alterations

- 24 The proposed alterations to rules 4(a)(i) and 4(e) occasion no difficulty. This is because they merely update the employer of “state school teachers” from the Education Department of Western Australia to the Department of Education and Training.
- 25 With respect to rule 4(a)(v), counsel for the applicant accepted that because one of the criteria for eligibility under this sub-rule was eligibility for membership within one of the preceding paragraphs, it did not of itself add to the people who could become “full members” of the applicant (T9). Counsel said he assumed the terms of this rule were because of the desire for the membership rules to be more like the Australian Education Union, so that a counterpart federal body certificate under s71 of *the Act* might be obtained in the future. The fact that the proposed sub-rule does not add to the categories of people who could become full-time members does not of itself make the proposed alteration problematic, although it is in itself somewhat pointless.
- 26 Proposed rule 4(a)(viii) refers to people who “desire to be employed ...”. The proposed sub-rule must be read with the proposed concluding paragraph of rule 4(a). This provides an objective element to the requirement for a “desire”. The concluding paragraph is expressed negatively; a person “shall not be eligible for membership” if one of the three specified criteria apply to them. That is so because of the negative expression and the use of the word “or” between the three disqualifying criteria. Putting it positively, unless a person satisfies each of the three specified criteria then he or she cannot become a member. That is, despite his or her “qualification” and “desire” the putative member must also be “registered with the relevant employer as available for work”, “worked as a teacher in the last two years” and have “a contract of employment with the relevant employer”. The terms of the concluding paragraph means that “qualified” in proposed rule 4(a)(viii) is unnecessary, as a person could hardly fill each of the three criteria if he or she was not “qualified”. That does not however make the proposed rule objectionable.
- 27 As pointed out during the hearing of the application however the breadth of the concluding paragraph to rule 4(a) may have unintended consequences. For example, people in the categories described in rule 4(a)(vi) and (vii) may not satisfy all three criteria. Accordingly these people would not be eligible for membership despite being elected to an office or employed by the applicant in the terms described in rule 4(a)(vi) and rule 4(a)(vii) respectively. As submitted by the applicant’s counsel however, this is “not problematic to the application. It just may be something that the union wishes to revisit at a future time” (T12).
- 28 Proposed rule 4(a)(ix), as discussed at the hearing, is the most problematic of the proposed altered rules. This is because it seeks to include as possible members of the applicant people who are not employees but who are “independent contractors”. Although no submissions were made on the point, I act on the basis that the expression “independent contractor” in the proposed rule has the meaning given to it in the common law and discussed in cases like *Kershaw v Sunvalley Australia Pty Ltd* (2007) 87 WAIG 1169.
- 29 It was submitted by counsel that there was nothing to prevent such a proposed rule alteration being made. This was despite the fact that the qualifications for and basis of registration of organisations of employees in accordance with s53 of *the Act* are as follows:

**“53. Qualifications for and basis of registration of organisations of employees**

- (1) Subject to this Act, any unregistered organisation consisting of not less than 200 employees associated for the purpose of protecting or furthering the interests of employees may be registered by authority of the Full Bench.
- (2) Subject to this Act, an unregistered organisation consisting of less than 200 employees may be registered by authority of the Full Bench if the Full Bench is satisfied that there is good reason, consistent with the objects prescribed in section 6, to permit registration.”

- 30 Counsel submitted that although an organisation to be registered had to consist of employees, there was no restriction upon the Full Bench authorising an alteration to the rules of an organisation to include independent contractors as possible members. Whilst there is no express restriction, in my opinion the text and context of *the Act* as a whole exhibit a legislative intention that an organisation may not consist of employees and also independent contractors. This is for these reasons.
- 31 **Firstly**, principal object 6(e) of *the Act* is to “encourage the formation of representative organisations of employers and employees and their registration under *the Act* ...”. Although the word “employee” has an extended definition in s7 of *the Act*, it does not include somebody who is an “independent contractor”.
- 32 **Secondly**, throughout *the Act* the expression “organisation of employees” is used; the expression “organisation of employees and independent contractors” is not. (See for example the definition of “industrial matter” in s7, and see also s47(5), s49J, s51O, s51R, s59(2), s66(8), s71(1), s72A, s72B, s73(14), s76, s80H(6), s83B, s96A, s96D-s96G, s96I of *the Act*).
- 33 **Thirdly**, s73(12) of *the Act* requires the Full Bench, relevantly, to cancel the registration of an organisation if it is satisfied on the application of the Registrar that the number of members of the organisation would not entitle it to registration under s53 of *the Act*. This reinforces the statutory link between an “organisation” and a membership comprised by employees.
- 34 **Fourthly**, one of the primary privileges afforded to an organisation under *the Act* is to apply to the Commission pursuant to s44(7) of *the Act* for a compulsory conference under s44(1). Compulsory conferences involve conciliation and the possible arbitration of “industrial matters”. (See for example s44(6), (8), (9), (10)). In turn an “industrial matter” is defined in s7 of *the Act* in terms of employers, employees and employment. The work, privileges, rights and duties of independent contractors is not mentioned.
- 35 **Fifthly**, and similarly, the general jurisdiction of the Commission to enquire into and deal with any “industrial matter under s23(1) of *the Act*” does not include a jurisdiction to enquire into and deal with matters involving a principal and independent contractor.
- 36 **Sixthly**, s61 of *the Act* provides:

**“61. Effect of registration**

Upon and after registration, the organisation and its members for the time being shall be subject to the jurisdiction of the Court and the Commission and to this Act; and, subject to this Act, all its members shall be bound by the rules of the organisation during the continuance of their membership.”

- 37 The prospect of the members of an organisation including independent contractors does not sit happily with s61 of *the Act*, given the Commission does not generally have any jurisdiction over an independent contractor.
- 38 Overall therefore in my opinion the Full Bench does not have the power to authorise an alteration to the rules of an organisation to allow for the possibility of independent contractors becoming members of the organisation.
- 39 If I am wrong in this conclusion, counsel for the applicant accepted that the authorisation of the alteration of a membership rule involves the exercise of a discretion by the Full Bench. Counsel also accepted that the breadth of the proposed membership rule was a relevant consideration for the Full Bench to take into account in exercising its discretion (T6). Even if there was power to authorise the rule alteration sought, I would not favour the exercise of any discretion to do so. This is because:
- (a) The concept of an organisation of employees also including independent contractors as its members is foreign to the generally accepted breadth and scope of *the Act* and an organisation registered under it.
  - (b) There has not been put before the Full Bench any sufficiently cogent reason to include independent contractors within the possible members of the applicant.

40 Accordingly I would not allow the application with respect to proposed rule 4(a)(ix).

**Section 58(3) of the Act**

- 41 Faced at the hearing with the difficulties the Full Bench mentioned about proposed rule 4(a)(ix), counsel submitted authorisation should be given to the proposed alterations other than for rule 4(a)(ix). Counsel relied upon s58(3) of *the Act* to submit the Full Bench had the power to so order (T7).
- 42 Section 62(4) of *the Act* makes s58(3) applicable to an application to authorise the alteration of rules with “such modifications as are necessary ...”. It is not always to decide what such modifications might be more than 18 years ago. Section 62(4) was

criticised by Brinsden J in *The Ceiling Fixers' Case* as a “lazy man’s way of drafting”, (at 286). The Full Bench has recently endorsed this comment. (See *The Electrical and Communications Association of Western Australia (Union of Employers)* (2007) 87 WAIG 2899 at [45] (*Re Electrical Association*)). It is hoped the subsection might receive legislative attention.

- 43 Section 58(3) of *the Act* gives an authority to the agent or representative of an applicant to make a request to the Full Bench. That request is for the Full Bench to authorise the registration of rules other than those lodged under s55(1)(b) of *the Act*. The authority is for rules “that exclude certain persons or classes of persons from the description of persons who would have been eligible for enrolment as members of the organisation under the rules as lodged ...”.
- 44 There is some tension between s58(3) and s55(4)(a) of *the Act*, which requires the Full Bench to refuse an application unless it has been authorised in accordance with the rules of the organisation. This is because the outcome of a s58(3) request, if authorised by the Full Bench, inevitably leads to the granting of an application to alter rules which was not “authorised in accordance with the rules of an organisation”. Ordinarily a failure to comply with s55(4)(a) must lead to a refusal of the application. (See *Re Electrical Association* and *The Ceiling Fixers' Case* at 287 (per Brinsden J; Franklyn J agreeing and also Kennedy J at 288)).
- 45 Given that it is a specific provision, s58(3) should be construed as providing an exception to s55(4)(a) of *the Act*. The Industrial Appeal Court in *The Ceiling Fixers' Case* seemed to acknowledge this, by deciding that the amendment to the rules as lodged which the Full Bench purported to give effect to, did not come within s58(3) of *the Act* (Brinsden J 287; Franklyn and Kennedy JJ agreeing). Also, the decision of the Full Bench in *The Master Plumbers' and Mechanical Services Association of Western Australia (Union of Employers)* (2001) 81 WAIG 1060 applied s58(3) of *the Act* in the way I have suggested. In *The Master Plumbers' Case* the Full Bench at [13] decided in effect that the words “would have been eligible” in s58(3) do not require the Full Bench to make a determination that the proposed members were, as a matter of law and fact, eligible. Accordingly, the fact that I have found the class of persons identified in proposed rule 4(a)(ix) as being not able to become members, does not prevent s58(3) of *the Act* from applying.
- 46 In addition Sharkey P expressed the following in *Australian Railways Union of Workers, (WA Branch) and The West Australian Locomotive Engine Drivers', Firemen's and Cleaners' Union of Workers* (1979) 79 WAIG 972 at 973:
- “In my opinion, the ratio of the Wall and Ceiling Fixers' Case means that, apart from s58(3) of the Act, the Full Bench cannot permit an amendment to the rules of an organisation seeking authority for registration or an organisation's proposed alterations to its rules, where that is substantially different from that proposed to the members and should therefore have been put to them under s55(4)(b).”
- 47 Section 58(3) of *the Act* was also cited to similar effect in *Actors Equity of Western Australia (Union of Employees)* (1998) 78 WAIG 316.
- 48 Although s58(3) may be primarily directed to a situation where there has been an objection and a demarcation dispute, in its terms and consistent with authority, it is not so limited. (As to the use of s58(3) to resolve a demarcation dispute after objection, see *Western Australian Prison Officers' Union of Workers* (1995) 77 WAIG 3196; *The Civil Service Association of Western Australia (Incorporated)* (1995) 75 WAIG 867 and *The Small Business Association of Western Australia (Union of Employers)* (2002) 82 WAIG 2418). In my opinion therefore s58(3) of *the Act* can apply to proposed rule 4(a)(ix).
- 49 Section 58(3) of *the Act* enlivens a discretion. In my opinion it is appropriate for the Full Bench to exercise that discretion and authorise the registration of the alteration of the rules in the terms of the request made by the applicant's counsel. There is no reason in my opinion not to do so and the outcome is a sensible resolution to the problem that it is only proposed rule 4(a)(ix) which is beyond power.

#### Minute of Orders

50 In my opinion a minute of proposed order should issue that:

1. The Registrar is authorised to register the proposed alterations to rule 4(a) of the rules of the applicant, as published in the Western Australian Industrial Gazette on 27 August 2008, save and except for proposed rule 4(a)(ix).

51 If the applicant wishes to make any submissions about the minute it should do so in writing within four days. If it considers some alternative procedure is appropriate it should make written submission about this within two days.

52 In my opinion once an order is made, it would be appropriate for Mr Kelly to expeditiously ensure that the members of the applicant are aware that the authorisation of the Full Bench has not included all of the alterations endorsed by the membership, together with the reasons for this.

#### BEECH CC:

53 The application by the SSTU to alter its membership rule may conveniently be divided into three parts. The proposed amendments to Rule 4(a)(i) and (v) are the first part and they are unexceptional. Rule 4(a)(i) will change the name “Education Department of WA” to its current name. Rule 4(a)(v) will specify that school teachers who are employed to supervise and/or coordinate student teachers will be eligible for membership provided that they are eligible for membership in other respects. I would authorise these amendments.

54 The second part is the proposed Rule 4(a)(viii) which will allow persons who are qualified to be, and who desire to be employed in any of the categories in 4(a)(i) to (iv), to be eligible for membership. The issue that arises from the wording in

this proposed amendment is that it will allow persons who are not employees to be admitted to membership on the basis that they are qualified to be, and desire to be, employed as a teacher or in any of the other categories of persons specified in the rule.

- 55 As an organisation registered under the Act, the SSTU consists of employees associated for the purpose of protecting or furthering the interests of employees: s.53(1). There will necessarily be a problem with the Full Bench authorising an alteration which will permit the SSTU to admit to membership a person who is not an employee. However, it appears that this proposed rule may not allow this to occur. This is because the last paragraph of Rule 4(a) already provides that notwithstanding the various categories of persons specified in the sub-rules of Rule 4(a) who are made eligible for membership, any person who no longer is an employee of the relevant employer is not eligible for membership as a full member. That is, the rules of the SSTU already provide that a person who no longer has a contract of employment with the relevant employer is not eligible for membership under Rule 4(a).
- 56 Further, the proposed amendment to that final paragraph will make it clear that the provisions in it will continue to apply notwithstanding the proposed Rule 4(a)(viii). It appears to me therefore that granting this second part of the SSTU's application will not lead to the SSTU admitting to membership a person who is not an employee. Although I have reservations about the practicability of the proposed amendment, in the context of the SSTU's stated purpose of ensuring greater consistency between its membership rule and the equivalent rules of the Australian Education Union, I would authorise the amendment sought.
- 57 The third part of the application is the proposed Rule 4(a)(ix). This part presents an insuperable problem for the SSTU. It proposes to allow the SSTU to admit as members persons who are independent contractors. For the Reasons I have already given, the Act does not permit an organisation of employees to admit as members persons who are independent contractors and the amendment sought must be refused.
- 58 The SSTU submitted that in the event the proposed amendment to Rule 4(a)(ix) was refused, the Full Bench should authorise the Registrar to alter Rule 4 in the terms of the other proposed amendments and it referred the Full Bench to the provisions of s.58(3) of the Act. That section, which s.62(4) of the Act makes relevant to this application, allows the Full Bench to authorise the rules of an organisation to be registered in terms that exclude certain persons or classes of persons from the descriptions of persons who would have been eligible for enrolment as members of the organisation under the rules as lodged.
- 59 For the purposes of this application to amend the rules of an organisation, s.58(3) will allow the Full Bench to authorise an alteration to an organisation's rules in terms that exclude certain persons or classes of persons from the descriptions of persons who would have been eligible for enrolment as members of the organisation under the rules as they are proposed to be amended in the application. Section 58(3) will allow the Full Bench to authorise an alteration to an organisation's rules in accordance with the application if a proviso is inserted which provides that the amendment will not apply to a person who is eligible to belong to an organisation which is already registered, for example see *Re Western Australian Prison Officers' Union of Workers* (1997) 77 WAIG 3196.
- 60 In my view, s.58(3) also will allow the Full Bench to authorise an alteration to an organisation's rules which excludes certain persons or classes of persons from the description of persons who would otherwise become eligible for membership if the rules are altered in accordance with the application: see *Re The Master Plumbers' and Mechanical Services Association of Western Australia (Union of Employers)* [2001] WAIRC 02527; 81 WAIG 1060 at para 13. In this case I am satisfied that s.58(3) permits the Full Bench to authorise the Registrar to register the amendments sought by the SSTU other than the proposed amendment to Rule 4(a)(ix).
- 61 Whether the Full Bench should do so will be a matter for discretion on each occasion. The Full Bench should not give such an authorisation if the resulting alteration to the rules will be so inconsistent with the amendments which the membership of the union have agreed should be made that it can be said that they have not authorised the alteration or have not been given the opportunity to object to the proposed alteration. In *Re Wall & Ceiling Fixers* (1990) 70 WAIG 281 at 287, Brinsden J, with whom Franklyn J agreed, referred to this issue when he noted that the alteration to the rules which had been authorised by the Full Bench in that matter had not been the proposed alteration the subject of the application and which had been advertised in the WA Industrial Gazette, nor the same proposal as was brought to the attention of the members of the organisation so as to afford them the opportunity to object.
- 62 In this case the authorisation which I would give would allow the proposed amendments to Rules 4(a)(i), (v), (viii) and the final sentence in Rule 4(a) to be made. Those are proposed amendments which the membership of the union has agreed should be made; they are proposed amendments which have been published in the required manner and to which the membership has been given an opportunity to object. It is not suggested that excluding the proposed Rule 4(a)(ix) will affect the operation of the amendments proposed to Rules 4(a)(i), (v), (viii) and the final sentence in Rule 4(a); indeed it is the opposite which is suggested and I agree that excluding Rule 4(a)(ix) will not affect the other amendments proposed. I would therefore authorise the Registrar to register an alteration to Rules 4(a)(i), (v), (viii) and the final sentence in Rule 4(a) in the terms of the proposed amendments. I agree with the minute of proposed order.

**KENNER C:**

- 63 I have read in draft form the reasons for decision and proposed order of the Acting President with which I am in general agreement.
- 64 The application seeks the approval of the Full Bench to register alterations to the applicant's registered rules pursuant to s 62(2) of the Industrial Relations Act 1979 ("the Act") in relation to qualifications for membership. Based on the evidence before the Full Bench, the requirements of s 55 of the Act, applicable by reason of s 62(4), are met. Section 56 of the Act has no application to the present circumstances.

- 65 The proposed rule 4(a)(ix), seeking to make eligible for membership of the applicant persons who are independent contractors, is impermissible. The entire scheme of the Act, and in turn the Commission's jurisdiction, however constituted, which includes that of the Full Bench, in terms of organisations capable of being registered and having conferred upon them the benefits and obligations of registration, is directed to organisations of employers and employees. In particular, it would be incongruous indeed if the Full Bench had the jurisdiction and power to authorise this particular alteration to the applicant's rules when the terms of s 61 of the Act, dealing with members of an organisation being subject to the jurisdiction of the Court and the Commission, could have no effect upon the persons sought to be included in the applicant's eligibility for membership rule.
- 66 I also agree however, that in the circumstances of this case, s 58(3) enables relief to be granted to the applicant to excise the proposed rule 4(a)(ix) from the application.

2008 WAIRC 01627

<b>PARTIES</b>	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION THE STATE SCHOOL TEACHERS' UNION OF W.A. (INCORPORATED)	<b>APPLICANT</b>
	<b>-and-</b> (NOT APPLICABLE)	<b>RESPONDENT</b>
<b>CORAM</b>	FULL BENCH THE HONOURABLE M T RITTER, ACTING PRESIDENT CHIEF COMMISSIONER A R BEECH COMMISSIONER S J KENNER	
<b>DATE</b>	WEDNESDAY, 19 NOVEMBER 2008	
<b>FILE NO</b>	FBM 7 OF 2007	
<b>CITATION NO.</b>	2008 WAIRC 01627	
<b>Decision</b>	Application granted	
<b>Appearances</b>		
<b>Applicant</b>	Mr T Borgeest (of Counsel), by leave	

*Order*

This matter having come on for hearing before the Full Bench on 1 October 2008, and having heard Mr T Borgeest (of Counsel), by leave on behalf of the applicant, and reasons for decision having been delivered on 13 November 2008, it is this day, 19 November 2008, ordered that:

1. The Registrar is authorised to register the proposed alterations to rule 4(a) of the rules of the applicant, as published in the Western Australian Industrial Gazette on 27 August 2008, save and except for proposed rule 4(a)(ix).

By the Full Bench  
(Sgd.) M T RITTER,  
Acting President.

[L.S.]

**FULL BENCH—Procedural Directions and Orders—**

2008 WAIRC 01617

<b>PARTIES</b>	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION EDWARD MICHAEL	<b>APPELLANT</b>
	<b>-and-</b> DIRECTOR GENERAL, DEPARTMENT OF EDUCATION AND TRAINING	<b>RESPONDENT</b>
<b>CORAM</b>	FULL BENCH THE HONOURABLE M T RITTER, ACTING PRESIDENT CHIEF COMMISSIONER A R BEECH COMMISSIONER P E SCOTT	
<b>DATE</b>	MONDAY, 17 NOVEMBER 2008	
<b>FILE NO/S</b>	FBA 27 OF 2006	
<b>CITATION NO.</b>	2008 WAIRC 01617	

---

<b>Decision</b>	Orders and directions
<b>Appearances</b>	
<b>Appellant</b>	In person
<b>Respondent</b>	Ms R Hartley (of Counsel), by leave

---

*Order*

This matter having come on for a directions hearing before the Full Bench on 17 November 2008, and having heard Mr E Michael on his own behalf as appellant, and Ms R Hartley (of Counsel), by leave, on behalf of the respondent, it is this day, 17 November 2008, ordered that:

1. The appellant file and serve his proposed amended grounds of appeal on or before 4 May 2009.
2. The appeal be listed for hearing on 18 May 2009 at 10.30am.

By the Full Bench  
(Sgd.) M T RITTER,  
Acting President.

[L.S.]

---

## PRESIDENT—Unions—Matters dealt with under Section 66—

**2008 WAIRC 01618**

<b>PARTIES</b>	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION ROBERT MCJANNETT	<b>APPLICANT</b>
	-AND-	
	KEVIN REYNOLDS, SECRETARY - THE CONSTRUCTION FORESTRY MINING & ENERGY UNION OF WORKERS	<b>FIRST RESPONDENT</b>
	-AND-	
	DARREN KAVANAGH, SAFETY OFFICER - THE CONSTRUCTION FORESTRY MINING & ENERGY UNION OF WORKERS	<b>SECOND RESPONDENT</b>
	-AND-	
	THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION OF WORKERS	<b>THIRD RESPONDENT</b>
	-AND-	
	ELECTORAL COMMISSIONER FOR WESTERN AUSTRALIA	<b>FOURTH RESPONDENT</b>
<b>CORAM</b>	THE HONOURABLE M T RITTER, ACTING PRESIDENT	
<b>DATE</b>	MONDAY, 17 NOVEMBER 2008	
<b>FILE NO</b>	PRES 2 OF 2008	
<b>CITATION NO.</b>	2008 WAIRC 01618	

---

<b>Decision</b>	Application dismissed
<b>Appearances</b>	
<b>Applicant</b>	Mr D Howlett (of Counsel), by leave
<b>First Respondent</b>	Mr T Borgeest (of Counsel), by leave, and with him Mr S Millman (of Counsel), by leave
<b>Second Respondent</b>	Mr T Kucera (of Counsel), by leave
<b>Third Respondent</b>	Mr G MacLean (of Counsel)
<b>Fourth Respondent</b>	Mr R Bathurst (of Counsel), by leave

---

*Order*

This matter having come on for hearing before the Acting President on 4 September 2008, and having heard Mr D Howlett (of Counsel), by leave, on behalf of the applicant, Mr T Borgeest (of Counsel), by leave, and with him Mr S Millman (of Counsel), by leave, on behalf of the first respondent, Mr T Kucera (of Counsel), by leave, on behalf of the second respondent, Mr G MacLean (of Counsel) on behalf of the third respondent, and Mr R Bathurst (of Counsel), by leave, on behalf of the fourth respondent, it is this day, 17 November 2008, ordered that:

1. The application by counsel for the applicant for an order postponing the closure of nominations for The Construction, Forestry, Mining and Energy Union of Workers election is dismissed.

[L.S.]

(Sgd.) M T RITTER,  
Acting President.**2008 WAIRC 01555****PARTIES**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
BEN RICHARD THOMPSON

**APPLICANT****-and-**

KEVIN NOEL REYNOLDS - THE SECRETARY

**FIRST RESPONDENT****-and-**

THE CONSTRUCTION FORESTRY MINING AND ENERGY UNION OF WORKERS

**SECOND RESPONDENT****-and-**

WARWICK GATLEY AM, THE RETURNING OFFICER  
WESTERN AUSTRALIAN ELECTORAL COMMISSION

**THIRD RESPONDENT****PRES 3 OF 2008****-and-**

BRIAN BYRON

**APPLICANT****-and-**

KEVIN NOEL REYNOLDS - THE SECRETARY

**FIRST RESPONDENT****-and-**

THE CONSTRUCTION FORESTRY MINING AND ENERGY UNION OF WORKERS

**SECOND RESPONDENT****-and-**

WARWICK GATLEY AM, THE RETURNING OFFICER  
WESTERN AUSTRALIAN ELECTORAL COMMISSION

**THIRD RESPONDENT****PRES 4 OF 2008****-and-**

SEAN MALCOLM

**APPLICANT****-and-**

KEVIN NOEL REYNOLDS - THE SECRETARY

**FIRST RESPONDENT****-and-**

THE CONSTRUCTION FORESTRY MINING AND ENERGY UNION OF WORKERS

**SECOND RESPONDENT**

**-and-**

WARWICK GATLEY AM, THE RETURNING OFFICER  
WESTERN AUSTRALIAN ELECTORAL COMMISSION

**THIRD RESPONDENT**

**PRES 5 OF 2008**

JIM JOSEPH MELLOR

**APPLICANT**

**-and-**

THE CONSTRUCTION FORESTRY MINING & ENERGY UNION OF WORKERS ("CFMEUW")

**FIRST RESPONDENT**

**-and-**

KEVIN NOEL REYNOLDS - THE SECRETARY, CFMEUW

**SECOND RESPONDENT**

**-and-**

WARWICK MCLEAN GATLEY AM - ELECTORAL COMMISSIONER, WESTERN  
AUSTRALIAN ELECTORAL COMMISSION

**THIRD RESPONDENT**

**-and-**

WAYNE NICHOLSON - RETURNING OFFICER (CFMEUW ELECTIONS), WESTERN  
AUSTRALIAN ELECTORAL COMMISSION

**FOURTH RESPONDENT**

**PRES 6 OF 2008**

**CORAM**

THE HONOURABLE M T RITTER, ACTING PRESIDENT

**DATE**

THURSDAY, 30 OCTOBER 2008

**FILE NO/S**

PRES 3 OF 2008, PRES 4 OF 2008, PRES 5 OF 2008 AND PRES 6 OF 2008

**CITATION NO.**

2008 WAIRC 01555

---

<b>Decision</b>	Order
<b>Appearances</b>	
<b>Applicants</b>	Mr P G Laskaris (of Counsel), by leave, and with him Mr T Kucera (of Counsel), by leave
<b>First Respondent</b>	Mr K J Bonomelli (of Counsel), by leave
<b>Second Respondent</b>	Mr R C Kenzie QC (of Counsel), by leave, and with him Mr T J Dixon (of Counsel), by leave
<b>Third Respondent in</b>	Ms N Eagling (of Counsel), by leave
<b>PRES 3-5 of 2008</b>	
<b>Third Respondent and</b>	Ms N Eagling (of Counsel), by leave
<b>Fourth Respondent in</b>	
<b>PRES 6 of 2008</b>	

---

*Order*

This matter having come on for hearing before the Acting President on 30 October 2008 and having heard Mr P G Laskaris (of Counsel), by leave, and with him Mr T Kucera (of Counsel), by leave, on behalf of the applicants, Mr K J Bonomelli (of Counsel), by leave, on behalf of the first respondent, Mr R C Kenzie QC (of Counsel), by leave, and with him Mr T J Dixon (of Counsel), by leave, on behalf of the second respondent, and Ms N Eagling (of Counsel), by leave, on behalf of the third respondent in PRES 3-5 of 2008, and the third respondent and the fourth respondent in PRES 6 of 2008, it is this day, 30 October 2008, ordered that:

1. Exhibit 13 is not to be published until further order.

[L.S.]

(Sgd.) M T RITTER,  
Acting President.



2008 WAIRC 01556

**PARTIES**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
 BEN RICHARD THOMPSON

**APPLICANT****-and-**

KEVIN NOEL REYNOLDS - THE SECRETARY

**FIRST RESPONDENT****-and-**

THE CONSTRUCTION FORESTRY MINING AND ENERGY UNION OF WORKERS

**SECOND RESPONDENT****-and-**

WARWICK GATLEY AM, THE RETURNING OFFICER  
 WESTERN AUSTRALIAN ELECTORAL COMMISSION

**THIRD RESPONDENT****PRES 3 OF 2008****-and-**

BRIAN BYRON

**APPLICANT****-and-**

KEVIN NOEL REYNOLDS - THE SECRETARY

**FIRST RESPONDENT****-and-**

THE CONSTRUCTION FORESTRY MINING AND ENERGY UNION OF WORKERS

**SECOND RESPONDENT****-and-**

WARWICK GATLEY AM, THE RETURNING OFFICER  
 WESTERN AUSTRALIAN ELECTORAL COMMISSION

**THIRD RESPONDENT****PRES 4 OF 2008****-and-**

SEAN MALCOLM

**APPLICANT****-and-**

KEVIN NOEL REYNOLDS - THE SECRETARY

**FIRST RESPONDENT****-and-**

THE CONSTRUCTION FORESTRY MINING AND ENERGY UNION OF WORKERS

**SECOND RESPONDENT****-and-**

WARWICK GATLEY AM, THE RETURNING OFFICER  
 WESTERN AUSTRALIAN ELECTORAL COMMISSION

**THIRD RESPONDENT****PRES 5 OF 2008**

JIM JOSEPH MELLOR

**APPLICANT****-and-**

THE CONSTRUCTION FORESTRY MINING & ENERGY UNION OF WORKERS ("CFMEUW")

**FIRST RESPONDENT**

**-and-**

KEVIN NOEL REYNOLDS - THE SECRETARY, CFMEUW

**SECOND RESPONDENT**

**-and-**

WARWICK MCLEAN GATLEY AM - ELECTORAL COMMISSIONER, WESTERN AUSTRALIAN ELECTORAL COMMISSION

**THIRD RESPONDENT**

**-and-**

WAYNE NICHOLSON - RETURNING OFFICER (CFMEUW ELECTIONS), WESTERN AUSTRALIAN ELECTORAL COMMISSION

**FOURTH RESPONDENT**

**PRES 6 OF 2008**

**CORAM** THE HONOURABLE M T RITTER, ACTING PRESIDENT  
**DATE** MONDAY, 3 NOVEMBER 2008  
**FILE NO/S** PRES 3 OF 2008, PRES 4 OF 2008, PRES 5 OF 2008 AND PRES 6 OF 2008  
**CITATION NO.** 2008 WAIRC 01556

---

**Decision** Orders and directions

**Appearances**

**Applicants** Mr P G Laskaris (of Counsel), by leave, and with him Mr T Kucera (of Counsel), by leave, and Mr I C Latham (of Counsel), by leave

**First Respondent** Mr K J Bonomelli (of Counsel), by leave

**Second Respondent** Mr R C Kenzie QC (of Counsel), by leave, and with him Mr T J Dixon (of Counsel), by leave

**Third Respondent in PRES 3-5 of 2008** Ms N Eagling (of Counsel), by leave

**Third Respondent and Fourth Respondent in PRES 6 of 2008** Ms N Eagling (of Counsel), by leave

---

*Order*

This matter having come on for hearing before the Acting President on 27 October 2008, 28 October 2008, 29 October 2008, 30 October 2008 and 31 October 2008 and having heard Mr P G Laskaris (of Counsel), by leave, and with him Mr T Kucera (of Counsel), by leave, and Mr I C Latham (of Counsel), by leave, on behalf of the applicants, Mr K J Bonomelli (of Counsel), by leave, on behalf of the first respondent, Mr R C Kenzie QC (of Counsel), by leave, and with him Mr T J Dixon (of Counsel), by leave, on behalf of the second respondent, and Ms N Eagling (of Counsel), by leave, on behalf of the third respondent in PRES 3-5 of 2008, and the third respondent and the fourth respondent in PRES 6 of 2008, it is this day, 3 November 2008, ordered that:

1. The order made on 30 October 2008 that exhibit 13 not be published until further order is revoked.
2. Exhibits R3F, R3G, R3H, R3I, R3J and R3K are not to be published until further order.
3. The applicants file and serve additional written submissions by 19 November 2008.
4. The third respondent in PRES 3-5 of 2008 and the third respondent and the fourth respondent in PRES 6 of 2008 file and serve written submissions by 3 December 2008.
5. The first and second respondents file and serve written submissions by 23 December 2008.
6. The parties be at liberty to apply upon 3 days' notice.
7. The matter be adjourned to a 3 day hearing on a date to be fixed.

(Sgd.) M T RITTER,  
Acting President.

[L.S.]

---

2008 WAIRC 01591

## WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

## PRESIDENT

**CITATION** 2008 WAIRC 01591  
**CORAM** THE HONOURABLE M T RITTER, ACTING PRESIDENT  
**HEARD** MONDAY, 27 OCTOBER 2008, TUESDAY, 28 OCTOBER 2008, WEDNESDAY, 29 OCTOBER 2008, THURSDAY, 30 OCTOBER 2008, FRIDAY, 31 OCTOBER 2008  
**DELIVERED** THURSDAY, 13 NOVEMBER 2008  
**FILE NOs.** PRES 3 OF 2008, PRES 4 OF 2008, PRES 5 OF 2008, PRES 6 OF 2008  
**BETWEEN** BEN RICHARD THOMPSON

APPLICANT

-and-

KEVIN NOEL REYNOLDS - THE SECRETARY

FIRST RESPONDENT

-and-

THE CONSTRUCTION FORESTRY MINING AND ENERGY UNION OF WORKERS

SECOND RESPONDENT

-and-

WARWICK GATLEY AM, THE RETURNING OFFICER  
WESTERN AUSTRALIAN ELECTORAL COMMISSION

THIRD RESPONDENT

**PRES 3 OF 2008**

-and-

BRIAN BYRON

APPLICANT

-and-

KEVIN NOEL REYNOLDS - THE SECRETARY

FIRST RESPONDENT

-and-

THE CONSTRUCTION FORESTRY MINING AND ENERGY UNION OF WORKERS

SECOND RESPONDENT

-and-

WARWICK GATLEY AM, THE RETURNING OFFICER  
WESTERN AUSTRALIAN ELECTORAL COMMISSION

THIRD RESPONDENT

**PRES 4 OF 2008**

-and-

SEAN MALCOLM

APPLICANT

-and-

KEVIN NOEL REYNOLDS - THE SECRETARY

FIRST RESPONDENT

-and-

THE CONSTRUCTION FORESTRY MINING AND ENERGY UNION OF WORKERS

SECOND RESPONDENT

-and-

WARWICK GATLEY AM, THE RETURNING OFFICER  
WESTERN AUSTRALIAN ELECTORAL COMMISSION

THIRD RESPONDENT

**PRES 5 OF 2008**

JIM JOSEPH MELLOR

**APPLICANT****-and-**

THE CONSTRUCTION FORESTRY MINING &amp; ENERGY UNION OF WORKERS ("CFMEUW")

**FIRST RESPONDENT****-and-**

KEVIN NOEL REYNOLDS - THE SECRETARY, CFMEUW

**SECOND RESPONDENT****-and-**

WARWICK MCLEAN GATLEY AM - ELECTORAL COMMISSIONER, WESTERN AUSTRALIAN ELECTORAL COMMISSION

**THIRD RESPONDENT****-and-**

WAYNE NICHOLSON - RETURNING OFFICER (CFMEUW ELECTIONS), WESTERN AUSTRALIAN ELECTORAL COMMISSION

**FOURTH RESPONDENT****PRES 6 OF 2008****CatchWords:**

Industrial Law (WA) - Section 66 applications in relation to the process of election of union officers - Procedural and hearing timetable varied.

**Legislation:**

Nil

**Result:**

Order varied

**Representation:**

Counsel:

**Applicants**

Mr P G Laskaris (of Counsel), by leave, and with him Mr T Kucera (of Counsel), by leave, and Mr I C Latham (of Counsel), by leave

**First Respondent**

Mr K J Bonomelli (of Counsel), by leave

**Second Respondent**

Mr R C Kenzie QC (of Counsel), by leave, and with him Mr T J Dixon (of Counsel), by leave

**Third Respondent in**

Ms N Eagling (of Counsel), by leave

**PRES 3-5 of 2008****Third Respondent and**

Ms N Eagling (of Counsel), by leave

**Fourth Respondent in****PRES 6 of 2008****Solicitors:**

Applicants	:	Leask & Co.
First Respondent	:	Jeremy Noble Barristers & Solicitors
Second Respondent	:	Slater & Gordon Lawyers
Third Respondent in		
PRES 3-5 of 2008	:	State Solicitor for Western Australia
Third Respondent and		
Fourth Respondent in		
PRES 6 of 2008	:	State Solicitor for Western Australia

**Case(s) referred to in reasons:***Da Cunha v 1929 Holdings Pty Ltd* (1983) 63 WAIG 1514

*Reasons for Decision***RITTER AP:****Introduction**

- 1 In this election inquiry, at the conclusion of the evidence of the first respondent and after discussion with counsel, I made the following orders:
  1. The order made on 30 October 2008 that exhibit 13 not be published until further order is revoked.
  2. Exhibits R3F, R3G, R3H, R3I, R3J and R3K are not to be published until further order.
  3. The applicants file and serve additional written submissions by 19 November 2008.
  4. The third respondent in PRES 3-5 of 2008 and the third respondent and the fourth respondent in PRES 6 of 2008 file and serve written submissions by 3 December 2008.
  5. The first and second respondents file and serve written submissions by 23 December 2008.
  6. The parties be at liberty to apply upon 3 days' notice.
  7. The matter be adjourned to a 3 day hearing on a date to be fixed.
- 2 After the adjournment of the proceedings and upon some reflection it seemed to me that it was not in the interests of the parties or the members of the second respondent for the issues and questions which have arisen in this inquiry to be left pending and unresolved for as long as would occur if this programme was adhered to.
- 3 Accordingly I instructed my associate on 10 November 2008 to write to the parties to request that they confer for the purpose of agreeing upon a minute or alternatively provide submissions upon the shortening of the procedural timetable; so that the filing of written submissions could be completed by 10 December 2008 and a hearing to be listed in the week after that. The parties were requested to respond by close of business the following day. Although no agreed minute was filed, the solicitors or counsel for each party provided written responses.
- 4 None of the parties submitted that my proposed alteration to the timetable should not occur or it would cause prejudice. Each of the parties made submissions about the time they would need to file and serve written submissions and gave available dates for the hearing. No party submitted that the hearing would require more than a day. On this point I mention that the submissions as to the length of the hearing, which lead to the making of order 7 of the orders made on 31 October 2008, was not based on any firm view that three days would be required.
- 5 Taking into account the information provided by the parties, in all the circumstances, I propose to make the following order:
  1. Order 4 of the orders made on 3 November 2008 be varied so as to provide that the third respondent in PRES 3-5 of 2008 and the third respondent and fourth respondent in PRES 6 of 2008 file and serve written submissions by 26 November 2008.
  2. Order 5 of the orders made on 3 November 2008 be varied so as to provide that the first and second respondents file and serve written submissions by 10 December 2008.
  3. Order 7 of the orders made on 3 November 2008 is revoked.
  4. The proceeding be listed for hearing at 9:30am on 16 December 2008.
- 6 The timetable in this order for the filing and service of written submissions is in accordance with what the parties submitted to be achievable. The hearing date accommodates the availability of all counsel, save and except counsel for the first respondent. His facsimile sent to my associate on 11 November 2008 said:

“Subject to the applicant's additional written submissions it would appear that the submissions *on* behalf of the respondent Kevin Noel Reynolds are likely to be limited, if at all, at this stage of the proceedings. ...

Notwithstanding the above, I trust that any re-listing of this matter be done so with consideration of counsel's availability. As I understood the position the original orders made were done so having regard to counsel's availability. As for my own part I have a trial listed for 5 days on 8 December 2008 in the District Court of Western Australia, a trial on 15 December 2008 in the Magistrates Court and appearances on the 16, 17 and 22 December 2008 again in the Magistrates Court.”
- 7 According to this information, the first respondent's counsel has an appearance in the Magistrate's Court on the date on which the hearing is to be set down, in accordance with the above. It is unclear from the letter whether the date of the appearance in the Magistrate's Court could be changed or whether counsel may be able to properly return this brief or arrange for alternative counsel. I take into account however that counsel for the first respondent may not be able to appear on 16 December 2008. Despite this I think it appropriate to list the hearing for that date, given:

- (a) The interests of the inquiry being determined expeditiously.
- (b) All other counsel are available on that date.
- (c) There is no suggestion that counsel for the first respondent will not be available to draft the written submissions.
- (d) It is likely, as counsel has said in his letter, that the submissions to be made on behalf of the first respondent will be limited.
- (e) There is no suggestion that alternative counsel could not appear for the first respondent if his present counsel were to be unable to attend on 16 December 2008, even though there may be an increase in costs.
- (f) Although the Commission takes into account the availability of counsel in deciding hearing dates, it does not and cannot act on the basis that in all cases it is the controlling or determinative factor (see *Da Cunha v 1929 Holdings Pty Ltd* (1983) 63 WAIG 1514 at 1515).

8 Accordingly a minute will be published in the terms set out above. If any party wishes to make any submissions about the minute they may do so in writing by 4pm on 17 November 2008.

**2008 WAIRC 01621**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

BEN RICHARD THOMPSON

**APPLICANT**

**-and-**

KEVIN NOEL REYNOLDS - THE SECRETARY

**FIRST RESPONDENT**

**-and-**

THE CONSTRUCTION FORESTRY MINING AND ENERGY UNION OF WORKERS

**SECOND RESPONDENT**

**-and-**

WARWICK GATLEY AM, THE RETURNING OFFICER  
WESTERN AUSTRALIAN ELECTORAL COMMISSION

**THIRD RESPONDENT**

**PRES 3 OF 2008**

**-and-**

BRIAN BYRON

**APPLICANT**

**-and-**

KEVIN NOEL REYNOLDS - THE SECRETARY

**FIRST RESPONDENT**

**-and-**

THE CONSTRUCTION FORESTRY MINING AND ENERGY UNION OF WORKERS

**SECOND RESPONDENT**

**-and-**

WARWICK GATLEY AM, THE RETURNING OFFICER  
WESTERN AUSTRALIAN ELECTORAL COMMISSION

**THIRD RESPONDENT**

**PRES 4 OF 2008**

**-and-**

SEAN MALCOLM

**APPLICANT**

**-and-**

KEVIN NOEL REYNOLDS - THE SECRETARY

**FIRST RESPONDENT**

**-and-**

THE CONSTRUCTION FORESTRY MINING AND ENERGY UNION OF WORKERS

**SECOND RESPONDENT****-and-**

WARWICK GATLEY AM, THE RETURNING OFFICER

WESTERN AUSTRALIAN ELECTORAL COMMISSION

**THIRD RESPONDENT****PRES 5 OF 2008**

JIM JOSEPH MELLOR

**APPLICANT****-and-**

THE CONSTRUCTION FORESTRY MINING &amp; ENERGY UNION OF WORKERS ("CFMEUW")

**FIRST RESPONDENT****-and-**

KEVIN NOEL REYNOLDS - THE SECRETARY, CFMEUW

**SECOND RESPONDENT****-and-**WARWICK MCLEAN GATLEY AM - ELECTORAL COMMISSIONER, WESTERN  
AUSTRALIAN ELECTORAL COMMISSION**THIRD RESPONDENT****-and-**WAYNE NICHOLSON - RETURNING OFFICER (CFMEUW ELECTIONS), WESTERN  
AUSTRALIAN ELECTORAL COMMISSION**FOURTH RESPONDENT****PRES 6 OF 2008**

THE HONOURABLE M T RITTER, ACTING PRESIDENT

**CORAM****DATE**

MONDAY 17 NOVEMBER 2008

**FILE NO/S**

PRES 3 OF 2008, PRES 4 OF 2008, PRES 5 OF 2008, PRES 6 OF 2008

**CITATION NO.**

2008 WAIRC 01621

*Order*

It is this day, 17 November 2008, ordered that:

1. Order 4 of the orders made on 3 November 2008 be varied so as to provide that the third respondent in PRES 3-5 of 2008 and the third respondent and fourth respondent in PRES 6 of 2008 file and serve written submissions by 26 November 2008.
2. Order 5 of the orders made on 3 November 2008 be varied so as to provide that the first and second respondents file and serve written submissions by 10 December 2008.
3. Order 7 of the orders made on 3 November 2008 is revoked.
4. The proceeding be listed for hearing at 9:30am on 16 December 2008 with such hearing to include video link to Sydney.

[L.S.]

(Sgd.) M T RITTER,  
Acting President.

**2008 WAIRC 01650****PARTIES**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
 BEN RICHARD THOMPSON

**APPLICANT****-and-**

KEVIN NOEL REYNOLDS - THE SECRETARY

**FIRST RESPONDENT****-and-**

THE CONSTRUCTION FORESTRY MINING AND ENERGY UNION OF WORKERS

**SECOND RESPONDENT****-and-**

WARWICK GATLEY AM, THE RETURNING OFFICER  
 WESTERN AUSTRALIAN ELECTORAL COMMISSION

**THIRD RESPONDENT****PRES 3 OF 2008****-and-**

BRIAN BYRON

**APPLICANT****-and-**

KEVIN NOEL REYNOLDS - THE SECRETARY

**FIRST RESPONDENT****-and-**

THE CONSTRUCTION FORESTRY MINING AND ENERGY UNION OF WORKERS

**SECOND RESPONDENT****-and-**

WARWICK GATLEY AM, THE RETURNING OFFICER  
 WESTERN AUSTRALIAN ELECTORAL COMMISSION

**THIRD RESPONDENT****PRES 4 OF 2008****-and-**

SEAN MALCOLM

**APPLICANT****-and-**

KEVIN NOEL REYNOLDS - THE SECRETARY

**FIRST RESPONDENT****-and-**

THE CONSTRUCTION FORESTRY MINING AND ENERGY UNION OF WORKERS

**SECOND RESPONDENT****-and-**

WARWICK GATLEY AM, THE RETURNING OFFICER  
 WESTERN AUSTRALIAN ELECTORAL COMMISSION

**THIRD RESPONDENT****PRES 5 OF 2008**

JIM JOSEPH MELLOR

**APPLICANT****-and-**

THE CONSTRUCTION FORESTRY MINING & ENERGY UNION OF WORKERS ("CFMEUW")

**FIRST RESPONDENT**



	<b>-and-</b> KEVIN NOEL REYNOLDS - THE SECRETARY, CFMEUW	<b>SECOND RESPONDENT</b>
	<b>-and-</b> WARWICK MCLEAN GATLEY AM - ELECTORAL COMMISSIONER, WESTERN AUSTRALIAN ELECTORAL COMMISSION	<b>THIRD RESPONDENT</b>
	<b>-and-</b> WAYNE NICHOLSON - RETURNING OFFICER (CFMEUW ELECTIONS), WESTERN AUSTRALIAN ELECTORAL COMMISSION	<b>FOURTH RESPONDENT</b>
	<b>PRES 6 OF 2008</b> THE HONOURABLE M T RITTER, ACTING PRESIDENT	
<b>CORAM</b>		
<b>DATE</b>	FRIDAY, 28 NOVEMBER 2008	
<b>FILE NO/S</b>	PRES 3 OF 2008, PRES 4 OF 2008, PRES 5 OF 2008, PRES 6 OF 2008	
<b>CITATION NO.</b>	2008 WAIRC 01650	

---

*Order*

It is this day, 28 November 2008, ordered that:

1. The application by the applicants filed on 27 November 2008 be listed for hearing at 2:00pm on 5 December 2008 including by video link to Sydney.
2. The parties be at liberty to file and serve written submissions upon the application referred to in order 1 by 2:00pm on 4 December 2008.

[L.S.]

(Sgd.) M T RITTER,  
Acting President.

	<b>2008 WAIRC 01714</b>
<b>PARTIES</b>	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION BEN RICHARD THOMPSON
	<b>APPLICANT</b>
	<b>-and-</b> KEVIN NOEL REYNOLDS - THE SECRETARY
	<b>FIRST RESPONDENT</b>
	<b>-and-</b> THE CONSTRUCTION FORESTRY MINING AND ENERGY UNION OF WORKERS
	<b>SECOND RESPONDENT</b>
	<b>-and-</b> WARWICK GATLEY AM, THE RETURNING OFFICER WESTERN AUSTRALIAN ELECTORAL COMMISSION
	<b>THIRD RESPONDENT</b>
	<b>PRES 3 OF 2008</b> <b>-and-</b> BRIAN BYRON
	<b>APPLICANT</b>
	<b>-and-</b> KEVIN NOEL REYNOLDS - THE SECRETARY
	<b>FIRST RESPONDENT</b>

**-and-**  
 THE CONSTRUCTION FORESTRY MINING AND ENERGY UNION OF WORKERS  
**SECOND RESPONDENT**

**-and-**  
 WARWICK GATLEY AM, THE RETURNING OFFICER  
 WESTERN AUSTRALIAN ELECTORAL COMMISSION  
**THIRD RESPONDENT**

**PRES 4 OF 2008**  
**-and-**  
 SEAN MALCOLM  
**APPLICANT**

**-and-**  
 KEVIN NOEL REYNOLDS - THE SECRETARY  
**FIRST RESPONDENT**

**-and-**  
 THE CONSTRUCTION FORESTRY MINING AND ENERGY UNION OF WORKERS  
**SECOND RESPONDENT**

**-and-**  
 WARWICK GATLEY AM, THE RETURNING OFFICER  
 WESTERN AUSTRALIAN ELECTORAL COMMISSION  
**THIRD RESPONDENT**

**PRES 5 OF 2008**  
 JIM JOSEPH MELLOR  
**APPLICANT**

**-and-**  
 THE CONSTRUCTION FORESTRY MINING & ENERGY UNION OF WORKERS ("CFMEUW")  
**FIRST RESPONDENT**

**-and-**  
 KEVIN NOEL REYNOLDS - THE SECRETARY, CFMEUW  
**SECOND RESPONDENT**

**-and-**  
 WARWICK MCLEAN GATLEY AM - ELECTORAL COMMISSIONER, WESTERN  
 AUSTRALIAN ELECTORAL COMMISSION  
**THIRD RESPONDENT**

**-and-**  
 WAYNE NICHOLSON - RETURNING OFFICER (CFMEUW ELECTIONS), WESTERN  
 AUSTRALIAN ELECTORAL COMMISSION  
**FOURTH RESPONDENT**

**PRES 6 OF 2008**  
 THE HONOURABLE M T RITTER, ACTING PRESIDENT  
 TUESDAY, 9 DECEMBER 2008  
 PRES 3 OF 2008, PRES 4 OF 2008, PRES 5 OF 2008, PRES 6 OF 2008  
 2008 WAIRC 01714

**CORAM**

**DATE**

**FILE NO/S**

**CITATION NO.**

**Decision**

Orders and Directions

**Appearances**

**Applicants**

Mr P G Laskaris (of Counsel), by leave, and with him Mr T R Kucera (of Counsel), by leave

**First Respondent**

Mr K J Bonomelli (of Counsel), by leave

**Second Respondent**

Mr R C Kenzie QC, by leave, and with him Mr T J Dixon (of Counsel), by leave

**Third Respondent in**

Mr R Bathurst (of Counsel), by leave

**PRES 3-5 of 2008****Third Respondent and** Mr R Bathurst (of Counsel), by leave**Fourth Respondent in****PRES 6 of 2008***Order*

This matter having come on for hearing before me on 5 December 2008, and having heard Mr P G Laskaris (of Counsel), by leave, and with him Mr T R Kucera (of Counsel), by leave, on behalf of the applicants, Mr K J Bonomelli (of Counsel), by leave, on behalf of the first respondent, Mr R C Kenzie QC, by leave, and with him Mr T J Dixon (of Counsel), by leave, on behalf of the second respondent, and Mr R Bathurst (of Counsel), by leave, on behalf of the third respondent in PRES 3-5 of 2008, and the third respondent and the fourth respondent in PRES 6 of 2008, it is this day, 9 December 2008, ordered that:

1. The application by Mr Mcjannett to become a party to the proceeding is dismissed.
2. The order made on 3 November 2008 is varied by the revocation of order 3.
3. The order made on 17 November 2008 is varied by the amendment of the date in order 2 from 10 December 2008 to 11 December 2008.
4. The application by the applicants for leave to discontinue is adjourned to 16 December 2008.

[L.S.]

(Sgd.) M T RITTER,  
Acting President.**PUBLIC SERVICE ARBITRATOR—Awards/Agreements—Variation of—****2008 WAIRC 01631****CHILDREN'S SERVICES (GOVERNMENT) AWARD 1989**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION

**APPLICANT**

-v-

HONOURABLE MINISTER FOR COMMUNITY SERVICES AND OTHERS

**RESPONDENT**

**CORAM** COMMISSIONER J L HARRISON  
**DATE** THURSDAY, 20 NOVEMBER 2008  
**FILE NO/S** APPL 88 OF 2008  
**CITATION NO.** 2008 WAIRC 01631

**Result** Award varied*Order*

HAVING heard Ms C Pullen on behalf of the applicant and Ms L Wiese and Mr A Harper on behalf of the respondents and by consent, the Commission, pursuant to the powers conferred under the *Industrial Relations Act, 1979*, hereby orders:

THAT the *Children's Services (Government) Award 1989 (No A 29 of 1985 and PSA A 29A 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 19 November 2008.

[L.S.]

(Sgd.) J L HARRISON,  
Commissioner.

## SCHEDULE

**1. Clause 10. - Overtime: Delete subclause (4)(a) of this clause and insert the following in lieu thereof:**

- (4) (a) An employee required to work continuous overtime for more than one hour shall be supplied with a meal by the employer or be paid \$10.70 for a meal, and if, owing to the amount of overtime worked, a second or subsequent meal is required he/she shall be supplied with each meal by the employer or be paid \$6.25 for each meal so required.

2008 WAIRC 01607

**COUNTRY HIGH SCHOOL HOSTELS AUTHORITY RESIDENTIAL COLLEGE SUPERVISORY STAFF AWARD  
2005**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA (INCORPORATED)

**APPLICANT**

-v-

COUNTRY HIGH SCHOOL HOSTELS AUTHORITY

**RESPONDENT**

**CORAM**

PUBLIC SERVICE ARBITRATOR

COMMISSIONER P E SCOTT

**DATE**

MONDAY, 17 NOVEMBER 2008

**FILE NO**

P 21 OF 2008

**CITATION NO.**

2008 WAIRC 01607

**Result**

Award varied

*Order*

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia (Incorporated) and Mr A Harper as agent for the respondent, and by consent, the Public Service Arbitrator, pursuant to the powers conferred under the Industrial Relations Act 1979, hereby orders:

THAT the Country High School Hostels Authority Residential College Supervisory Staff Award 2005, No. PSAA 1 of 2005 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 7<sup>th</sup> day of November 2008.

(Sgd.) P E SCOTT,  
Commissioner,  
Public Service Arbitrator.

[L.S.]

SCHEDULE

**1. Clause 24. – Removal Allowance: Delete subclauses (1)(c) and (d) of this clause and insert the following in lieu thereof:**

1. (c) An allowance of \$532.00 for accelerated depreciation and extra wear and tear on furniture, effects and appliances for each occasion that an employee is required to transport furniture, effects and appliances. Provided that the employer is satisfied that the value of household furniture, effects and appliances moved by the employee is at least \$3,188.00.

(d) Reimbursement of reasonable expenses in kennelling and transporting of domestic pet or pets up to a maximum amount of \$181.00.

Pets are defined as dogs, cats, birds or other domestic animals kept by the employee or the employee's dependants for the purpose of household enjoyment.

Pets do not include domesticated livestock, native animals or equine animals.

**2. Clause 24. – Removal Allowance: Delete subclause (6) of this clause and insert the following in lieu thereof:**

(6) Where an employee is transferred to Government owned or private rental accommodation, where furniture is provided, and as a consequence the employee is obliged to store furniture, the employee shall be reimbursed the actual cost of such storage up to a maximum allowance of \$989.00 per annum. Actual cost is deemed to include the premium for adequate insurance coverage of the value of the furniture stored. An allowance under this subclause shall not be paid for a period in excess of four (4) years without the approval of the employer.

**3. Clause 22. – Motor Vehicle Allowance: Delete subclause (5) of this clause and insert the following in lieu thereof:**

(5) Allowance for towing the employer's caravan or trailer.

In cases where employees are required to tow the employer's caravans on official business, the additional rate shall be 7.5 cents per kilometer. When the employer's trailers are towed on official business the additional rate shall be 4.5 cents per kilometer.

2008 WAIRC 01613

**EDUCATION DEPARTMENT MINISTERIAL OFFICERS SALARIES ALLOWANCES AND CONDITIONS AWARD  
1983 NO 5 OF 1983**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA (INCORPORATED)

**APPLICANT**

-v-

DEPARTMENT OF EDUCATION AND TRAINING

**RESPONDENT**

**CORAM**

PUBLIC SERVICE ARBITRATOR

COMMISSIONER P E SCOTT

**DATE**

MONDAY, 17 NOVEMBER 2008

**FILE NO**

P 27 OF 2008

**CITATION NO.**

2008 WAIRC 01613

**Result**

Award varied

*Order*

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia (Incorporated) and Mr A Harper as agent for the respondent, and by consent, the Public Service Arbitrator, pursuant to the powers conferred under the Industrial Relations Act 1979, hereby orders:

THAT the Education Department Ministerial Officers Salaries Allowances and Conditions Award 1983 No 5 of 1983 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 7<sup>th</sup> day of November 2008.

[L.S.]

(Sgd.) P E SCOTT,  
Commissioner,  
Public Service Arbitrator.

SCHEDULE

1. **Clause 40. – Relieving Allowance: Delete subclause (4) of this clause and insert the following in lieu thereof:**
  - (4) If an officer whose normal duties do not involve camp accommodation is required to relieve or perform special duty resulting in a stay at a camp, the officer shall be paid camping allowance for the duration of the period spent in camp, and in addition, shall be paid a lump sum of \$170.00 to cover incidental personal expenses: Provided that an officer shall receive no more than one lump sum of \$170.00 in any one period of three (3) years.
2. **Clause 41. – Removal Allowance: Delete subclause (1)(c) and (d) of this clause and insert the following in lieu thereof:**
  - (c) An allowance of \$532.00 for accelerated depreciation and extra wear and tear on furniture, effects and appliances for each occasion that an officer is required to transport his or her furniture, effects and appliances provided that the Employer is satisfied that the value of household furniture, effects and appliances moved by the officer is at least \$3,188.00.
  - (d) Reimbursement of reasonable expenses in kennelling and transporting of domestic pet or pets up to a maximum amount of \$181.00.  
  
 Pets are defined as dogs, cats, birds or other domestic animals kept by the officer or the officer's dependents for the purpose of household enjoyment.  
  
 Pets do not include domesticated livestock, native animals or equine animals.
3. **Clause 41.- Removal Allowance: Delete subclause (6) of this clause and insert the following in lieu thereof:**
  - (6) Where an officer is transferred to government owned or private rental accommodation, where furniture is provided, and as a consequence the officer is obliged to store furniture, the officer shall be reimbursed the actual cost of such storage up to a maximum allowance of \$989.00 per annum. Actual cost is deemed to include the premium for adequate insurance coverage for the value of the furniture stored. An allowance under this subclause shall not be paid for a period in excess of four years without the approval of the employer.

**4. SCHEDULE G. – Overtime Allowance: Delete PART II – MEALS of this schedule and insert the following in lieu therefore:**

**PART II - MEALS**

(Operative from first pay period commencing on and from 7 November 2008)

Breakfast	\$9.60 per meal
Lunch	\$11.80 per meal
Evening Meal	\$14.15 per meal
Supper	\$9.60 per meal

**5. Clause 37. – Motor Vehicle Allowance: Delete subclause (5) of this clause and insert the following in lieu thereof:**

(5) Allowance for towing Employer's caravan or trailer.

In case where officers are required to tow employer's caravans on official business, the additional rate shall be 7.5 cents per kilometre. When employer's trailers are towed on official business the additional rate shall be 4.5 cents per kilometre.

**2008 WAIRC 01699**

**EDUCATION DEPARTMENT MINISTERIAL OFFICERS SALARIES ALLOWANCES AND CONDITIONS AWARD  
1983 NO 5 OF 1983**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED AND  
ANOTHER

**APPLICANTS**

-v-

(NOT APPLICABLE)

**RESPONDENT**

**CORAM**

PUBLIC SERVICE ARBITRATOR  
COMMISSIONER P E SCOTT

**DATE**

MONDAY, 8 DECEMBER 2008

**FILE NO/S**

P 37 OF 2008

**CITATION NO.**

2008 WAIRC 01699

**Result**

Award varied

*Order*

HAVING heard Ms S Thomas on behalf of The Civil Service Association of Western Australia Incorporated and Ms A Young on behalf of the Director General, Department of Education and Training and by consent, the Public Service Arbitrator, pursuant to the powers conferred under the Industrial Relations Act 1979, hereby orders:

THAT the Education Department Ministerial Officers Salaries Allowances and Conditions Award 1983 No 5 of 1983 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 and from the 8<sup>th</sup> day of December 2008.

(Sgd.) P E SCOTT,  
Commissioner,  
Public Service Arbitrator.

[L.S.]

**SCHEDULE**

**1. Clause 2. – Arrangement:**

**A. Delete “23. Study Leave” and insert the following in lieu thereof:**

23. Study Assistance

**B. Delete “50. Establishment of Consultative Mechanisms” and insert the following in lieu thereof:**

50. Access to Information Resources

**C. Delete from “51. Salary Packaging Arrangement” to “56. Expired General Agreement Salaries” and insert the following in lieu thereof:**

51. Establishment of Consultative Mechanisms

52. Salary Packaging Arrangement

53. Supported Wage

54. Traineeships

55. Purchased Leave – Deferred Salary Arrangement

56. Dispute Settlement Procedure

57. Expired General Agreement Salaries

2. **Clause 23. – Study Leave: Delete the entire clause and insert the following in lieu thereof:**

23. – STUDY ASSISTANCE

- (1) (a) To ensure the maintenance of a trained public sector an employer may provide an officer with paid study leave and/or financial assistance for study purposes in accordance with the provisions of this clause.
- (b) Officers are not eligible for study assistance if they have previously received study assistance for an approved course from their employer. Further study assistance towards additional qualifications may, however, be granted in special cases, at the discretion of the employer.
- (2) Study Leave
- (a) An officer may be granted time off with pay for study purposes at the discretion of the employer.
- (b) In every case the approval of time off to attend lectures and tutorials will be subject to:
- (i) agency convenience;
  - (ii) officers undertaking an acceptable formal study load in their own time;
  - (iii) officers making satisfactory progress with their studies;
  - (iv) the course being an approved course as defined by subclause (5) of this clause;
  - (v) the course being of value to the agency; and
  - (vi) the employer's discretion when the course is only relevant to the officer's career in the service and being of value to the State.
- (c) Part-time officers are entitled to study leave on the same basis as full time officers, with their entitlement calculated on a pro rata basis. Officers working shift work or on fixed term contracts have the same access to study leave as all other officers.
- (d) Time off with pay may be granted up to a maximum of five hours per week including travelling time, where subjects of approved courses are available during normal working hours, or where approved study by correspondence is undertaken.
- (e) Officers who are obliged to attend educational institutions for compulsory block sessions may be granted time off with pay, including travelling time, up to the maximum annual amount allowed in subclause (2)(d) of this clause.
- (f) Where an officer is undertaking approved study via distance education and/or is not required to attend formal classes, an employer may allow the officer to access study leave up to the maximum annual amount allowed in subclause (2)(d) of this clause.
- (g) Officers shall be granted sufficient time off with pay to travel to and sit for the examinations of any approved course of study.
- (h) An acceptable part-time study load should be regarded as not less than five hours per week of formal tuition with at least half of the total formal study commitment being undertaken in the officer's own time, except in special cases such as where the officer is in the final year of study and requires less time to complete the course, or the officer is undertaking the recommended part-time year or stage and this does not entail five hours formal study.
- (i) In cases where officers are studying subjects which require fortnightly classes the weekly study load should be calculated by averaging over two weeks the total fortnightly commitment.
- (j) In agencies which are operating on flexi-time, time spent attending or travelling to or from formal classes for approved courses between 8.15 am and 4.30 pm, less the usual lunch break, and for which "time off" would usually be granted, is to be counted as credit time for the purpose of calculating total hours worked per week.
- (k) Travelling time returning home after lectures or tutorials is to be calculated as the excess time taken to travel home from such classes, compared with the time usually taken to travel home from the officer's normal place of work.
- (l) An officer shall not be granted more than five hours time off with pay per week except in exceptional circumstances where the employer may decide otherwise.
- (m) Time off with pay for those who have failed a unit or units may be considered for one repeat year only.
- (n) An officer performing service with the Australian Defence Force is not entitled to study leave for any period of service with the Australian Defence Force that they receive defence force reserves leave as provided for by clause 32 – Defence Force Reserves Leave.
- (o) A service agreement or bond will not be required.
- (3) Financial Assistance
- (a) An employer may reimburse an officer for the full or any part of any reasonable cost of enrolment fees, Higher Education Contribution Surcharge, compulsory textbooks, compulsory computer software and other necessary study materials for studies commenced during their employment.

- (b) Half of the value of the agreed costs shall be reimbursed immediately following production of written evidence of enrolment and costs incurred, and the remaining half shall be reimbursed following production of written evidence of successful completion of the subject for which reimbursement has been claimed.
  - (c) The employer and officer may agree to alternative reimbursement arrangements.
- (4) Cadets and Trainees
- (a) Agencies are to meet the payment of higher education administrative charges for cadets and trainees who, as a condition of their employment, are required to undertake studies at a university or college of advanced education. Officers who of their own volition attend such institutions to gain higher qualifications will be responsible for the payment of fees.
  - (b) This assistance does not include the cost of textbooks or Guild and Society fees.
  - (c) An officer who is required to repeat a full academic year of the course will be responsible for payment of the higher education fees for that particular year.
- (5) Approved Courses for Study Purposes
- (a) For the purposes of subclauses (2) and (3) of this clause, the following are approved courses:
    - (i) Degree or associate diploma courses at a university within Australia;
    - (ii) Degree or diploma courses at an authorised non-university institution;
    - (iii) Diploma courses provided by registered training organisations, including TAFE;
    - (iv) Two-year full time certificate courses provided by registered training organisations, including TAFE;
    - (v) Courses recognised by the National Authority for the Accreditation of translators and Interpreters (NAATI) in a language relevant to the needs of the public sector; and
    - (vi) Secondary courses leading to the Tertiary Entrance Examination or courses preparing students for the mature age entrance conducted by the Tertiary Institutions Service Centre.
  - (b) For the purposes of subclause (5)(a) of this clause:
    - (i) The term 'university' includes recognised Australian universities and recognised overseas universities as defined by the *Higher Education Act 2004 (WA)*;
    - (ii) An authorised non-university institution is a non-university institution that is authorised under the *Higher Education Act 2004 (WA)* to provide a higher education course; and
    - (iii) A registered training organisation is an organisation that is registered with the Training Accreditation Council or equivalent registering authority and complies with the nationally agreed standards set out in the Australian Quality Training Framework (AQTF).
  - (c) An officer who has completed a diploma through TAFE is eligible for study assistance to undertake a degree course at a university within Australia or an authorised non-university institution.
  - (d) An officer who has completed a two year full time certificate through TAFE is eligible for study assistance to undertake a diploma course specified in subclause (5)(a)(iii) of this clause or a degree or diploma course specified in subclauses (5)(a)(i) or (ii) of this clause.
- (6) Full Time Study
- (a) Subject to the provisions of subclause (6)(b) of this clause, the employer may grant an officer full time study leave with pay to undertake:
    - (i) post graduate degree studies at Australian or overseas tertiary education institutions; or
    - (ii) study tours involving observations and/or investigations; or
    - (iii) a combination of postgraduate studies and study tour.
  - (b) Applications for full time study leave with pay are to be considered on their merits and may be granted provided that the following conditions are met:
    - (i) The course or a similar course is not available locally. Where the course of study is available locally, applications are to be considered in accordance with the provisions of subclauses (2) and (5) of this clause and clause 22 – Leave Without Pay.
    - (ii) It must be a highly specialised course with direct relevance to the officer's profession.
    - (iii) It must be highly relevant to the agency's corporate strategies and goals.
    - (iv) The expertise or specialisation offered by the course of study should not already be available through other officers employed within the agency.
    - (v) If the applicant was previously granted study leave, studies must have been successfully completed at that time. Where an officer is still under a bond, this does not preclude approval being granted to take further study leave if all the necessary criteria are met.
    - (vi) A fixed term contract officer may not be granted study leave with pay for any period beyond that officer's approved period of engagement.



- (c) Full time study leave with pay may be approved for more than 12 months subject to a yearly review of satisfactory performance.
- (d) Where an outside award is granted and the studies to be undertaken are considered highly desirable by an employer, financial assistance to the extent of the difference between the officer’s normal salary and the value of the award may be considered. Where no outside award is granted and where a request meets all the necessary criteria then part of full payment of salary may be approved at the discretion of the employer.
- (e) The employer supports recipients of coveted awards and fellowships by providing study leave with pay. Recipients normally receive as part of the award or fellowship; return airfares, payment of fees, allowance for books, accommodation or a contribution towards accommodation.
- (f) Where recipients are in receipt of a living allowance, this amount should be deducted from the officer’s salary for that period.
- (g) Where the employer approves full time study leave with pay the actual salary contribution forms part of the agency’s approved average staffing level funding allocation. Employers should bear this in mind if considering temporary relief.
- (h) Where study leave with pay is approved and the employer also supports the payment of transit costs and/or an accommodation allowance, the employer will gain approval for the transit and accommodation costs as required.
- (i) Where officers travelling overseas at their own expense wish to participate in a study tour or convention whilst on tour, study leave with pay may be approved by the employer together with some local transit and accommodation expenses providing it meets the requirements of subclause (6)(b) of this clause. Each case is to be considered on its merits.
- (j) The period of full time study leave with pay is accepted as qualifying service for leave entitlements and other privileges and conditions of service prescribed for officers under the Award.

**3. Clause 25. – Bereavement Leave: Immediately following subclause (5) of this clause insert a new subclause as per the following:**

- (6) Travelling Time for Regional Employees
  - (a) Subject to prior approval from the employer, an employee entitled to bereavement leave and who, as a result of such bereavement, travels to a location within Western Australia that is more than 240 km from their workplace will be granted paid time off for the travel period undertaken in the employee’s ordinary working hours up to a maximum of 15 hours per bereavement. The employer will not unreasonably withhold approval.
  - (b) The employer may approve additional paid travel time within Western Australia where the employee can demonstrate to the satisfaction of the employer that more than two days travel time is warranted.
  - (c) The provisions of clause 25(6) are not available to employees whilst on leave without pay or sick leave without pay.
  - (d) The provisions of clauses 25(6)(a) and (b) apply as follows:
    - (i) An employee employed on a fixed term contract for a period greater than 12 months, shall be credited with the same entitlement as a permanent employee for each full year of service and pro rata for any residual portion of employment.
    - (ii) An employee employed on a fixed term contract for a period less than 12 months shall be credited with the same entitlement on a pro rata basis for the period of employment.
    - (iii) A part time employee shall be entitled to the same entitlement as a full time employee for the period of employment, but on a pro rata basis according to the number of ordinary hours worked each fortnight.
    - (iv) For casual employees, the provisions apply to the extent of their agreed working arrangements.

**4. Clause 35. – District Allowance:**

**A. Immediately following subclause (4) of this clause insert a new subclause as per the following:**

(5) Casual Officers

District Allowance is payable to casual employees on an hourly rate basis in accordance with the following formula:

Appropriate Annual District Allowance

$$\frac{\text{Rate}}{1} \times \frac{12}{313} \times \frac{1}{75}$$

**B. Renumber existing subclause “(5) Adjustment of Rates” to subclause (6).**

5. **Clause 41. – Removal Allowance: Delete the entire clause and insert the following in lieu thereof:**

41. – REMOVAL ALLOWANCE

- (1) When an employee is transferred in the public interest, or in the ordinary course of promotion or transfer, or on account of illness due to causes over which the employee has no control, the employee shall be reimbursed:
- (a) The actual reasonable cost of conveyance of the employee and dependants.
  - (b) The actual cost (including insurance) of the conveyance of an employee's household furniture effects and appliances up to a maximum volume of 45 cubic metres provided that a larger volume may be approved by the employer in special cases.
  - (c) An allowance of \$532.00 for accelerated depreciation and extra wear and tear on furniture, effects and appliances for each occasion that an employee is required to transport their furniture, effects and appliances provided that the employer is satisfied that the value of household furniture, effects and appliances moved by the employee is at least \$3,188.00.
  - (d) Reimbursement of reasonable expenses in kennelling and transporting of domestic pet or pets up to a maximum amount of \$181.00.  
Pets are defined as dogs, cats, birds or other domestic animals kept by the employee or the employee's dependants for the purpose of household enjoyment.  
Pets do not include domesticated livestock, native animals or equine animals.
- (2) An employee who is transferred solely at their own request or on account of misconduct must bear the whole cost of removal unless otherwise determined by the employer prior to removal.
- (3) An employee shall be reimbursed the full freight charges necessarily incurred in respect of the removal of the employee's motor vehicle. If authorised by the employer to travel to a new locality in the employee's own motor vehicle, reimbursement shall be as follows:
- (a) Where the employee will be required to maintain a motor vehicle for use on official business at the new headquarters, reimbursement for the distance necessarily travelled shall be on the basis of the appropriate rate prescribed by subclause (2) of Clause 37 - Motor Vehicle Allowance.
  - (b) Where the employee will not be required to maintain a motor vehicle for use on official business at the new headquarters reimbursement for the distance necessarily travelled shall be on the basis of one half (½) of the appropriate rate prescribed by subclause (3) of clause 37 - Motor Vehicle Allowance.
  - (c) Where an employee or their dependants have more than one vehicle, and all the vehicles are to be relocated to the new residence, the cost of transporting or driving up to two vehicles shall be deemed to be part of the removal costs.
  - (d) Where only one vehicle is to be relocated to the new residence, the employee may choose to transport a trailer, boat or caravan in lieu of the second vehicle. The employee may be required to show evidence of ownership of the trailer, boat or caravan to be transported.
  - (e) If the employee tows the caravan, trailer or boat to the new residence, the additional rate per kilometre is to be 3.5 cents per kilometre for a caravan or boat and 2.0 cents per kilometre for a trailer.
- (4) The employee shall, before removal is undertaken obtain quotes from at least two carriers which shall be submitted to the employer, who may authorise the acceptance of the more suitable: Provided that payment for a volume amount beyond 45 cubic metres shall not occur without the prior written approval of the employer.
- (5) The employer may, in lieu of conveyance, authorise payment to compensate for any loss in any case where an employee, with prior approval of the employer, disposes of their household furniture effects and appliances instead of removing them to the new headquarters: Provided that such payments shall not exceed the sum which would have been paid if the employee's household furniture effects and appliances had been removed by the cheapest method of transport available and the volume was 45 cubic metres.
- (6) Where an employee is transferred to government owned or private rental accommodation, where furniture is provided, and as a consequence the employee is obliged to store furniture, the employee shall be reimbursed the actual cost of such storage up to a maximum allowance of \$989.00 per annum. Actual cost is deemed to include the premium for adequate insurance coverage for the value of the furniture stored. An allowance under this subclause shall not be paid for a period in excess of four years without the approval of the employer.
- (7) Receipts must be produced for all sums claimed.
- (8) New appointees shall be entitled to receive the benefits of this clause if they are required by the employer to participate in any training course prior to being posted to their respective positions in the service. This entitlement shall only be available to employees who have completed their training and who incur costs when moving to their first posting.
- (9) An employer may agree to provide removal assistance greater than specified in this award and if in that event that the employee to whom the benefit is granted elects to leave the position, on a permanent basis, within twelve months, the employer may require the employee to repay the additional removal assistance on a pro rata basis. Repayment can be deducted from any monies due to the employee.

- (10) For the purposes of subclause (9) of this clause, “elects to leave the position,” means the employee freely chooses to leave the position in the ordinary course of promotion, transfer or resignation and this necessitates the employer obtaining a replacement employee.

**6. Clause 50. – Access to Information and Resources: Immediately following clause 49 insert a new clause as per the following:**

50. – ACCESS TO INFORMATION AND RESOURCES

- (1) The parties recognise that information technology resources have major implications for industrial and human resource functions within the workplace.
- (2) The employer recognises the need to provide appropriate information to all employees, so it is accessible in the workplace in either electronic or hard copy format.
- (3) Where the employer utilises information technology as the means of communicating to employees, the employer must ensure that where employees do not have access to technology, then alternative methods of providing this information will be used.
- (4) The information includes, but is not limited to policies and practice guidelines, human resource manuals, awards and agreements, internal agency news bulletins and updates and job opportunities.

**7. Clause 50. – Establishment of Consultative Mechanisms: Delete the clause title of this clause and insert the following in lieu thereof:**

51. – ESTABLISHMENT OF CONSULTATIVE MECHANISMS

**8. Clause 51. – Salary Packaging Arrangements: Delete the clause title of this clause and insert the following in lieu thereof:**

52. – SALARY PACKAGING ARRANGEMENT

**9. Clause 52. – Supported Wage: Delete the clause title of this clause and insert the following in lieu thereof:**

53. – SUPPORTED WAGE

**10. Clause 53. – Traineeships: Delete the clause title of this clause and insert the following in lieu thereof:**

54. – TRAINEESHIPS

**11. Clause 54. – Purchased Leave – Deferred Salary Arrangement: Delete the clause title of this clause and insert the following in lieu thereof:**

55. – PURCHASED LEAVE – DEFERRED SALARY ARRANGEMENT

**12. Clause 55. – Dispute Settlement Procedure: Delete the clause title of this clause and insert the following in lieu thereof:**

56. – DISPUTE SETTLEMENT PROCEDURE

**13. Clause 56. – Expired General Agreement Salaries: Delete the clause title of this clause and insert the following in lieu thereof:**

57. – EXPIRED GENERAL AGREEMENT SALARIES

2008 WAIRC 01609

**ELECTORATE OFFICERS AWARD 1986**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA (INCORPORATED)

**APPLICANT**

-v-

THE HONOURABLE SPEAKER OF THE LEGISLATIVE ASSEMBLY, THE HONOURABLE  
PRESIDENT OF THE LEGISLATIVE COUNCIL

**RESPONDENTS**

**CORAM**

PUBLIC SERVICE ARBITRATOR

COMMISSIONER P E SCOTT

**DATE**

MONDAY, 17 NOVEMBER 2008

**FILE NO**

P 23 OF 2008

**CITATION NO.**

2008 WAIRC 01609

---

**Result** Award varied

---

*Order*

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Mr A Harper as agent for the respondents, and by consent, the Public Service Arbitrator, pursuant to the powers conferred under the Industrial Relations Act 1979, hereby orders:

THAT the Electorate Officers Award 1986, No. A 18 of 1986 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 7<sup>th</sup> day of November 2008.

[L.S.]

(Sgd.) P E SCOTT,  
Commissioner,  
Public Service Arbitrator.

SCHEDULE

1. **Clause 38. – Removal Allowance: Delete subclause (1)(c) and (d) of this clause and insert the following in lieu thereof:**
  - (1) (c) An allowance of \$532.00 for accelerated depreciation and extra wear and tear on furniture, effects and appliances for each occasion that an employee is required to transport their furniture, effects and appliances provided that the employer is satisfied that the value of household furniture, effects and appliances moved by the employee is at least \$3,188.00.
  - (d) Reimbursement of reasonable expenses in kennelling and transporting of domestic pet or pets up to a maximum amount of \$181.00.  
  
Pets are defined as dogs, cats, birds or other domestic animals kept by the employee or the employee's dependants for the purpose of household enjoyment.  
  
Pets do not include domesticated livestock, native animals or equine animals.
2. **Clause 38. – Removal Allowance: Delete subclause (6) of this clause and insert the following in lieu thereof:**
  - (6) Where an employee is transferred to government owned or private rental accommodation, where furniture is provided, and as a consequence the employee is obliged to store furniture, the employee shall be reimbursed the actual cost of such storage up to a maximum allowance of \$989.00 per annum. Actual cost is deemed to include the premium for adequate insurance coverage for the value of the furniture stored. An allowance under this subclause shall not be paid for a period in excess of four years without the approval of the employer.
3. **Clause 36. – Motor Vehicle Allowance : Delete subclause (5) of this clause and insert the following in lieu thereof:**
  - (5) Allowance for towing Electorate Office caravan or trailer.  
  
In case where employees are required to tow Electorate Office caravans on official business, the additional rate shall be 7.5 cents per kilometre. When Electorate Office trailers are towed on official business the additional rate shall be 4.5 cents per kilometre.

**2008 WAIRC 01612**

**GOVERNMENT OFFICERS SALARIES, ALLOWANCES AND CONDITIONS AWARD 1989**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA (INCORPORATED)

**APPLICANT**

-v-

ANIMAL RESOURCES AUTHORITY AND OTHERS

**RESPONDENTS**

**CORAM**

PUBLIC SERVICE ARBITRATOR

COMMISSIONER P E SCOTT

**DATE**

MONDAY, 17 NOVEMBER 2008

**FILE NO**

P 26 OF 2008

**CITATION NO.**

2008 WAIRC 01612

---

**Result**

Award varied

---

*Order*

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia (Incorporated) and Mr A Harper as agent for the respondents, and by consent, the Public Service Arbitrator, pursuant to the powers conferred under the Industrial Relations Act 1979, hereby orders:

THAT the Government Officers Salaries, Allowances and Conditions Award 1989, No. PSAA 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 7<sup>th</sup> day of November 2008.

(Sgd.) P E SCOTT,  
Commissioner,  
Public Service Arbitrator.

[L.S.]

## SCHEDULE

1. **Clause 49. – Relieving Allowance: Delete subclause (1)(d) of this clause and insert the following in lieu thereof:**
  - (d) If an officer whose normal duties do not involve camp accommodation is required to relieve or perform special duty resulting in a stay at a camp, the officer shall be paid camping allowance for the duration of the period spent in camp, and in addition, shall be paid a lump sum of \$170.00 to cover incidental personal expenses: Provided that an officer shall receive no more than one lump sum of \$170.00 in any one period of three (3) years.
2. **Clause 50. – Removal Allowance: Delete subclause (1)(c) and (d) of this clause and insert the following in lieu thereof:**
  - (c) An allowance of \$532.00 for accelerated depreciation and extra wear and tear on furniture, effects and appliances for each occasion that an employee is required to transport their furniture, effects and appliances provided that the employer is satisfied that the value of household furniture, effects and appliances moved by the employee is at least \$3,188.00.
  - (d) Reimbursement of reasonable expenses in kennelling and transporting of domestic pet or pets up to a maximum amount of \$181.00.
    - Pets are defined as dogs, cats, birds or other domestic animals kept by the employee or the employee's dependants for the purpose of household enjoyment.
    - Pets do not include domesticated livestock, native animals or equine animals.
3. **Clause 50.- Removal Allowance: Delete subclause (6) of this clause and insert the following in lieu thereof:**
  - (6) Where an employee is transferred to government owned or private rental accommodation, where furniture is provided, and as a consequence the employee is obliged to store furniture, the employee shall be reimbursed the actual cost of such storage up to a maximum allowance of \$989.00 per annum. Actual cost is deemed to include the premium for adequate insurance coverage for the value of the furniture stored. An allowance under this subclause shall not be paid for a period in excess of four years without the approval of the employer.
4. **SCHEDULE I. – Overtime Allowance: Delete PART II – MEALS of this schedule and insert the following in lieu thereof:**

## PART II - MEALS

(Operative from the first pay period commencing on or from 7 November 2008)

Breakfast	\$9.60 per meal
Lunch	\$11.80 per meal
Evening Meal	\$14.15 per meal

5. **SCHEDULE O. – Annual Interstate Allowance Rates: Delete this schedule and insert the following in lieu thereof:**

## ANNUAL INTERSTATE ALLOWANCE RATES

(Operative from the first pay period commencing on or from 7 November 2008)

	Single	With Dependents
	\$	\$
Adelaide	\$2,584	\$3,521
Brisbane	\$2,819	\$3,761
Melbourne	\$2,889	\$4,272
Sydney	\$4,429	\$5,291

6. **Clause 46. – Motor Vehicle Allowance: Delete subclause (5) of this clause and insert the following in lieu thereof:**

- (5) Allowance for towing employer's caravan or trailer.

In cases where officers are required to tow the employer's caravans on official business, the additional rate shall be 7.5 cents per kilometre. When the employer's trailers are towed on official business the additional rate shall be 4.5 cents per kilometre.

2008 WAIRC 01614

**GOVERNMENT OFFICERS (SOCIAL TRAINERS) AWARD 1988**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA (INCORPORATED)

**APPLICANT**

-v-

DISABILITY SERVICES COMMISSION

**RESPONDENT****CORAM**

PUBLIC SERVICE ARBITRATOR

COMMISSIONER P E SCOTT

**DATE**

MONDAY, 17 NOVEMBER 2008

**FILE NO**

P 28 OF 2008

**CITATION NO.**

2008 WAIRC 01614

**Result**

Award varied

*Order*

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia (Incorporated) and Mr A Harper as agent for the respondent, and by consent, the Public Service Arbitrator, pursuant to the powers conferred under the Industrial Relations Act 1979, hereby orders:

THAT the Government Officers (Social Trainers) Award 1988, No. PSAA 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 7<sup>th</sup> day of November 2008.

(Sgd.) P E SCOTT,  
Commissioner,  
Public Service Arbitrator.

[L.S.]

## SCHEDULE

1. **Clause 45. – Relieving Allowance: Delete subclause (4) of this clause and insert the following in lieu thereof:**
  - (4) If an employee whose normal duties do not involve camp accommodation is required to relieve or perform special duty resulting in a stay at a camp, the employee shall be paid camping allowance for the duration of the period spent in camp, and in addition, shall be paid a lump sum of \$170.00 to cover incidental personal expenses: Provided that an employee shall receive no more than one lump sum of \$170.00 in any one period of three (3) years.
2. **Clause 46. – Removal Allowance: Delete subclause (1)(c) and (d) of this clause and insert the following in lieu thereof:**
  - (c) An allowance of \$532.00 for accelerated depreciation and extra wear and tear on furniture, effects and appliances for each occasion that an employee is required to transport his or her furniture, effects and appliances provided that the Employer is satisfied that the value of household furniture, effects and appliances moved by the employee is at least \$3,188.00.
  - (d) Reimbursement of reasonable expenses in kennelling and transporting of domestic pet or pets up to a maximum amount of \$181.00.  
  
Pets are defined as dogs, cats, birds or other domestic animals kept by the employee or the employee's dependents for the purpose of household enjoyment.  
  
Pets do not include domesticated livestock, native animals or equine animals.
3. **Clause 46.- Removal Allowance: Delete subclause (6) of this clause and insert the following in lieu thereof:**
  - (6) Where an employee is transferred to government owned or private rental accommodation, where furniture is provided, and as a consequence the employee is obliged to store furniture, the employee shall be reimbursed the actual cost of such storage up to a maximum allowance of \$989.00 per annum. Actual cost is deemed to include the premium for adequate insurance coverage for the value of the furniture stored. An allowance under this subclause shall not be paid for a period in excess of four years without the approval of the Employer.

**4. SCHEDULE E. – Overtime Allowance: Delete PART II – MEALS of this schedule and insert the following in lieu therefore:**

PART II - MEALS

(Operative from first pay period commencing on and from 7 November 2008)

Breakfast	\$9.60 per meal
Lunch	\$11.80 per meal
Evening Meal	\$14.15 per meal

**5. Clause 42. – Motor Vehicle Allowance: Delete subclause (5) of this clause and insert the following in lieu thereof:**

(5) Allowance for Towing the Employer's Caravan or Trailer

In the case where employees are required to tow the Employer's caravans on official business, the additional rate shall be 7.5 cents per kilometre. When the Employer's trailers are towed on official business the additional rate shall be 4.5 cents per kilometre.

**2008 WAIRC 01615**

**GOVERNMENT OFFICERS (STATE GOVERNMENT INSURANCE COMMISSION) AWARD, 1987**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA (INCORPORATED)

**APPLICANT**

-v-

INSURANCE COMMISSION OF WESTERN AUSTRALIA

**RESPONDENT**

**CORAM**

PUBLIC SERVICE ARBITRATOR

COMMISSIONER P E SCOTT

**DATE**

MONDAY, 17 NOVEMBER 2008

**FILE NO**

P 29 OF 2008

**CITATION NO.**

2008 WAIRC 01615

**Result**

Award varied

*Order*

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia (Incorporated) and Mr A Harper as agent for the respondent, and by consent, the Public Service Arbitrator, pursuant to the powers conferred under the Industrial Relations Act 1979, hereby orders:

THAT the Government Officers (State Government Insurance Commission) Award, 1987, No. PSAA 21 of 1986 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 7<sup>th</sup> day of November 2008.

(Sgd.) P E SCOTT,  
Commissioner,  
Public Service Arbitrator.

[L.S.]

**SCHEDULE**

**3. SCHEDULE C. – Overtime Allowance: Delete PART II – MEALS of this schedule and insert the following in lieu therefore:**

PART II - MEALS

(Operative from first pay period commencing on and from 7 November 2008)

Breakfast	\$9.60 per meal
Lunch	\$11.80 per meal
Evening Meal	\$14.15 per meal
Supper	\$9.60 per meal

2008 WAIRC 01611

**GRAYLANDS SELBY-LEMNOS AND SPECIAL CARE HEALTH SERVICES AWARD 1999**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA (INCORPORATED)

**APPLICANT**

-v-

THE METROPOLITAN HEALTH SERVICE BOARD, THE HEALTH SERVICES UNION OF  
WESTERN AUSTRALIA (UNION OF WORKERS)**RESPONDENTS****CORAM**

PUBLIC SERVICE ARBITRATOR

COMMISSIONER P E SCOTT

**DATE**

MONDAY, 17 NOVEMBER 2008

**FILE NO**

P 25 OF 2008

**CITATION NO.**

2008 WAIRC 01611

**Result**

Award varied

*Order*

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia (Incorporated), Mr A Harper on behalf of The Metropolitan Health Service Board and Ms R McFarlane on behalf of The Health Services Union of Western Australia (Union of Workers), and by consent, the Public Service Arbitrator, pursuant to the powers conferred under the Industrial Relations Act 1979, hereby orders:

THAT the Graylands Selby-Lemnos and Special Care Health Services Award 1999, No. PSAA 1 of 1999 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 7<sup>th</sup> day of November 2008.

(Sgd.) P E SCOTT,  
Commissioner,  
Public Service Arbitrator.

[L.S.]

## SCHEDULE

1. **Clause 38. – Relieving Allowance: Delete subclause (4) of this clause and insert the following in lieu thereof:**
  - (4) If an officer whose normal duties do not involve camp accommodation is required to relieve or perform special duty resulting in a stay at a camp, the officer shall be paid camping allowance for the duration of the period spent in camp, and in addition, shall be paid a lump sum of \$170.00 to cover incidental personal expenses: Provided that an officer shall receive no more than one lump sum of \$170.00 in any one period of three (3) years.
2. **Clause 39. – Removal Allowance: Delete subclause (1)(c) and (d) of this clause and insert the following in lieu thereof:**
  - (c) An allowance of \$532.00 for accelerated depreciation and extra wear and tear on furniture, effects and appliances for each occasion that an officer is required to transport his or her furniture, effects and appliances provided that the Employer is satisfied that the value of household furniture, effects and appliances moved by the officer is at least \$3,188.00
  - (d) Reimbursement of reasonable expenses in kennelling and transporting of domestic pet or pets up to a maximum amount of \$181.00.  
  
Pets are defined as dogs, cats, birds or other domestic animals kept by the officer or the officer's dependants for the purpose of household enjoyment.  
  
Pets do not include domesticated livestock, native animals nor equine animals.
3. **Clause 39. – Removal Allowance: Delete subclause (6) of this clause and insert the following in lieu thereof:**
  - (6) Where an officer is transferred to government owned or private rental accommodation, where furniture is provided, and as a consequence the officer is obliged to store furniture, the officer shall be reimbursed the actual cost of such storage up to a maximum allowance of \$989.00 per annum. Actual cost is deemed to include the premium for adequate insurance coverage for the value of the furniture stored. An allowance under this subclause shall not be paid for a period in excess of four years without the approval of the employer.
4. **SCHEDULE H. – OVERTIME ALLOWANCE: Delete PART II – MEALS of this schedule and insert the following in lieu therefore:**

## PART II - MEALS

(Operative from the first pay period commencing on or from 7 November 2008)



Breakfast	\$9.60 per meal
Lunch	\$11.80 per meal
Evening Meal	\$14.15 per meal
Supper	\$9.60 per meal

The allowances prescribed in this schedule shall apply from the dates indicated and shall be varied in accordance with any movement in the equivalent allowances in the Public Service Award 1992.

**5.. Clause 35. – Motor Vehicle Allowance: Delete subclause (5) of this clause and insert the following in lieu thereof:**

(5) Allowance for towing Departmental caravan or trailer.

In case where officers are required to tow departmental caravans on official business, the additional rate shall be 7.5 cents per kilometre. When departmental trailers are towed on official business the additional rate shall be 4.5 cents per kilometre.

2008 WAIRC 01606

**INSTITUTION OFFICERS ALLOWANCES AND CONDITIONS AWARD 1977, NO. 3 OF 1977**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA (INCORPORATED)

**APPLICANT**

**-v-**

HONOURABLE MINISTER FOR FAMILY AND CHILDREN'S SERVICES AND ANOTHER

**RESPONDENTS**

**CORAM**

PUBLIC SERVICE ARBITRATOR

COMMISSIONER P E SCOTT

**DATE**

MONDAY, 17 NOVEMBER 2008

**FILE NO/S**

P 20 OF 2008

**CITATION NO.**

2008 WAIRC 01606

**Result**

Award varied

*Order*

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia (Incorporated) and Mr A Harper as agent for the respondents, and by consent, the Public Service Arbitrator, pursuant to the powers conferred under the Industrial Relations Act 1979, hereby orders:

THAT the Institution Officers Allowances and Conditions Award 1977, No. 3 of 1977 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 7<sup>th</sup> day of November 2008.

(Sgd.) P E SCOTT,  
Commissioner,  
Public Service Arbitrator.

[L.S.]

**SCHEDULE**

**1. Clause 40. – Relieving Allowance: Delete subclause (4) of this clause and insert the following in lieu thereof:**

(4) If an officer whose normal duties do not involve camp accommodation is required to relieve or perform special duty resulting in a stay at a camp, the officer shall be paid camping allowance for the duration of the period spent in camp, and in addition, shall be paid a lump sum of \$170.00 to cover incidental personal expenses: Provided that an officer shall receive no more than one lump sum of \$170.00 in any one period of three (3) years.

**2. Clause 41. – Removal Allowance: Delete subclauses (1)(c) and (d) of this clause and insert the following in lieu thereof:**

(1) (c) An allowance of \$532.00 for accelerated depreciation and extra wear and tear on furniture, effects and appliances for each occasion that an officer is required to transport his or her furniture, effects and appliances provided that the Employer is satisfied that the value of household furniture, effects and appliances moved by the officer is at least \$3,188.00.

(d) Reimbursement of reasonable expenses in kennelling and transporting of domestic pet or pets up to a maximum amount of \$181.00.

Pets are defined as dogs, cats, birds or other domestic animals kept by the officer or the officer's dependants for the purpose of household enjoyment.

Pets do not include domesticated livestock, native animals or equine animals.

**3. Clause 41. – Removal Allowance: Delete subclause (6) of this clause and insert the following in lieu thereof:**

- (6) Where an officer is transferred to government owned or private rental accommodation, where furniture is provided, and as a consequence the officer is obliged to store furniture, the officer shall be reimbursed the actual cost of such storage up to a maximum allowance of \$989.00 per annum. Actual cost is deemed to include the premium for adequate insurance coverage for the value of the furniture stored. An allowance under this subclause shall not be paid for a period in excess of four years without the approval of the Employer.

**4. Clause 37. – Motor Vehicle Allowance: Delete subclause (5) of this clause and insert the following in lieu thereof:**

- (5) Allowance for towing an Employer's caravan or trailer.

In case where officers are required to tow an Employer's caravans on official business, the additional rate shall be 7.5 cents per kilometre. When an Employer's trailers are towed on official business the additional rate shall be 4.5 cents per kilometre.

**2008 WAIRC 01610**

**PUBLIC SERVICE AWARD 1992**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA (INCORPORATED)

**APPLICANT**

-v-

DEPARTMENT OF INDIGENOUS AFFAIRS AND OTHERS

**RESPONDENTS**

**CORAM**

PUBLIC SERVICE ARBITRATOR

COMMISSIONER P E SCOTT

**DATE**

MONDAY, 17 NOVEMBER 2008

**FILE NO**

P 24 OF 2008

**CITATION NO.**

2008 WAIRC 01610

**Result**

Award varied

*Order*

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia (Incorporated) and Mr A Harper as agent for the respondents, and by consent, the Public Service Arbitrator, pursuant to the powers conferred under the Industrial Relations Act 1979, hereby orders:

THAT the Public Service Award 1992, No. PSAA 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 7<sup>th</sup> day of November 2008.

(Sgd.) P E SCOTT,  
Commissioner,  
Public Service Arbitrator.

[L.S.]

**SCHEDULE**

**1. Clause 50. – Relieving Allowance: Delete subclause (4) of this clause and insert the following in lieu thereof:**

- (4) If an officer whose normal duties do not involve camp accommodation is required to relieve or perform special duty resulting in a stay at a camp, the officer shall be paid camping allowance for the duration of the period spent in camp, and in addition, shall be paid a lump sum of \$170.00 to cover incidental personal expenses: Provided that an officer shall receive no more than one lump sum of \$170.00 in any one period of three (3) years.

**2. Clause 51. – Removal Allowance: Delete subclause (1)(c) and (d) of this clause and insert the following in lieu thereof:**

- (c) An allowance of \$532.00 for accelerated depreciation and extra wear and tear on furniture, effects and appliances for each occasion that an employee is required to transport their furniture, effects and appliances provided that the employer is satisfied that the value of household furniture, effects and appliances moved by the employee is at least \$3,188.00.

- (d) Reimbursement of reasonable expenses in kennelling and transporting of domestic pet or pets up to a maximum amount of \$181.00.

Pets are defined as dogs, cats, birds or other domestic animals kept by the employee or the employee's dependants for the purpose of household enjoyment.

Pets do not include domesticated livestock, native animals or equine animals.

**3. Clause 51. – Removal Allowance: Delete subclause (6) of this clause and insert the following in lieu thereof:**

- (6) Where an employee is transferred to government owned or private rental accommodation, where furniture is provided, and as a consequence the employee is obliged to store furniture, the employee shall be reimbursed the actual cost of such storage up to a maximum allowance of \$989.00 per annum. Actual cost is deemed to include the premium for adequate insurance coverage for the value of the furniture stored. An allowance under this subclause shall not be paid for a period in excess of four years without the approval of the employer.

**4. SCHEDULE H. – OVERTIME ALLOWANCE: Delete PART II – MEALS of this schedule and insert the following in lieu therefore:**

**PART II - MEALS**

(Operative from the first pay period commencing on or from 7 November 2008)

Breakfast	\$9.60 per meal
Lunch	\$11.80 per meal
Evening Meal	\$14.15 per meal
Supper	\$9.60 per meal

**4. Clause 47. – Motor Vehicle Allowance: Delete subclause (5) of this clause and insert the following in lieu thereof:**

- (5) Allowance for towing Departmental caravan or trailer

In case where officers are required to tow departmental caravans on official business, the additional rate shall be 7.5 cents per kilometre. When departmental trailers are towed on official business the additional rate shall be 4.5 cents per kilometre.

---

## AWARDS/AGREEMENTS—Variation of—

2008 WAIRC 01684

### BAKERS' (COUNTRY) AWARD NO. 18 OF 1977

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION, WESTERN AUSTRALIAN  
BRANCH

**APPLICANT**

-v-

ACME BAKERY AND OTHERS

**RESPONDENTS**

**CORAM** SENIOR COMMISSIONER J H SMITH

**DATE** WEDNESDAY, 3 DECEMBER 2008

**FILE NO/S** APPL 61 OF 2008

**CITATION NO.** 2008 WAIRC 01684

---

<b>Result</b>	Varied
<b>Representation</b>	
<b>Applicant</b>	Ms J O'Keefe
<b>Respondents</b>	No appearance

---

*Order*

HAVING heard Ms O'Keefe on behalf of the applicant and there being no appearance on behalf of the respondents, and by consent, the Commission pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders —

THAT the Bakers' (Country) Award No. 18 of 1977 be varied in accordance with the following schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 2 December 2008.

[L.S.]

(Sgd.) J H SMITH,  
Senior Commissioner.

## SCHEDULE

**1. Clause 8. – Wages: Delete both paragraphs (d) and both paragraphs (e) of subclause (1) of this clause and insert the following in lieu thereof:**

- (d) Foreperson: In addition to the total wage prescribed in this clause for a doughmaker, a foreperson shall be paid:
- |  |       |
|--|-------|
|  | \$    |
| (i) if placed in charge of less than four other employees (per week)             | 16.40 |
| (ii) if placed in charge of four but less than ten other employees (per week)    | 26.10 |
| (iii) if placed in charge of ten and not more than 20 other employees (per week) | 39.90 |
| (iv) if placed in charge of 20 or more other employees (per week)                | 54.40 |
- (e) Disability Allowance:  
In addition to the total wage prescribed in this subclause a disability allowance of \$7.00 per week shall be paid to doughmakers and single hand bakers.

2008 WAIRC 01674

**BUILDING MATERIALS MANUFACTURE (CSR LIMITED - WELSHPOOL WORKS) AWARD, 1982**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION, WESTERN AUSTRALIAN  
BRANCH**APPLICANT**

-v-

CSR LIMITED

**RESPONDENT**

**CORAM** COMMISSIONER S J KENNER  
**DATE** MONDAY, 1 DECEMBER 2008  
**FILE NO/S** APPL 45 OF 2008  
**CITATION NO.** 2008 WAIRC 01674

---

**Result** Award varied  
**Representation**  
**Applicant** Ms J O' Keefe  
**Respondent** No appearance

---

*Order*

HAVING heard Ms J O'Keefe on behalf of the applicant and there being no appearance on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders –

THAT the Building Materials Manufacture (CSR Limited – Welshpool Works) Award, 1982 (No. A 10 of 1982) be varied in accordance with the following schedule and that such variation shall have effect from the first pay period on or after the date of this order.

(Sgd.) S J KENNER,  
Commissioner.

[L.S.]

## SCHEDULE

**1. Clause 7 – Overtime: Delete subclause (9) of this clause and insert the following in lieu thereof:****(9) Meal Money:**

Where an employee has to work before the usual starting time or after the usual ceasing time for one and one-half hours or more, in either case, he/she shall be paid \$8.80 for a meal. Any employee required to work a further four hours' overtime shall be paid a further \$8.80.

If an employee pursuant to notice has provided a meal or meals and is not required to work overtime, he/she shall be paid \$8.70 for each meal provided.

**2. Clause 9 – Wages:****A. Delete paragraphs (b) and (c) of subclause (1) of this clause and insert the following in lieu thereof:**

- (b) Provided that an employee qualified Senior Hand Gyprock or Warehouse appointed as Shift Boss shall be paid an all purpose allowance of \$135.50 per week.

- (c) Provided further that a Shift Boss may appoint on a day to day basis and subject to work requirements, a Deputy Shift Boss who shall be paid a flat allowance of \$8.20 per shift.

**B. Delete subclauses (5) and (6) of this clause and insert the following in lieu thereof:**

- (5) First Aid Allowance:

An employee qualified to act as a first aid attendant and appointed to act as a first aid attendant in association with other work under this award shall be paid an allowance of \$16.10 per week.

- (6) Extra Rates:

- (a) Employees who are required to clean the forming machine drain and pit shall be paid a flat allowance of \$3.90 for each day when this work needs to be performed.
- (b) In addition to the rates set out in subclauses (1) and (2) of this clause any Products Handler who is appointed a leading hand shall receive a weekly allowance as follows:
- |                            |         |
|----------------------------|---------|
| not more than 10 employees | \$30.50 |
| more than 10 employees     | \$45.60 |

- 3. Clause 16 - General Conditions: Delete paragraph (g) of subclause (1) of this clause and insert the following in lieu thereof:**

- (g) An employee who is required to launder his work clothing in accordance with this clause shall be paid an allowance of \$4.00 per week.

2008 WAIRC 01635

**CHILD CARE (OUT OF SCHOOL CARE - PLAYLEADERS) AWARD**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION, WA BRANCH

**APPLICANT**

-v-

COMMUNICARE AND OTHERS

**RESPONDENT**

**CORAM**

COMMISSIONER J L HARRISON

**DATE**

THURSDAY, 20 NOVEMBER 2008

**FILE NO/S**

APPL 96 OF 2008

**CITATION NO.**

2008 WAIRC 01635

**Result**

Award varied

*Order*

HAVING heard Ms C Pullen on behalf of the applicant and there being no appearances on behalf of the respondents, the Commission, pursuant to the powers conferred under the *Industrial Relations Act, 1979*, hereby orders:

THAT the *Child Care (Out of School Care – Playleaders) Award (No A 13 of 1984)* be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 19 November 2008.

[L.S.]

(Sgd.) J L HARRISON,  
Commissioner.

SCHEDULE

- 1. Clause 6. – Hours of Work: Delete subclause (2)(c) of this clause and insert the following in lieu thereof:**

- (c) A day's work shall be worked in one "unbroken" shift provided that a shift shall not be deemed to be broken by the taking of meal breaks. Provided further that an employee may work a day's work in a "broken" shift in which case an additional payment of \$3.09 per day shall be paid to such worker who does not live in the locality of the work place.

- 2. Clause 7. – Meal Breaks and Allowances: Delete subclause (2) of this clause and insert the following in lieu thereof:**

- (2) Where any employee, without being notified on the previous day, has to continue working after the usual finishing time for more than two hours he or she shall be paid \$10.70 for a meal or be provided with a meal at the Centre.

**3. Clause 23. – Fares and Travelling Allowances: Delete subclause (2)(c) of this clause and insert the following in lieu thereof:**

- (c) A year for the purpose of this clause shall commence on the first day of July and end on the thirtieth day of June next following.

Rates of hire for use of employee's own vehicle on employer's business

Area Details	<u>Schedule 1 - Motor Vehicle Allowances</u>		
	Engine Displacement (in cubic centimetres)		
	Over 2600cc	Over 1600-2600cc	1600cc & under
	Rate per kilometre (cents)		
Metropolitan Area	88.4	76.9	68.0
South West Land Division	90.9	78.9	70.1
North of 23.5° South Latitude	99.7	86.9	77.4
Rest of the State	93.8	81.5	72.3

Distance travelled during a year on official business	<u>Schedule 2 - Motor Cycle Allowances</u>	
	Rate per kilometre (cents)	
All areas of the State	30.5	

Motor vehicles with rotary engines are to be included in the 1600-2600cc category

**2008 WAIRC 01634**

**CHILD CARE (SUBSIDISED CENTRES) AWARD**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION, WA BRANCH

**APPLICANT**

-v-

BASSENDAN DAY CARE CENTRE AND OTHERS

**RESPONDENT**

**CORAM** COMMISSIONER J L HARRISON  
**DATE** THURSDAY, 20 NOVEMBER 2008  
**FILE NO/S** APPL 90 OF 2008  
**CITATION NO.** 2008 WAIRC 01634

**Result** Award varied

*Order*

HAVING heard Ms C Pullen on behalf of the applicant and there being no appearances on behalf of the respondents, the Commission, pursuant to the powers conferred under the *Industrial Relations Act, 1979*, hereby orders:

THAT the *Child Care (Subsidised Centres) Award (No A 26 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 19 November 2008.

[L.S.]

(Sgd.) J L HARRISON,  
Commissioner.

SCHEDULE

**1. Clause 12A. – Fares and Travelling Allowances: Delete subclause (2)(c) of this clause and insert the following in lieu thereof:**

- (c) A year for the purpose of this clause shall commence on the 1<sup>st</sup> day of July and end on the 30<sup>th</sup> day of June next following.

Rates of hire for use of employee's own vehicle on employer's business

Area Details	<u>Schedule 1 - Motor Vehicle Allowances</u>		
	Engine Displacement (in cubic centimetres)		
	Over 2600cc	Over 1600cc - 2600cc	1600cc & Under
	Rate per kilometre (Cents)		
Metropolitan Area	88.4	76.8	68.0
South West Land Division	90.9	78.9	70.1

Schedule 1 - Motor Vehicle Allowances

Area Details	Engine Displacement (in cubic centimetres)		
	Over 2600cc	Over 1600cc - 2600cc	1600cc & Under
North of 23.5° South Latitude	99.7	86.9	77.4
Rest of the State	93.8	81.5	72.3

Schedule 2 - Motor Cycle Allowances

Distance travelled during a year on Official Business	Rate per Kilometre (Cents)
All areas of the State	30.5

Motor vehicles with rotary engines are to be included in the 1600-2600cc category

**2. Clause 22. – Meal Breaks and Allowances: Delete subclause (1) of this clause and insert the following in lieu thereof:**

- (1) Where an employee, without being notified on the previous day, is required to continue working after the usual ceasing time for two hours or more she/he shall be provided with a meal free of charge or be paid \$10.65 for such meal.

2008 WAIRC 01632

**CHILDREN'S SERVICES CONSENT AWARD 1984**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION

**APPLICANT**

-v-

WINTERFOLD CHILD CARE CENTRE INC AND OTHERS

**RESPONDENT**

**CORAM** COMMISSIONER J L HARRISON  
**DATE** THURSDAY, 20 NOVEMBER 2008  
**FILE NO/S** APPL 87 OF 2008  
**CITATION NO.** 2008 WAIRC 01632

---

**Result** Award varied

---

*Order*

HAVING heard Ms C Pullen on behalf of the applicant and there being no appearances on behalf of the respondents, the Commission, pursuant to the powers conferred under the *Industrial Relations Act, 1979*, hereby orders:

THAT the *Children's Services Consent Award 1984 (No A 1 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 19 November 2008.

[L.S.]

(Sgd.) J L HARRISON,  
Commissioner.

## SCHEDULE

**1. Clause 25. – Fares and Travelling Allowances: Delete subclause (2)(c) of this clause and insert the following in lieu thereof:**

- (c) A year for the purpose of this clause shall commence on the 1<sup>st</sup> day of July and end on the 30<sup>th</sup> day of June next following.

Rates of hire for use of employee's own vehicle on employer's business

Schedule 1 - Motor Vehicle Allowances

Area and Details	Engine Displacement (in cubic centimetres)		
	Over 2600cc	Over 1600-2600cc	1600cc & under
	Rate per kilometre (cents)		
Metropolitan Area	88.4	76.7	68.0
South West Land Division	90.9	78.9	70.1
North of 23.5 ° South Latitude	99.7	86.9	77.4
Rest of the State	93.9	81.5	72.3

Schedule 2 - Motor Cycle Allowances

Distance travelled during a year on official business  
All areas of the State

Rate per kilometre (cents)  
30.6

Motor vehicles with rotary engines are to be included in the 1600-2600cc category.

**2008 WAIRC 01594**

**CLEANERS AND CARETAKERS (GOVERNMENT) AWARD 1975**  
WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION

**PARTIES**

**APPLICANT**

-v-

HON PREMIER OF WESTERN AUSTRALIA AND OTHERS

**RESPONDENTS**

**CORAM** COMMISSIONER S WOOD  
**DATE** THURSDAY, 13 NOVEMBER 2008  
**FILE NO** APPL 51 OF 2008  
**CITATION NO.** 2008 WAIRC 01594

**Result** Award varied  
**Representation**  
**Applicant** Ms J O'Keefe  
**Respondents** Mr A Harper

*Order*

HAVING heard Ms J O'Keefe on behalf of the applicant and Mr A Harper on behalf of the respondents, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, and by consent, hereby orders:

THAT the Cleaners and Caretakers (Government) Award 1975 as varied, be further varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the date of this order.

(Sgd.) S WOOD,  
Commissioner.

[L.S.]

SCHEDULE

1. **Clause 3.2. – Overtime: Delete paragraph (a) of subclause 3.2.3 of this clause and insert the following in lieu thereof:**
  - 3.2.3 (a) Any employee who, without being notified the previous day, is required to continue working for more than one hour after the usual ceasing time shall be provided with a meal by the employer or be paid \$10.70 in lieu of the meal.
2. **Clause 5.1. – Special Rates and Provisions:**
  - A. **Delete paragraph (a) of subclause 5.1.1 of this clause and insert the following in lieu thereof:**
    - 5.1.1 (a) All employees called upon to clean closets connected with septic tanks or sewerage shall receive an allowance of 71 cents per closet per week.
  - B. **Delete subclause 5.1.2 of this clause and insert the following in lieu thereof:**
    - 5.1.2 Employees called upon outside the ordinary working hours to wash towels shall be paid \$4.35 per dozen for ordinary towels, and \$3.25 per dozen for dusters, hand towels and tea towels.
  - C. **Delete sub-paragraph (i) of paragraph (b) of subclause 5.1.4 of this clause and insert the following in lieu thereof:**
    - (b) (i) When window cleaning is done from a ladder and any portion of a window to be cleaned is more than seven metres from the nearest horizontal plane, the employee shall be paid an allowance of 13 cents per window.
  - D. **Delete subclause 5.1.5 of this clause and insert the following in lieu thereof:**
    - 5.1.5 Employees who are required to work their ordinary hours each day in two shifts and where the break between the two shifts is not less than three hours, shall be paid an allowance of \$4.10 per day.



**E. Delete subclause 5.1.6 of this clause and insert the following in lieu thereof:**

5.1.6 An employee who is required to open and close classrooms, halls and other school facilities for any activities authorised by the Principal, shall be paid an allowance according to the following scale:

	Per Day
	\$
(a) Evenings - Monday to Friday	
Up to 40 rooms per week	6.95
41 rooms to 100 per week	10.55
Over 100 rooms per week	13.90
(b) Saturday and Sunday	13.20
(c) An additional allowance of \$4.10 shall be paid to a caretaker on each occasion they are required to open or close a school facility after 11.00 pm, Monday to Friday, or for any opening or closing required on a Saturday or Sunday after the initial opening and closing. Provided that on a Saturday or Sunday the additional allowance shall not be paid if the duty is performed less than one hour after the initial or any subsequent opening or closing.	

**F. Delete paragraph (b) of subclause 5.1.8 of this clause and insert the following in lieu thereof:**

- (b) Any employee performing wood chopping duties shall be paid an allowance of \$15.65 per tonne to a maximum of:
- (i) 100% of the weight of bushwood supplied or 50% of the weight of mill-ends supplied for enclosed fireplaces such as Wonderheats.
  - (ii) 50% of the weight of bushwood supplied or 20% of the weight of mill-ends supplied for open fireplaces.

**G. Delete paragraph (a) of subclause 5.1.9 of this clause and insert the following in lieu thereof:**

5.1.9 (a) An estate attendant (Homeswest) who, in their privately owned vehicle, commutes from estate to estate and is required to carry sundry cleaning and/or gardening implements and/or supplies shall be paid \$7.80 per week for all purposes of this award.

**3. Clause 5.4. – First Aid: Delete paragraph (b) of subclause 5.4.2 of this clause and insert the following in lieu thereof:**

- (b) Employees so appointed shall be paid the following rates in addition to their prescribed wage:
- |                      |                           |
|----------------------|---------------------------|
| 10 employees or less | In excess of 10 employees |
| \$1.40 per day       | \$2.40 per day            |

**2008 WAIRC 01633****FAMILY DAY CARE CO-ORDINATORS' AND ASSISTANTS' AWARD, 1985**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION, WA BRANCH

**APPLICANT**

-v-

COMMUNICARE AND OTHERS

**RESPONDENT**

**CORAM** COMMISSIONER J L HARRISON  
**DATE** THURSDAY, 20 NOVEMBER 2008  
**FILE NO/S** APPL 89 OF 2008  
**CITATION NO.** 2008 WAIRC 01633

---

**Result** Award varied

---

*Order*

HAVING heard Ms C Pullen on behalf of the applicant and there being no appearances on behalf of the respondents, the Commission, pursuant to the powers conferred under the *Industrial Relations Act, 1979*, hereby orders:

THAT the *Family Day Care Co-ordinators' and Assistants' Award, 1985 (No A 16 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 19 November 2008.

(Sgd.) J L HARRISON,  
Commissioner.

[L.S.]

SCHEDULE

**1. Clause 21. – Fares and Travelling Allowance: Delete subclause (2)(c) of this clause and insert the following in lieu thereof:**

(c) A year for the purpose of this clause shall commence on the first day of July and end on the thirtieth day of June next following.

Rates of hire for use of employee's own vehicle on employer's business.

Schedule 1 - Motor Vehicle Allowance

Area Details	Engine Displacement (in cubic centimetres)		
	Over 2600cc	1600-2600cc	1600cc & under

Rate per kilometre (cents)

Metropolitan Area	88.4	76.9	68.0
South West Land Division	90.9	78.9	70.1
North of 23.5° South Latitude	99.7	86.9	77.4
Rest of the State	93.8	81.5	72.3

Schedule 2 - Motor Cycles

Distance travelled during a year on official business	Rate per kilometre (cents)
All areas of the State	30.5

Motor vehicles with rotary engines are to be included in the 1600-2600cc category.

**2008 WAIRC 01593**

**GARDENERS (GOVERNMENT) 1986 AWARD NO. 16 OF 1983**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION, WESTERN AUSTRALIAN  
BRANCH

**APPLICANT**

-v-

THE HON PREMIER OF WA AND OTHERS

**RESPONDENTS**

<b>CORAM</b>	COMMISSIONER S WOOD
<b>DATE</b>	THURSDAY, 13 NOVEMBER 2008
<b>FILE NO</b>	APPL 50 OF 2008
<b>CITATION NO.</b>	2008 WAIRC 01593

<b>Result</b>	Award varied
<b>Representation</b>	
<b>Applicant</b>	Ms J O'Keefe
<b>Respondents</b>	Mr A Harper

*Order*

HAVING heard Ms J O'Keefe on behalf of the applicant and Mr A Harper on behalf of the respondents, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, and by consent, hereby orders:

THAT the Gardeners (Government) 1986 Award No. 16 of 1983 as varied, be further varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the date of this order.

(Sgd.) S WOOD,  
Commissioner.

[L.S.]

## SCHEDULE

- 1. Clause 12. – Overtime: Delete subclause (2) of this clause and insert the following in lieu thereof:**
- (2) When an employee without being notified on the previous day or earlier is required to continue working after his usual knock off time for more than two hours, the employee shall be provided with a meal or be paid \$10.70 in lieu thereof.
- 2. Clause 16. – First Aid – Kits and Attendants: Delete subclause (2) of this clause and insert the following in lieu thereof:**
- (2) The employer shall, wherever practicable and where there are two or more employees, appoint an employee holding current first aid qualifications from St John Ambulance or similar body to carry out first aid duty at all works or depots where employees are employed. Such employees so appointed in addition to first aid duties, shall be responsible under the general supervision of the supervisor or foreperson for maintaining the contents of the first aid kit, conveying it to the place of work and keeping it in a readily accessible place for immediate use.
- Employees so appointed shall be paid the following rates in addition to their prescribed rate per day:
- | Qualified Attendant       | \$ Per Day |
|---------------------------|------------|
| 10 employees or less      | 1.40       |
| In excess of 10 employees | 2.35       |
- 3. Clause 25. – Wages:**
- A. Delete subclause (3) of this clause and insert the following in lieu thereof:**
- (3) A Senior Gardener/Ground Attendant who is required to maintain turf wickets, bowling greens or tennis courts shall be paid in addition to the rates prescribed an amount of \$6.70 per week. Occasional off-season attention shall not qualify an employee for payment under this subclause.
- B. Delete subclause (5) of this clause and insert the following in lieu thereof:**
- (5) Leading Hands
- Leading Hands and Senior Gardener/Ground Attendants if placed in charge of:
- (a) five and not more than ten other employees shall be paid \$23.40 per week extra;
- (b) more than ten but not more than 20 other employees shall be paid \$34.30 per week extra;
- (c) more than 20 other employees shall be paid \$45.40 per week extra.
- C. Delete paragraph (a) of subclause (10) of this clause and insert the following in lieu thereof:**
- (a) Employees of the Zoological Gardens Board covered by this award who are required to clean public toilets shall be paid 72 cents per closet, per week.
- 4. Clause 28. – Travel Allowance: Delete subclause (1) of this clause and insert the following in lieu thereof:**
- (1) (a) An employee required on any day to report directly to the job as distinct from the permanent depot to which such employee is attached (or where a permanent depot does not exist the head office of the employer shall be regarded as the permanent depot) shall be paid \$11.85 per day to compensate for the excess fare and travelling time from the employee's home to his place of work and return.
- (b) An employee who is usually employed at his employer's principal place of business shall not be entitled to the foregoing allowance when required to start work at some other place unless he thereby incurred in travelling to and from his usual place of employment.

2008 WAIRC 01685

**HOTEL AND TAVERN WORKERS' AWARD, 1978**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION WA BRANCH

**APPLICANT**

-v-

SHERATON HOTEL AND OTHERS

**RESPONDENTS****CORAM**

SENIOR COMMISSIONER J H SMITH

**DATE**

WEDNESDAY, 3 DECEMBER 2008

**FILE NO/S**

APPL 71 OF 2008

**CITATION NO.**

2008 WAIRC 01685

<b>Result</b>	Varied
<b>Representation</b>	
<b>Applicant</b>	Ms J O'Keefe
<b>Respondents</b>	Mr R Ballucci on behalf of the Western Australian Hotels and Hospitality Association Incorporated (Union of Employers)

*Order*

HAVING heard Ms O'Keefe on behalf of the applicant and Mr Ballucci on behalf of the Western Australian Hotels and Hospitality Association Incorporated (Union of Employers) 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 Hotel and Tavern Workers' Award, 1978 be varied in accordance with the following schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 2 December 2008.

[L.S.]

(Sgd.) J H SMITH,  
Senior Commissioner.

SCHEDULE

**1. Clause 9. – Additional Rates for Ordinary Hours: Delete this clause and insert the following in lieu thereof:**

9. - ADDITIONAL RATES FOR ORDINARY HOURS

- (1) An employee who is required to work any ordinary hours prior to 7.00 am or after 7.00 pm on any day Monday to Friday, both inclusive, shall be paid at the rate of an extra \$1.66 per hour for each such hour, or part thereof worked. Provided that any employee who works the majority of his/her ordinary hours between midnight and 7.00 am shall be paid \$1.75 per hour extra for each such hour, or part thereof worked.
- (2) All time worked during the ordinary hours of work on Saturdays and Sundays shall be paid for at the rate of time and a half.
- (3) An employee who is required to work any of his/her ordinary hours on any day in more than one period of employment, other than for meal breaks as prescribed in accordance with the provisions of Clause 13. - Meal Breaks of this Award, shall be paid an allowance of \$2.70 per day, for such broken work period worked.
- (4) The provisions of subclauses (1) and (2) hereof shall not apply to any work performed on a holiday and to which the provisions of subclause (2) of Clause 17. - Holidays are applicable.
- (5) The provisions of this clause shall not apply to casual employees.

**2. Clause 14. – Meal Money: Delete this clause and insert the following in lieu thereof:**

14. - MEAL MONEY

Any employee who is required to work overtime for two hours or more on any day, without being notified on the previous day or earlier, that he or she will be so required to work such overtime, will either be supplied with a substantial meal by the employer or be paid \$11.30 meal money.

**3. Clause 26. – Uniforms and Laundering: Delete subclauses (2) and (3) of this clause and insert the following in lieu thereof:**

- (2) Subject to subclause (3) hereof, an employer requiring any of the articles of clothing to be worn as described in subclause (1) of this clause, shall cause such clothing to be laundered at his/her own expense or otherwise shall pay to the employee concerned \$7.20 per fortnight worked as a laundry allowance. The allowance provided herein shall be halved for employees who work less than thirty-eight ordinary hours each fortnight.
- (3) Where a cook wears the ordinary apparel usually worn by cooks such as black and white check trousers, white shirt, white apron and cap, such garments shall be laundered at the employer's expense or otherwise the employee shall be paid \$11.00 per fortnight worked as a laundry allowance. The allowance provided herein shall be halved for employees who work less than thirty-eight ordinary hours each fortnight.

**4. Clause 27. – Protective Clothing: Delete subclause (1) of this clause and insert the following in lieu thereof:**

- (1) Employees who are required to wash dishes, clean toilets or otherwise handle detergents, acids, soaps or any injurious substances, shall be supplied with rubber gloves free of charge by the employer, or be paid, in lieu, an allowance of \$3.90 per fortnight worked. The allowance provided herein shall be halved for employees who work less than thirty-eight ordinary hours each fortnight.

**5. Clause 28. – Employee Equipment: Delete this clause and insert the following in lieu thereof:**

28. - EMPLOYEE EQUIPMENT

All knives, choppers, tools, brushes, towels and other utensils, implements and material which may be required to be-used by the employee for the purpose of carrying out his/her duties, shall be supplied by the employer free of charge. Provided that where an employee is required by the employer to use his/her own knives he shall be paid an allowance of \$14.40 per fortnight worked. The allowance provided herein shall be halved for employees who work less than thirty-eight ordinary hours each fortnight.

2008 WAIRC 01686

**MOTEL, HOSTEL, SERVICE FLATS AND BOARDING HOUSE WORKERS' AWARD, 1976**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION, WESTERN AUSTRALIAN  
BRANCH**APPLICANT**

-v-

BELMONT PARK MOTEL AND OTHERS

**RESPONDENTS****CORAM**

SENIOR COMMISSIONER J H SMITH

**DATE**

WEDNESDAY, 3 DECEMBER 2008

**FILE NO/S**

APPL 75 OF 2008

**CITATION NO.**

2008 WAIRC 01686

**Result**

Varied

**Representation****Applicant**

Ms J O'Keefe

**Respondents**Mr R Ballucci on behalf of the Western Australian Hotels and Hospitality Association Incorporated  
(Union of Employers)*Order*

HAVING heard Ms O'Keefe on behalf of the applicant and Mr Ballucci on behalf of the Western Australian Hotels and Hospitality Association Incorporated (Union of Employers) 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 Motel, Hostel, Service Flats and Boarding House Workers' Award, 1976 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 2 December 2008.

[L.S.]

(Sgd.) J H SMITH,  
Senior Commissioner.**SCHEDULE****1. Clause 9. – Additional Rates for Ordinary Hours: Delete this clause and insert the following in lieu thereof:****9. - ADDITIONAL RATES FOR ORDINARY HOURS**

- (1) An employee who is required to work any ordinary hours prior to 7.00 am or after 7.00 pm on any day Monday to Friday, both inclusive, shall be paid at the rate of an extra \$1.66 per hour for each such hour, or part thereof worked. Provided that any employee who works the majority of his/her ordinary hours between midnight and 7.00 am shall be paid \$1.75 per hour extra for each such hour, or part thereof worked.
- (2) All time worked during the ordinary hours of work on Saturdays and Sundays shall be paid for at the rate of time and a half.
- (3) An employee who is required to work any of his/her ordinary hours on any day in more than one period of employment, other than for meal breaks as prescribed in accordance with the provisions of Clause 13. - Meal Breaks of this Award, shall be paid an allowance of \$2.70 per day, for such broken work period worked.
- (4) The provisions of subclauses (1) and (2) hereof shall not apply to any work performed on a holiday and to which the provisions of subclause (2) of Clause 17. - Holidays are applicable.
- (5) The provisions of this clause shall not apply to casual employees.

**2. Clause 14. – Meal Money: Delete this clause and insert the following in lieu thereof:****14. - MEAL MONEY**

Any employee who is required to work overtime for two hours or more on any day, without being notified on the previous day or earlier, that he or she will be so required to work such overtime, will either be supplied with a substantial meal by the employer or be paid \$11.30 meal money.

**3. Clause 26. – Uniforms and Laundering: Delete subclauses (2) and (3) of this clause and insert the following in lieu thereof:**

- (2) Subject to subclause (3) hereof, an employer requiring any of the articles of clothing to be worn as described in subclause (1) of this clause, shall cause such clothing to be laundered at his/her own expense or otherwise shall pay to the employee

concerned \$7.20 per fortnight worked as a laundry allowance. The allowance provided herein shall be halved for employees who work less than thirty-eight ordinary hours each fortnight.

- (3) Where a cook wears the ordinary apparel usually worn by cooks such as black and white check trousers, white shirt, white apron and cap, such garments shall be laundered at the employer's expense or otherwise the employee shall be paid \$11.00 per fortnight worked as a laundry allowance. The allowance provided herein shall be halved for employees who work less than thirty-eight ordinary hours each fortnight.

**4. Clause 27. – Protective Clothing: Delete subclause (1) of this clause and insert the following in lieu thereof:**

- (1) Employees who are required to wash dishes, clean toilets or otherwise handle detergents, acids, soaps or any injurious substances, shall be supplied with rubber gloves free of charge by the employer, or be paid, in lieu, an allowance of \$3.90 per fortnight worked. The allowance provided herein shall be halved for employees who work less than thirty-eight ordinary hours each fortnight.

**5. Clause 28. – Employees' Equipment: Delete this clause and insert the following in lieu thereof:**

**28. - EMPLOYEE EQUIPMENT**

All knives, choppers, tools, brushes, towels and other utensils, implements and material which may be required to be-used by the employee for the purpose of carrying out his/her duties, shall be supplied by the employer free of charge. Provided that where an employee is required by the employer to use his/her own knives he shall be paid an allowance of \$14.40 per fortnight worked. The allowance provided herein shall be halved for employees who work less than thirty-eight ordinary hours each fortnight.

**2008 WAIRC 01683**

**OPTICAL MECHANICS' AWARD, 1971**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION, WESTERN AUSTRALIAN  
BRANCH

**APPLICANT**

-v-

LAUBMAN & PANK OPTOMETRISTS (WA) PTY LTD AND OTHERS

**RESPONDENTS**

**CORAM** SENIOR COMMISSIONER J H SMITH  
**DATE** WEDNESDAY, 3 DECEMBER 2008  
**FILE NO/S** APPL 58 OF 2008  
**CITATION NO.** 2008 WAIRC 01683

**Result** Varied  
**Representation**  
**Applicant** Ms J O'Keefe  
**Respondents** No appearance

*Order*

HAVING heard Ms O'Keefe on behalf of the applicant and there being no appearance on behalf of the respondents, and by consent, the Commission pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders —

THAT the Optical Mechanics' Award, 1971 be varied in accordance with the following schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 2 December 2008.

[L.S.]

(Sgd.) J H SMITH,  
Senior Commissioner.

SCHEDULE

**1. Clause 12. – Meal Money: Delete subclause (1) of this clause and insert the following in lieu thereof:**

- (1) Subject to the provisions of subclause (2) of this clause an employee, required to work overtime for more than two hours, shall be supplied with a meal by the employer or be paid \$9.05 for a meal and, if owing to the amount of overtime worked, a second or subsequent meal is required the employee shall be supplied with such meal by the employer or paid \$6.20 for each meal so required.

**2. Clause 24. – Wages: Delete subclause (4) of this clause and insert the following in lieu thereof:**

- (4) Leading Hands: In addition to the appropriate rate prescribed in subclause (1) of this clause a leading hand shall be paid:

	Per Week
	\$
(a) If placed in charge of not less than 3 and not more than 10 other employees	26.80
(b) If placed in charge of more than 10 and not more than 20 other employees	40.40
(c) If placed in charge of more than 20 other employees	53.10

2008 WAIRC 01608

**PARLIAMENTARY EMPLOYEES AWARD 1989**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED

**APPLICANT****-v-**

THE GOVERNOR OF WESTERN AUSTRALIA IN COUNCIL, THE PRESIDENT OF THE LEGISLATIVE COUNCIL, THE SPEAKER OF THE LEGISLATIVE ASSEMBLY

**RESPONDENTS****CORAM**

PUBLIC SERVICE ARBITRATOR

COMMISSIONER P E SCOTT

**DATE**

MONDAY, 17 NOVEMBER 2008

**FILE NO**

P 22 OF 2008

**CITATION NO.**

2008 WAIRC 01608

**Result**

Award varied

*Order*

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Mr A Harper as agent for the respondents, and by consent, the Public Service Arbitrator, pursuant to the powers conferred under the Industrial Relations Act 1979, hereby orders:

THAT the Parliamentary Employees Award 1989, No. A 15 of 1987, A 4 of 1988, A 7 of 1988 & A 7 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 7<sup>th</sup> day of November 2008.

(Sgd.) P E SCOTT,  
Commissioner,  
Public Service Arbitrator.

[L.S.]

**SCHEDULE****1. Clause 9. – Meal Allowance: Delete subclause (1) of this clause and insert the following in lieu thereof:**

- (1) An employee who is required to work overtime under Clause 7 of this Award and where such overtime extends beyond 5.00 p.m., a meal allowance shall be paid in accordance with the provisions of the Public Service Overtime Award No. 10 of 1978 Clause 8 as amended. Provided that where such overtime extends beyond 6.00 a.m. the following day, an allowance of \$14.15 or the amount charged by the House, whichever is the higher, for such a three course meal shall be paid.

2008 WAIRC 01640

**PARLIAMENTARY EMPLOYEES AWARD 1989**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION

**APPLICANT****-v-**

THE SPEAKER OF THE LEGISLATIVE ASSEMBLY AND OTHERS

**RESPONDENTS****CORAM**

COMMISSIONER P E SCOTT

**DATE**

FRIDAY, 21 NOVEMBER 2008

**FILE NO**

APPL 102 OF 2008

**CITATION NO.**

2008 WAIRC 01640

---

**Result** Award Varied

---

*Order*

HAVING heard Ms J O'Keefe on behalf of the applicant and Mr A Harper on behalf of the respondent and by consent, the Commission, pursuant to the powers conferred under the Industrial Relations Act 1979, hereby orders:

THAT the Parliamentary Employees Award 1989, No. A 15 of 1987, A 4 of 1988, A 7 of 1988 and A7 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 12<sup>th</sup> day of November 2008.

(Sgd.) P E SCOTT,  
Commissioner.

[L.S.]

SCHEDULE

1. **Clause 25. – Parliamentary Support Services Employee Wages: Delete subclauses (3) and (4) of this clause and insert the following in lieu thereof:**
  - (3) The following allowances shall be paid to Parliamentary Support Services Employees indexed according to State Wage decisions and shall be:-
    - (a) Chef
 

1st year	\$122.70 per fortnight
2nd year	\$245.50 per fortnight
    - (b) Tradesperson Cook (Sous Chef)
 

1st year	\$ 79.80 per fortnight
2nd year	\$122.70 per fortnight
    - (c) Stewards to Speaker and President
 

	\$ 61.25 per fortnight
--	------------------------
  - (4) An allowance of \$35.60 per fortnight shall be paid to all Parliamentary Support Services Employees employed in the kitchen, dining room and bar areas.
2. **Clause 28. – Uniforms and Clothing: Delete subclause (2) of this clause and insert the following in lieu thereof:**
  - (2) Such uniforms supplied shall be laundered and/or dry cleaned by the employer and remain the property of the employer, provided that in lieu of the employer laundering and/or dry cleaning same, an employee shall be paid \$7.20 per week for such laundering and/or dry cleaning, excepting any person employed as a Cook who shall be paid \$10.95 per week for laundering and/or dry cleaning.

**2008 WAIRC 01681**

**PASTRYCOOKS' AWARD NO. 24 OF 1981**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION, WESTERN AUSTRALIAN  
BRANCH

**APPLICANT**

-v-

BAKEWELL PIES (1978) PTY LTD AND OTHERS

**RESPONDENTS**

**CORAM** SENIOR COMMISSIONER J H SMITH  
**DATE** WEDNESDAY, 3 DECEMBER 2008  
**FILE NO/S** APPL 42 OF 2008  
**CITATION NO.** 2008 WAIRC 01681

---

**Result** Varied  
**Representation**  
**Applicant** Ms J O'Keefe  
**Respondents** No appearance

---

*Order*

Having heard Ms O'Keefe on behalf of the applicant and there being no appearance on behalf of the respondents, and by consent, the Commission pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders —

THAT the Pastrycooks' Award No. 24 of 1981 be varied in accordance with the following schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 2 December 2008.

(Sgd.) J H SMITH,  
Senior Commissioner.

[L.S.]



## SCHEDULE

1. **Clause 8. – Overtime: Delete subclause (4) of this clause and insert the following in lieu thereof:**
- (4) When a employee, without being notified on the previous day or earlier, is required to continue working after the usual knock-off time for more than two hours, he shall be provided with any meal required, or shall be paid \$11.15 in lieu thereof. Provided that this subclause shall not apply in the case of a worker living in the same locality as his place of employment who can reasonably return home for a meal.
2. **Clause 10. – Wages: Delete subclause (5) of this clause and insert the following in lieu thereof:**
- (5) Leading Hand: In addition to the rates prescribed by this clause a leading hand shall be paid per week if placed in charge of:
- |  | Rate per Week |
|--|---------------|
|  | \$            |
| (a) Less than four other employees                     | 16.50         |
| (b) Four or more but not more than ten other employees | 26.10         |
| (c) More than ten but not more than 20 other employees | 39.90         |
| (d) More than 20 other employees                       | 51.50         |

2008 WAIRC 01628

**RECREATION CAMPS (DEPARTMENT FOR SPORT AND RECREATION) AWARD**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION, WESTERN AUSTRALIAN  
BRANCH**APPLICANT**

-v-

THE HON MINISTER FOR SPORTS &amp; RECREATION

**RESPONDENT**

**CORAM** COMMISSIONER P E SCOTT  
**DATE** THURSDAY, 20 NOVEMBER 2008  
**FILE NO/S** APPL 82 OF 2008  
**CITATION NO.** 2008 WAIRC 01628

---

**Result** Award Varied

---

*Order*

HAVING heard Ms J O'Keefe on behalf of the applicant and Ms M Gillam on behalf of the respondent and by consent, the Commission, pursuant to the powers conferred under the Industrial Relations Act 1979, hereby orders:

THAT the Recreation Camps (Department for Sport and Recreation) Award be varied in accordance with the following Schedule and that such variation shall have effect on and from the beginning of the first pay period commencing on or after the 14<sup>th</sup> day of November 2008.

(Sgd.) P E SCOTT,  
Commissioner.

[L.S.]

## SCHEDULE

1. **Clause 8. – Overtime:**
- (A) **Delete subclause (9)(a) of this clause and insert the following in lieu thereof:**
- (9) (a) An employee required to work continuous overtime for more than one hour shall be supplied with a meal by the employer or be paid \$10.70 for a meal, and if owing to the amount of overtime worked, a second or subsequent meal is required the employee shall be supplied with such meal by the employer or be paid \$6.25 for each meal so required.
- (B) **Delete subclause (9)(d) of this clause and insert the following in lieu thereof:**
- (d) An employee required to work continuously from midnight to 6.30 a.m. and ordered back to work at 8.00 a.m. on the same day shall be paid \$5.50 for breakfast.
2. **Clause 15. – Wages: Delete subclause (3) of this clause and insert the following in lieu thereof:**
- (3) Supervision Allowance
- Employees placed in charge of other employees shall be paid the following weekly allowance, or part thereof, in addition to the rate prescribed for the employee's class of work

	\$ per
	week
1 to 5 employees	10.00
6 to 10 employees	18.00
11 to 15 employees	22.40
16 to 20 employees	30.50
over 20 (for each additional employee)	0.36

**3. Clause 17. – Special Rates and Conditions:**

**(A) Delete subclauses (1) and (2) of this clause and insert the following in lieu thereof:**

- (1) All employees called upon to clean toilet closets shall receive an allowance of 71 cents per closet per week and for these purposes, one metre of urinal shall count as one closet and three urinal stalls shall count as one closet.
- (2) An employee who is the holder of an approved First Aid Certificate shall in addition to their normal rate of pay be paid an additional allowance of \$2.40 per week.

**(B) Delete subclause (4) of this clause and insert the following in lieu thereof:**

- (4) Mobile Wardens shall in addition to their normal rate of pay be paid an allowance of \$88.90 per week to offset the costs associated with living in and maintaining a caravan. This allowance shall be reviewed on the 31<sup>st</sup> December each year. The adjustment to the rates shall be effective from the beginning of the first pay period to commence on or after the first day of January in each year.

**2008 WAIRC 01682**

**RESTAURANT, TEAROOM AND CATERING WORKERS' AWARD, 1979**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION

**APPLICANT**

-v-

KINGS PARK GARDEN RESTAURANT AND OTHERS

**RESPONDENTS**

**CORAM** SENIOR COMMISSIONER J H SMITH

**DATE** WEDNESDAY, 3 DECEMBER 2008

**FILE NO/S** APPL 46 OF 2008

**CITATION NO.** 2008 WAIRC 01682

**Result** Award varied

**Representation**

**Applicant** Ms J O'Keefe

**Respondents** Mr O Moon as agent on behalf of the Restaurant and Catering Industry Association of Employers of Western Australia Inc

Mr R Ballucci on behalf of the Western Australian Hotels and Hospitality Association Incorporated (Union of Employers)

*Order*

HAVING heard Ms O'Keefe on behalf of the applicant and Mr Moon, as agent, on behalf of the Restaurant and Catering Industry Association of Employers of Western Australia Inc and Mr Ballucci on behalf of the Western Australian Hotels and Hospitality Association Incorporated (Union of Employers) on behalf of respondents, and by consent, the Commission pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders —

THAT the Restaurant, Tearoom and Catering Workers' Award, 1979 be varied in accordance with the following schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 2 December 2008.

[L.S.]

(Sgd.) J H SMITH,  
Senior Commissioner.

## SCHEDULE

**1. Clause 9. – Additional Rates for Ordinary Hours: Delete this clause and insert the following in lieu thereof:****9. - ADDITIONAL RATES FOR ORDINARY HOURS**

- (1) An employee who is required to work any ordinary hours prior to 7.00 am or after 7.00 pm on any day Monday to Friday, both inclusive, shall be paid at the rate of an extra \$1.66 per hour for each such hour, or part thereof worked. Provided that any employee who works the majority of his/her ordinary hours between midnight and 7.00 am shall be paid \$1.75 per hour extra for each such hour, or part thereof worked.
- (2) All time worked during the ordinary hours of work on Saturdays and Sundays shall be paid for at the rate of time and a half.
- (3) An employee who is required to work any of his/her ordinary hours on any day in more than one period of employment, other than for meal breaks as prescribed in accordance with the provisions of Clause 13. - Meal Breaks of this Award, shall be paid an allowance of \$2.70 per day, for such broken work period worked.
- (4) The provisions of subclauses (1) and (2) hereof shall not apply to any work performed on a holiday and to which the provisions of subclause (2) of Clause 17. - Holidays are applicable.
- (5) The provisions of this clause shall not apply to casual employees.

**2. Clause 14. – Meal Money: Delete this clause and insert the following in lieu thereof:****14. - MEAL MONEY**

Any employee who is required to work overtime for two hours or more on any day, without being notified on the previous day or earlier, that he or she will be so required to work such overtime, will either be supplied with a substantial meal by the employer or be paid \$11.30 meal money.

**3. Clause 26. – Uniforms and Laundering: Delete subclauses (2) and (3) of this clause and insert the following in lieu thereof:**

- (2) Subject to subclause (3) hereof, an employer requiring any of the articles of clothing to be worn as described in subclause (1) of this clause, shall cause such clothing to be laundered at his/her own expense or otherwise shall pay to the employee concerned \$7.20 per fortnight worked as a laundry allowance. The allowance provided herein shall be halved for employees who work less than thirty-eight ordinary hours each fortnight.
- (3) Where a cook wears the ordinary apparel usually worn by cooks such as black and white check trousers, white shirt, white apron and cap, such garments shall be laundered at the employer's expense or otherwise the employee shall be paid \$11.00 per fortnight worked as a laundry allowance. The allowance provided herein shall be halved for employees who work less than thirty-eight ordinary hours each fortnight.

**4. Clause 27. – Protective Clothing: Delete subclause (1) of this clause and insert the following in lieu thereof:**

- (1) Employees who are required to wash dishes, clean toilets or otherwise handle detergents, acids, soaps or any injurious substances, shall be supplied with rubber gloves free of charge by the employer, or be paid, in lieu, an allowance of \$3.90 per fortnight worked. The allowance provided herein shall be halved for employees who work less than thirty-eight ordinary hours each fortnight.

**5. Clause 28. – Employees' Equipment: Delete this clause and insert the following in lieu thereof:****28. – EMPLOYEES' EQUIPMENT**

All knives, choppers, tools, brushes, towels and other utensils, implements and material which may be required to be-used by the employee for the purpose of carrying out his/her duties, shall be supplied by the employer free of charge. Provided that where an employee is required by the employer to use his/her own knives he shall be paid an allowance of \$14.40 per fortnight worked. The allowance provided herein shall be halved for employees who work less than thirty-eight ordinary hours each fortnight.

2008 WAIRC 01636

**SOCIAL TRAINERS AND ASSISTANT SUPERVISORS' (ACTIV FOUNDATION) AWARD**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION, WESTERN AUSTRALIAN  
BRANCH**APPLICANT**

-v-

ACTIV FOUNDATION INCORPORATED

**RESPONDENT****CORAM**

COMMISSIONER J L HARRISON

**DATE**

THURSDAY, 20 NOVEMBER 2008

**FILE NO/S**

APPL 41 OF 2008

**CITATION NO.**

2008 WAIRC 01636

**Result** Award varied

*Order*

HAVING heard Ms C Pullen on behalf of the applicant and Ms M O'Day on behalf of the respondent, the Commission, pursuant to the powers conferred under the *Industrial Relations Act, 1979*, hereby orders:

THAT the *Social Trainers and Assistant Supervisors' (Activ Foundation) Award (No A 15 of 1984)* be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 19 November 2008.

(Sgd.) J L HARRISON,  
Commissioner.

[L.S.]

SCHEDULE

- 1. Clause 9. – General Conditions: Delete subclause (2) of this clause and insert the following in lieu thereof:**
- (2) (a) An allowance of 50 cents per hour or part thereof shall be paid to employees who are placed in charge of a unit during the off shift period of the Senior Social Trainer.
- (b) An allowance of \$1.21 cents per hour or part thereof shall be paid to employees who are placed in charge of a unit of 25 and under bed capacity during the off shift period of the Hostel Manager.
- (c) An allowance of \$1.50 per hour or part thereof shall be paid to employees who are placed in charge of a unit of 26 and over bed capacity during the off shift period of the Hostel Manager.
- 2. Clause 18. – Travelling, Transfers and Relieving Duty – Rates of Allowance: Delete this clause and insert the following in lieu thereof:**

Item	Particulars	Column A	Column B	Column C
		Daily Rate	Daily Rate	Daily Rate
			Married Employee Relieving Allowance for Period in Excess of 35 days (Clause 17 (3)(b)) Transfer Allowance for Period in Excess of Prescribed Period (Clause 16 (3))	Single Employee Relieving Allowance for Period in Excess of 35 days (Clause 17 (3)(b))
		\$	\$	\$
	Allowance to meet incidental expenses			
1.	W.A. - South of 26 ° South Latitude	12.80		
2.	W.A. - North of 26 ° South Latitude	18.30		
3.	Interstate	18.30		
	Accommodation involving an overnight stay at a Hotel or Motel			
4.	W.A. - Metropolitan Hotel or Motel	239.50	119.75	79.85
5.	Locality South of 26 ° South Latitude	183.80	91.90	61.25
6.	Locality North of 26 ° South Latitude:			
	Broome	392.80	196.40	130.95
	Carnarvon	224.50	112.25	74.85
	Dampier	323.80	161.90	107.95
	Derby	258.80	129.40	86.25
	Exmouth	279.30	139.65	93.10
	Fitzroy Crossing	346.80	173.40	115.60
	Gascoyne Junction	156.30	78.15	52.10
	Halls Creek	245.30	122.65	81.75
	Karratha	500.80	250.40	166.95
	Kununurra	291.80	145.90	97.25
	Marble Bar	224.80	112.40	74.95
	Newman	268.55	134.25	89.50
	Nullagine	198.30	99.15	66.10
	Onslow	240.75	120.40	80.25
	Pannawonica	185.95	92.95	62.00
	Paraburdoo	236.70	118.35	78.90
	Port Hedland	319.50	159.75	106.50
	Roebourne	138.70	69.35	46.25

Item	Particulars	Column A	Column B	Column C
		Daily Rate	Daily Rate	Daily Rate
			Married Employee	Single Employee
			Relieving Allowance	Relieving Allowance
			for Period in Excess of	for Period in Excess
			35 days (Clause 17	of 35 days (Clause 17
			(3)(b)) Transfer	(3)(b))
			Allowance for Period	
			in Excess of Prescribed	
			Period (Clause 16 (3))	
		\$	\$	\$
	Accommodation involving an overnight stay at a Hotel or Motel— <i>continued</i>			
	Sandfire	163.30	81.65	54.45
	Shark Bay	184.30	92.15	61.45
	Tom Price	261.25	130.60	87.10
	Turkey Creek	197.80	98.90	65.95
	Wickham	415.80	207.90	138.60
	Wyndham	231.30	115.65	77.10
7.	Interstate - Capital City			
	Sydney	269.50	134.75	89.80
	Melbourne	256.80	128.40	85.60
	Other Capitals	230.50	115.25	76.75
8.	Interstate - Other than Capital City	183.80	91.90	61.25
	Accommodation involving an over- night stay at other than a Hotel or Motel			
9.	W.A. - South of 26 ° South Latitude	83.90		
10.	W.A. - North of 26 ° South Latitude	111.00		
11.	Interstate	111.00		
	Travel not involving an overnight stay			
12.	W.A. - South of 26 ° South Latitude:			
	Breakfast	15.50		
	Lunch	15.50		
	Evening Meal	40.10		
13.	W.A. - North of 26 ° South Latitude:			
	Breakfast .....	18.10		
	Lunch .....	30.60		
	Evening Meal .....	44.00		
	Deduction for normal living expenses			
14.	Interstate			
	Breakfast .....	18.10		
	Lunch .....	30.60		
	Evening Meal .....	44.00		
	Deduction for normal living expenses			
15.	Each adult	24.95		
16.	Each child	4.30		
	Midday Meal (Clause 15(10))			
17.	Rate per meal	6.05		
18.	Maximum reimbursement per pay period	30.25		

The rates prescribed in this clause shall be increased in accordance with movements in the Government Officers Salaries, Allowances & Conditions Award 1989 (88 WAIG 372).

**3. Clause 19. – Removal Allowance:**

**A. Delete subclause (1) of this clause and insert the following in lieu thereof:**

- (1) When a married employee is transferred in the employer's interest, or in the ordinary course of promotion or transfer, or on account of illness due to causes over which the employee has no control, the employee shall be reimbursed:
- (a) The actual reasonable cost of conveyance of the employee and the employee's spouse and children under 16 years of age or other children wholly dependent upon him.
- (b) The actual reasonable cost up to an amount of \$1783.00 for conveyance of the employee's furniture, including insurance of such furniture whilst in transit unless a higher sum is approved by the employer in any special case: Provided that only necessary household furniture, effects and appliances shall be taken into account.

- (c) An allowance of \$565.00 for accelerated depreciation and extra wear and tear on furniture, effects and appliances: Provided that the employer is satisfied that the value of household furniture, effects and appliances moved by the employer is at least \$3143.00.

In the case of a single employee, an application for any reimbursement under this clause shall be considered by the employer.

**B. Delete subclause (6) of this clause and insert the following in lieu thereof:**

- (6) Where an employee is transferred to accommodation owned by the employer where furniture is provided and as a consequence is obliged to store the employee's own furniture, the employee shall be reimbursed the actual cost of such storage up to a maximum allowance of \$1050.00 per annum. An allowance under this subclause shall not be paid for a period in excess of one year without the approval of the employer.

**4. Clause 21. – Shift Work: Delete paragraph (a) of subclause (1) of this clause and insert the following in lieu thereof:**

- (1) (a) The loading on the ordinary rates of pay for an afternoon or night shift shall be \$2.13 per hour or part thereof.

2008 WAIRC 01637

**SOCIAL TRAINERS (NULSEN HAVEN) AWARD**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION, WESTERN AUSTRALIAN  
BRANCH

**APPLICANT**

-v-

NULSEN HAVEN ASSOCIATION INC

**RESPONDENT**

**CORAM**

COMMISSIONER J L HARRISON

**DATE**

THURSDAY, 20 NOVEMBER 2008

**FILE NO/S**

APPL 84 OF 2008

**CITATION NO.**

2008 WAIRC 01637

**Result**

Award varied

*Order*

HAVING heard Ms C Pullen on behalf of the applicant and there being no appearance on behalf of the respondent, the Commission, pursuant to the powers conferred under the *Industrial Relations Act, 1979*, hereby orders:

THAT the *Social Trainers (Nulsen Haven) Award (No A 11 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 19 November 2008.

(Sgd.) J L HARRISON,  
Commissioner.

[L.S.]

SCHEDULE

**1. Clause 8. – Qualifications Allowance: Delete this clause and insert the following in lieu thereof:**

Employees who have completed the Diploma in Training the Handicapped shall be paid an allowance of \$8.50 per week.

2008 WAIRC 01687

**WATCHMAKERS' AND JEWELLERS' AWARD, 1970**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION, WESTERN AUSTRALIAN  
BRANCH

**APPLICANT**

-v-

CARIS THE JEWELLER AND OTHERS

**RESPONDENTS**

**CORAM**

SENIOR COMMISSIONER J H SMITH

**DATE**

WEDNESDAY, 3 DECEMBER 2008

**FILE NO/S**

APPL 93 OF 2008

**CITATION NO.**

2008 WAIRC 01687

---

<b>Result</b>	Varied
<b>Representation</b>	
<b>Applicant</b>	Ms J O'Keefe
<b>Respondents</b>	No appearance

---

*Order*

HAVING heard Ms O'Keefe on behalf of the applicant and there being no appearance on behalf of the respondents, and by consent, the Commission pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders —

THAT the Watchmakers' and Jewellers' Award, 1970 be varied in accordance with the following schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 2 December 2008.

[L.S.]

(Sgd.) J H SMITH,  
Senior Commissioner.

## SCHEDULE

**1. Clause 8. – Wages: Delete subclause (4) of this clause and insert the following in lieu thereof:**

## (4) Leading Hands:

Any jeweller or watchmaker placed in charge of not more than ten (10) jewellers or watchmakers shall be paid \$25.60 per week in addition to the rates of pay prescribed by this award.

**2. Clause 11. – Meal Money:****(A) Delete subclause (1) of this clause and insert the following in lieu thereof:**

- (1) Subject to the provisions of subclause (2) of this clause an employee, required to work overtime for more than two hours, shall be supplied with a meal by the employer or be paid \$8.90 for a meal and, if owing to the amount of overtime worked, a second or subsequent meal is required the employee shall be supplied with such meal by the employer or paid \$6.20 for each meal so required.

**(B) Delete subclause (4) of this clause and insert the following in lieu thereof:**

## (4) Late Night Trading Meal Allowance:

An employee who commences work prior to 4.30 p.m. on the day of late night trading and is required to work beyond 7.00 p.m. on that day, shall be paid a meal allowance of \$8.90.

2008 WAIRC 01638

**WESTERN AUSTRALIAN MINT SECURITY OFFICERS' AWARD, 1988**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION, WESTERN AUSTRALIAN  
BRANCH**APPLICANT**

-v-

THE WESTERN AUSTRALIAN MINT

**RESPONDENT**

<b>CORAM</b>	COMMISSIONER J L HARRISON
<b>DATE</b>	THURSDAY, 20 NOVEMBER 2008
<b>FILE NO/S</b>	APPL 66 OF 2008
<b>CITATION NO.</b>	2008 WAIRC 01638

---

<b>Result</b>	Award varied
---------------	--------------

---

*Order*

HAVING heard Ms C Pullen on behalf of the applicant and Mr A Harper on behalf of the respondent, the Commission, pursuant to the powers conferred under the *Industrial Relations Act, 1979*, hereby orders:

THAT the *Western Australian Mint Security Officers' Award, 1988 (No A 5 of 1988)* be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 19 November 2008.

[L.S.]

(Sgd.) J L HARRISON,  
Commissioner.

## SCHEDULE

**1. Clause 14. – Wages and Allowances:****A. Delete subclause (3)(a) of this clause and insert the following in lieu thereof:**

- (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 \$1.80 per shift with a maximum payment of \$8.70 per week.

**B. Delete subclause (4)(a) of this clause and insert the following in lieu thereof:**

- (4) (a) Where an officer is required to carry a firearm that officer shall be paid an allowance of \$1.95 per shift with a maximum payment of \$9.40 per week.

**2. Clause 16. – Overtime: Delete subclause (2) of this clause and insert the following in lieu thereof:**

- (2) An officer required to work in excess of two hours after completion of their ordinary shift, without being notified before the completion of the previous day or shift, shall be paid a meal allowance of \$10.20. A further meal allowance of \$6.21 shall be paid on the completion of each additional four hours' overtime worked.

2008 WAIRC 01639

**PARTIES**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
THE SHOP, DISTRIBUTIVE AND ALLIED EMPLOYEES' ASSOCIATION OF WESTERN AUSTRALIA

**APPLICANT**

-v-

WESTRALIAN FARMERS CO-OPERATIVE LIMITED AND OTHERS

**RESPONDENTS****CORAM**

COMMISSIONER S J KENNER

**DATE**

WEDNESDAY, 19 NOVEMBER 2008

**FILE NO/S**

APPL 103 OF 2008

**CITATION NO.**

2008 WAIRC 01639

<b>Result</b>	Award varied
<b>Representation</b>	
<b>Applicant</b>	Mr T Pope
<b>Respondents</b>	No appearance

*Order*

HAVING heard Mr T Pope on behalf of the applicant and there being no appearance on behalf of the respondents, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders –

THAT the Wool, Hide and Skin Store Employees' Award No. 8 of 1966 be varied in accordance with the following schedule and that such variation shall have effect from the first pay period on or after the date of this order.

(Sgd.) S J KENNER,  
Commissioner.

[L.S.]

## SCHEDULE

**1. Clause 13 – Wages and Classification Structure: Delete subclauses (7) and (8) of this clause and insert in lieu thereof:**

- (7) Ninety 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 \$2.00 per day.

**2. Clause 15 – Meal Hours and Meal Money: Delete subclause (2)(a) of this clause and insert the following in lieu thereof:**

- (2) (a) An employee shall be entitled to meal money of \$11.20 in the following circumstances.
- (i) Where he is required to work for more than one hour before his normal commencing time or to continue to work for more than one hour after his normal ceasing time; or
  - (ii) Where he is required to continue working after 12.00 midnight for more than one hour; or
  - (iii) Where he is required to continue working after midday on Saturday, Sunday or public holiday for more than one hour; or
  - (iv) Where he is required to continue overtime after 5.00pm on a Saturday, Sunday or public holiday for not less than one hour.



2008 WAIRC 01630

**ZOOLOGICAL GARDENS EMPLOYEES' AWARD 1969**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION, WESTERN AUSTRALIAN  
BRANCH**APPLICANT**

-v-

ZOOLOGICAL GARDENS BOARD

**RESPONDENT****CORAM**

COMMISSIONER P E SCOTT

**DATE**

THURSDAY, 20 NOVEMBER 2008

**FILE NO/S**

APPL 80 OF 2008

**CITATION NO.**

2008 WAIRC 01630

**Result**

Award varied

*Order*

HAVING heard Ms J O'Keefe on behalf of the applicant and Ms M Gillam on behalf of the respondent and by consent, the Commission, pursuant to the powers conferred under the Industrial Relations Act 1979, hereby orders:

THAT the Zoological Gardens Employees' Award 1969 be varied in accordance with the following Schedule and that such variation shall have effect on and from the beginning of the first pay period commencing on or after the 14<sup>th</sup> day of November 2008.

(Sgd.) P E SCOTT,  
Commissioner.

[L.S.]

**SCHEDULE****1. Clause 8. – Overtime: Delete subclause (5)(a) of this clause and insert the following in lieu thereof:**

- (5) (a) An employee required to work continuous overtime for more than one and a half hours shall be supplied with a meal by the employer or be paid \$10.70 for a meal, and if, owing to the amount of overtime worked, a second or subsequent meal is required they shall be supplied with each such meal by the employer or be paid \$6.25 for each meal so required.

---

**AWARDS/AGREEMENTS AND ORDERS—Application for variation of—  
No variation resulting—**

2008 WAIRC 01623

**CHILD CARE WORKERS (EDUCATION DEPARTMENT) AWARD**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION, WESTERN AUSTRALIAN  
BRANCH**APPLICANT**

-v-

THE MINISTER FOR EDUCATION

**RESPONDENT****CORAM**

COMMISSIONER J L HARRISON

**DATE**

TUESDAY, 18 NOVEMBER 2008

**FILE NO/S**

APPL 7 OF 2006

**CITATION NO.**

2008 WAIRC 01623

**Result**

Discontinued

*Order*

WHEREAS this is an application to vary the *Child Care Workers (Education Department) Award (No A 20 of 1984)* ("the Award"); and

WHEREAS on 13 April 2006 the Commission convened a conference for the purpose of conciliating between the parties however there was no appearance by the respondent; and

WHEREAS the matter was adjourned indefinitely pending the outcome of matters in the Federal Commission; and  
 WHEREAS the Commission contacted the applicant on a number of occasions to ascertain the status of this matter and was advised that the applicant required further time to have discussions in respect to varying a number of child care awards, including the Award; and

WHEREAS on 3 September 2007 the applicant filed a Notice of Discontinuance in respect of the application;

NOW THEREFORE the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) J L HARRISON,  
 Commissioner.

---

## NOTICES—Award/Agreement matters—

2008 WAIRC 01669

### WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Application No. AG 23 of 2008

#### APPLICATION FOR A NEW AGREEMENT ENTITLED

#### “COMBINED METAL INDUSTRIES AND TRANSPORT WORKERS UNION ENTERPRISE AGREEMENT 2008”

NOTICE is given that an application was made to the Commission, on 20 November 2008, by Combined Metal Industries under the Industrial Relations Act 1979, for the registration of the above named Agreement.

As far as relevant, those parts of the proposed Agreement that relate to area of operation or scope are published hereunder: -

#### **4. – SCOPE OF THE AGREEMENT**

- (1) This Agreement shall apply throughout the State of Western Australia to all employees of Combined Metal Industries employed in the distribution operations in the classifications listed in this agreement.
- (2) The number of employees covered by this Agreement upon commencement is 8.

The classifications prescribed in clause 9. – WAGE RATES are:

- Driver - Grade 4 rigid vehicle; and
- Driver - Grade 8 heavy combination vehicle ('HC').

A copy of the proposed Agreement may be inspected at my office at 111 St Georges Terrace, Perth.

(Sgd) J. SPURLING,  
 Registrar.

25 November 2008

2008 WAIRC 01725

### WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Application No. 129 of 2008

#### APPLICATION FOR VARIATION OF AN AWARD ENTITLED

#### “SOFT FURNISHINGS AWARD”

NOTICE is given that an application has been made to the Commission by *The Forest Products, Furnishing and Allied Industries Industrial Union of Workers, W.A.* under the Industrial Relations Act 1979 for a variation of the above Award.

As far as relevant, those parts of the proposed variation which relate to area of operation or scope are published hereunder:-

Clause 4. – Scope: Delete this clause and insert in lieu.

#### 4. - SCOPE

This award shall apply to all employees engaged in the manufacture of Soft Furnishings as defined in 10. – Definitions of this award.

A copy of the proposed variation may be inspected at my office at 111 St Georges Terrace, Perth.

(Sgd) J. SPURLING,  
 Registrar.

27 November 2008

**POLICE ACT 1892—APPEAL—Matters Pertaining To—**

2008 WAIRC 01692

**APPEAL AGAINST A DECISION OF THE COMMISSIONER OF POLICE TO TAKE REMOVAL ACTION**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

ANTHONY SEAN MOSS

**APPELLANT**

-v-

COMMISSIONER OF POLICE

**RESPONDENT****CORAM**CHIEF COMMISSIONER A R BEECH  
SENIOR COMMISSIONER J H SMITH  
COMMISSIONER J L HARRISON**DATE**

FRIDAY, 5 DECEMBER 2008

**FILE NO/S**

APPL 8 OF 2008

**CITATION NO.**

2008 WAIRC 01692

**Result**

Order varied - Appeal Further Adjourned

**Representation****Appellant**

Ms C Adams (of counsel), by correspondence

**Respondent**

Ms D Scaddan (of counsel), by correspondence

*Order*

WHEREAS on 28 November 2008 the appellant's representative advised that Mr Moss' appeal to the Supreme Court of Western Australia was upheld on 26 September 2008;

AND WHEREAS the appellant's representative advised that Mr Moss' solicitors had made a formal request to the respondent for the reinstatement of Mr Moss as a member of the WA Police;

AND WHEREAS the appellant's representative requested the WAIRC to adjourn this appeal for a further three months to enable the respondent time to consider its position;

AND WHEREAS on 2 December 2008 the respondent advised it agrees with the proposed further adjournment;

AND WHEREAS on the information before it, the WAIRC is of the view that it is in the interests of justice to grant a further adjournment of three months;

NOW THEREFORE, the WAIRC, pursuant to the powers conferred on it under s.33T of the *Police Act 1892*, hereby orders -

1. THAT order 1 of the order of 12 March 2008 be varied by deleting the date 6 December 2008 and inserting in lieu thereof the date 6 March 2009.

(Sgd.) A R BEECH,  
Chief Commissioner,

[L.S.]

On Behalf of the Western Australian Industrial Relations Commission.

**UNFAIR DISMISSAL/CONTRACTUAL ENTITLEMENTS—**

2008 WAIRC 01646

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

ALEXANDER GORDON BROWN

**APPLICANT**

-v-

THE G & K CHIARADONNA FAMILY TRUST & THE GIANNI CHIARADONNA FAMILY  
TRUST (ENTITY NAME), SPIZZICO YOUR ARTISAN BAKER (TRADING NAME), STUZZICO  
(STORE NAME)**RESPONDENT****CORAM**

COMMISSIONER S WOOD

**DATE**

TUESDAY, 25 NOVEMBER 2008

**FILE NO**

B 92 OF 2008

**CITATION NO.**

2008 WAIRC 01646

---

**Result** Application discontinued

---

*Order*

WHEREAS this is an application pursuant to section 29(1)(b)(ii) of the Industrial Relations Act 1979; and

WHEREAS a conciliation conference was convened on 3 September 2008 at the conclusion of which the matter was adjourned; and

WHEREAS the applicant advised the Commission on 14 November 2008 that he wanted to discontinue the application; and

WHEREAS the parties have waived their rights to speak to the Minutes of Proposed Order pursuant to s.35(4) of the Industrial Relations Act 1979;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders -

THAT the application be and is hereby discontinued.

(Sgd.) S WOOD,  
Commissioner.

[L.S.]

---

**2008 WAIRC 01689**

<b>PARTIES</b>	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION NATALIE JEAN HODSON	<b>APPLICANT</b>
	-v-	
	SHOPPENHANGERS PTY LTD T/AS C RESTAURANT	<b>RESPONDENT</b>
<b>CORAM</b>	COMMISSIONER S J KENNER	
<b>DATE</b>	WEDNESDAY, 3 DECEMBER 2008	
<b>FILE NO/S</b>	U 152 OF 2008	
<b>CITATION NO.</b>	2008 WAIRC 01689	

---

<b>Result</b>	Application dismissed for want of jurisdiction
<b>Representation</b>	
<b>Applicant</b>	In person
<b>Respondent</b>	Mr T Carmady of counsel

---

*Order*

Having heard Ms Hodson on her own behalf and Mr T Carmady of counsel on behalf of the respondent the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders -

1. THAT the name of the respondent be amended to read "Shoppenhangers Pty Ltd t/as C Restaurant".
2. THAT the application be and is hereby dismissed for want of jurisdiction.

(Sgd.) S J KENNER,  
Commissioner.

[L.S.]

---

**2008 WAIRC 01649**

<b>PARTIES</b>	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION BEVERLEY ANNE MARION HUNTLY	<b>APPLICANT</b>
	-v-	
	SLOTAR FAMILY TRUST	<b>RESPONDENT</b>
<b>CORAM</b>	COMMISSIONER P E SCOTT	
<b>DATE</b>	FRIDAY, 28 NOVEMBER 2008	
<b>FILE NO/S</b>	U 122 OF 2008	
<b>CITATION NO.</b>	2008 WAIRC 01649	

---

**Result** Application dismissed

---

*Order*

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the Industrial Relations Act 1979, filed on the 22<sup>nd</sup> day of September 2008; and

WHEREAS on the 29<sup>th</sup> day of October 2008 the Commission convened a conference for the purpose of conciliating between the parties; and

WHEREAS on the 21<sup>st</sup> day of November 2008 the Applicant's representative advised that agreement had been reached between the parties; and

WHEREAS on the 26<sup>th</sup> day of November 2008, the Applicant filed a notice of withdrawal or discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred under the Industrial Relations Act 1979, hereby orders:

THAT this application be, and is hereby dismissed.

(Sgd.) P E SCOTT,  
Commissioner.

[L.S.]

**2008 WAIRC 01626**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

PAUL MARCUS LIVERIS

**APPLICANT**

-v-

JENNIFER REVELL AND LANCE REVELL T/A REVELL LAWNS AND LANDSCAPES

**RESPONDENTS**

**CORAM**

SENIOR COMMISSIONER J H SMITH

**HEARD**

THURSDAY, 18 SEPTEMBER 2008

**DELIVERED**

WEDNESDAY, 19 NOVEMBER 2008

**FILE NO.**

U 27 OF 2008

**CITATION NO.**

2008 WAIRC 01626

**CatchWords**

Termination of employment – Harsh, oppressive and unfair dismissal – applicant made redundant – redundancy genuine – applicant not offered alternative employment - applicant unfairly dismissed – turns on own facts – *Industrial Relations Act 1979* (WA) s 29(1)(b)(i); *Minimum Conditions Employment Act 1993* (WA) s 41(2).

**Result**

Declaration and Order issued that the respondents pay the applicant \$1,873.40 (gross) as compensation

**Representation**

**Applicant**

Ms M Macpherson (as agent)

**Respondents**

Mr D H Schapper (of counsel)

*Reasons for Decision*

- 1 Paul Marcus Liveris (the applicant) makes a claim under s 29(1)(b)(i) of the *Industrial Relations Act 1979* (WA) (the IR Act) that he has been harshly, oppressively or unfairly dismissed by Jennifer Revell and Lance Revell T/A Revell Lawns and Landscapes (the respondents) on 18 February 2008. In his application he sought an order for reinstatement or compensation. At the hearing of the matter however the applicant informed the Commission that the only orders sought are orders for compensation for loss and injury.
- 2 The applicant was engaged by the respondents from August 2006 until February 2008 to carry out a range of landscaping duties. The applicant was at all material times provided with the use of a motor vehicle and a mobile telephone. It is common ground that during the period of engagement the applicant's services were entirely satisfactory. The applicant maintains that at all material times he was engaged by the respondents as a landscaper. The parties agree that in August 2007 the respondents provided the applicant with a substantial pay increase from an hourly rate of \$26 per hour to an annualised salary of \$66,000 per annum. In early February 2007, the applicant became aware that the respondents' financial statements indicated that the business was doing poorly. The applicant was made redundant on 18 February 2008. The applicant says that he was not given an opportunity to reduce his rate of pay and remain employed.
- 3 On the day the applicant's employment was terminated the respondents employed one or two new landscapers on a trial basis. The applicant contends he should have been offered one of those positions. At law the applicant says that the decision to terminate his employment was not on grounds of redundancy. The applicant also contends that the respondents did not comply

with s 41 of the *Minimum Conditions of Employment Act 1993* (WA) (the MCE Act). In particular he should have been offered alternate work as work that he was qualified to do was available.

- 4 The respondents say that in August 2007 they agreed to pay the applicant a substantial salary increase because they reached an agreement with him to take up the position of project manager. They say that by February 2008 it was clear that they could not afford to retain the applicant as a project manager and offered him the position of landscaper at the rate of \$25 per hour. The respondents say that the applicant refused the offer to renegotiate his contract and consequently they were left with no alternative but to terminate his employment on the grounds of redundancy. The respondents deny that they did not comply with s 41 of the MCE Act.

#### **The applicant's evidence**

- 5 In August 2006 the applicant answered an advertisement in seek.com for the position of landscaper. The applicant was initially engaged as a sub-contractor to carry out landscaping duties. Throughout his entire engagement with the respondents he carried out installation of landscape structures such as limestone retaining walls, brick paving, soft scaping of plants and turf and reticulation. He also contends that at all material times he carried out some administrative duties to do with quoting, construction advice and attended site meetings. The respondents provided him with all tools, a motor vehicle and a mobile phone.
- 6 In February 2007 the applicant changed the nature of his engagement and became an employee and was paid \$26 for each hour worked. In late July 2007 the applicant was offered a job with another business. His diary (exhibit 1) records that on 30 July 2007 he attended an interview with Dream Gardens. He was offered a job which he decided to accept. The salary offered was \$66,000 per annum. After he was offered the position he approached Jennifer Revell, one of the owners of the business and told her he was going to accept the position as he had a baby on the way and he needed to move forward. Jennifer Revell was upset and told him that she did not want him to leave and she was not ready for him to leave. After speaking to her husband, Lance Revell (the other owner), about salary Jennifer Revell told the applicant that possibly they could offer him the same sort of money and would he be interested in staying. After discussing the matter with his partner, Mary Macpherson, the applicant agreed to continue to work for the respondents.
- 7 The applicant claims that his duties did not change after his remuneration was increased. The applicant testified that his 2007 and 2008 diaries (exhibits 1 and 2) record his daily work and that it is clear from the matters recorded in those exhibits that his work did not change.
- 8 The applicant strongly maintained in his evidence that at all material times his duties did not change throughout the time that he worked as an employee or as a sub-contractor for the respondents. The only thing that changed was his remuneration. The applicant was cross-examined at some length about this issue. It was put to him that in August 2007 he was offered the substantial increase in salary in exchange for agreeing to work as the respondents' project manager. The applicant denied this to be the case. However in cross-examination, it was also put to him that after he accepted the offer of a higher salary he was given business cards which described him as a project manager (Exhibit A). The applicant was unable to recall if he had said anything about the business cards which described him as project manager of Revell Landscaping when he received them in 2007. He said, however, he could hardly recall giving any of them out to clients or suppliers as he was on the tools most of the time. Nor could he recall what he thought when he was given the business cards by Jennifer Revell. When asked why had Jennifer Revell offered him such a high salary in 2007, he said that Jennifer Revell did not want him to leave as he was a good employee.
- 9 In cross-examination it was also put to the applicant that when he told Jennifer Revell he was leaving he told her he wanted to come off the tools and move into project management and quoting rather than actual hands-on work. He denied he said that. The applicant stated strongly when he gave evidence that he did not want to be a project manager and that he did not prefer quoting, supervision or ordering materials to hands-on work. He also denied that after he went onto the higher salary that he did more work in the nature of quoting, supervising, overseeing and much less time "hands-on" landscaping. The applicant, however, conceded that at the time he received the increase in remuneration the work was very busy and that the respondents was a small employer.
- 10 Shortly before the applicant's employment was terminated the total number of employees including the owners of the business was as follows:
- (a) Lance Revell (labourer);
  - (b) Tom Watson (landscaper);
  - (c) Mark Roberts (landscaper);
  - (d) The applicant;
  - (e) Les (sub-contractor-labourer);
  - (f) Jennifer Revell;
  - (g) Sharon (part-time bookkeeper).
- 11 The applicant also conceded in cross-examination that during 2007, he enrolled in a TAFE certificate IV in landscape design. When asked why he wanted to do the course he said that design goes hand-in-hand with landscape construction.
- 12 The applicant testified that on Thursday, 7 February 2008, it was raining all day so he worked in the office doing quotes as he was required to do so when it rained. On that day Sharon, the bookkeeper, who worked every second Thursday, was in the office. Sharon produced the quarterly figures for October/November/December 2007 and gave them to Jennifer Revell. The applicant said that it was apparent that the figures showed a significant downturn in profit. Jennifer Revell discussed the downturn with him but did not show him the figures. The applicant says they discussed what could be done to make the business more profitable. He suggested they look at job costing and labour times and they also discussed current jobs and projects underway. He told her that they possibly needed to run two jobs at one time

- 13 The applicant said that later that afternoon they sat down in the kitchen over a cup of coffee and Jennifer Revell told him that they all needed to sort of "knuckle down", that they could work their way out of this and she had a belief that he could with her turn things around. She also told him he was the best employee that they had. He left the office later that day to do a quote.
- 14 In cross-examination the applicant conceded that when he discussed the figures for the business on 7 February 2008 with Jennifer Revell it was plain to him that the business had suffered a significant downturn in profit. The applicant said, however, that he did not see the figures and he could not remember the amount that was discussed and says he made only a minor contribution to the discussion. It was put to him in cross-examination that the figures showed that the business was doing badly because the wages were so high. In response the applicant said he overheard a discussion between Jennifer Revell and Sharon that wages were too high. He also said he was told that things had to change. When further cross-examined the applicant conceded that apart from materials the largest cost in the landscaping business is labour. He, however, said that labour costs are only moderately important in his opinion as a landscaper. He said that he was experienced in running a business as a landscaper as he had run his own business but had ceased to do so as he wanted more time with his family.
- 15 The applicant, however, did concede that he did not dispute that labour costs had increased significantly but simply said that he was not told that. He also conceded that he had a discussion with Jennifer Revell sometime after 7 February 2008 about putting a proposal to the other landscaper, Mark Roberts, that Mark either reduce his wage to \$25 an hour or lose the use of the motor vehicle which was allocated to him. He was not present during that discussion with Mark but he was later told that Mark had accepted that offer. When asked why Jennifer Revell would discuss this matter with him, the applicant said Jennifer Revell discussed a myriad of issues with him throughout his entire employment but he denied that she discussed it with him because he was the project manager. It was put to the applicant in cross-examination that Jennifer Revell put a proposal to him on two occasions that he also cut his pay to \$25 per hour and he had refused and told Jennifer Revell that it was not enough. The first occasion was said to be on 7 February 2008. The applicant denied that he had any discussion with Jennifer Revell about cutting his pay even though he conceded that he was the most highly paid person in the business.
- 16 The applicant says that he was supervised by Jennifer Revell who visited him in the field daily. He denied that he was an on-site supervisor.
- 17 The applicant agreed he was aware that Tom Watson was leaving and had given six weeks' notice and was due to leave the respondents' employment about a week after the applicant's employment was terminated. He also agreed that Jennifer Revell had told him that when Tom left she wanted to go back to only employing two landscapers and two labourers. He also agreed that they had interviewed two landscapers. One had been trialled and was not suitable. The other started on a trial basis on the day the applicant was made redundant. This person was taken on as a trial to replace Tom. He also said that Jennifer Revell told him some time after 7 February 2008 that she was looking at only having two landscapers work in the business. She told him this when she told him she was going to offer Mark a reduction in pay.
- 18 On 8 February 2008 the applicant carried out a paving job in Light Street, Morley. On the following Monday, 11 February 2008, he started a new job at Cyrenian House near Hyde Park and he later helped Lance Revell and another employee at Light Street. On 12 and 13 February 2008 he worked all day by himself at Cyrenian House. On 14 February 2008 he worked again at Cyrenian House but he worked with others. His diary records that he worked at Cyrenian House with "Mark/Paul/Les".
- 19 On Friday, 15 February 2008 the applicant worked at the respondents' home at Bayswater. His diary records that he was building a limestone parapet wall and water feature planter. The job was very difficult. He spoke to Jennifer Revell about what was to happen on the following Monday. She told him that a new employee was starting on Monday and after finishing some work at her house they would be moving back to the Cyrenian House job. Jennifer Revell gave him some stationery during the course of the discussion. Jennifer Revell wished him well for the weekend as she was leaving to go and do a quote and said that she would see him on Monday. The applicant had interviewed a new landscaper with Jennifer Revell a couple of weeks earlier. The applicant's diary records that this interview took place on 6 February 2008.
- 20 The applicant was asked in cross-examination about what occurred at work on the Friday before his employment was terminated. The applicant said that Jennifer Revell's worksite was difficult and restricted and he found he had a frustrating day at work. It was put to the applicant that he had sworn at Tom and that Tom had previously complained to Jennifer Revell that he (the applicant) had bullied him (Tom). The applicant denied that to be the case.
- 21 On 18 February 2008 the applicant arrived at the respondents' office to do some work at 7:00 am. Troy or Todd, the new landscaper, was there ready to start to work with him. Tom Watson was also there ready to set up. He observed that Tom did not have a motor vehicle which he thought was strange. The applicant started to set up for work when Jennifer Revell asked him to come into the office with the Cyrenian House job file. Upon entering the office she told him he was to be made redundant. He was in shock and asked whether she was sacking him and she said, "No. You need to be given three written warnings to be sacked. You have been made redundant." She then told him that she could not afford to keep him and that business was bad. He asked her if he could take a pay cut like Mark Roberts had and she said, "No. This is the only way." She then said he could take the car home, catch a taxi or his partner could pick him up. He went outside and telephoned his partner, Mary Macpherson, and arranged for her to pick him up. He then returned to the office and requested that he be given a written notice of his termination and possibly remuneration for his termination. After some time Jennifer Revell became angry and told him he would get it when she was good and ready. They then started to discuss his redundancy and Jennifer Revell brought up some performance issues and referred to his attitude on site on the previous day. The discussion deteriorated so the applicant left the office and waited for Mary Macpherson. When he returned home he contacted Centrelink to obtain assistance as his first baby was due to be born in three weeks' time and he needed financial assistance. He said that he was advised that he needed to obtain a Separation Certificate from the respondents and to register for work. The applicant immediately arranged to register with an agency. He received a letter from the respondents a day or two after his employment was terminated. The letter states as follows:

I regret to advise that your employment with Revell Landscaping has been terminated. Termination is effective from 18 February 2008.

As discussed with you at our meeting your job was made redundant due to economic and structural requirements.

I confirm that you were consulted about the possibility of redundancy on the 4 February 2008. In particular the following issues were discussed with you at that time:

The Company had experienced a considerable downturn in business and profits. The possibility of a salary cut was discussed. The restructuring of operations was also discussed.

A payment will be made into your bank account for all outstanding wages, annual leave and two weeks payment in lieu of notice (redundancy pay).

We thank you for your service with Revell Landscaping and wish you success in future endeavours.

(Exhibit 3)

- 22 The applicant says that he was "knocked off his feet" at the time of the termination. He worried about obtaining work which affected him greatly. In addition he had until recently been on a reduced salary which made things hard for him and his family. He also says he has been under a lot of stress and has had high blood pressure and has had difficulty sleeping.
- 23 The applicant maintained in his evidence that if he had been offered to take a pay cut he would have accepted it as his baby was due in three weeks and if he had a choice between being unemployed or taking a lower rate of pay, he would have taken the pay cut because of his family situation.
- 24 The applicant was unemployed for three weeks. He then commenced working as a landscaper for Waldecks at the rate of \$23.7850 an hour for 76 hours per fortnight and he was provided with a motor vehicle. On 25 July 2008 he was promoted to the position of Waldecks Landscaping Assistant Manager on a salary of \$65,000 per annum plus an incentive scheme to be finalised. He continues to be provided with a motor vehicle.

#### **The respondents' evidence**

- 25 Jennifer Revell testified that she is the owner of Revell Landscaping together with her husband. They operate as a partnership and have been in business for nine years. The business provides a design and construction of commercial and residential landscaping service and they carry out some maintenance work. Jennifer Revell designs the landscapes and her husband works as a labourer. The two partners do not receive wages but receive an equal share of profit. Jennifer Revell initially engaged the applicant as a sub-contractor but he wanted to become a PAYG employee, so she engaged him as an employee on the rate of pay of either \$25 or \$26 an hour in February 2007. He was a good landscaper, he was punctual and customers and colleagues liked him.
- 26 In July 2007, the applicant told her that he had been offered a new job on a salary of \$65,000 or \$66,000 per annum. He said that he did not want to leave but if they could not match the salary he had no choice but to leave. He also told her that it was not about the money, that he did not want to be a landscaper forever and he wanted to progress his career as a project/site manager which in the past was something they had discussed. She told him that she was willing to take the chance on being able to afford it if he was. He agreed and he commenced work as a project manager. She arranged for him to be provided with business cards. They decided he would do quotations and carry out some sales work which she did most of the time. It was agreed that he would also work in the office writing up quotes and ordering materials. She also wanted him to run jobs as she did not want to go to the site all of the time as she wanted to do only sales. He also continued to work on the tools when there were no other duties to do.
- 27 Jennifer Revell said that prior to being employed as a project manager the applicant did not write up quotes. When she gave him the business cards as project manager he said thanks but did not say anything further. She then called a meeting with all the staff and she told them that he had been promoted to project manager.
- 28 When cross-examined Jennifer Revell conceded that she had continued to do quote work and ordering materials after the applicant's salary was increased. When it was put to her that he worked on the tools 50% of the time, she disagreed and said that he did not do so. Jennifer Revell testified, however, that when they started a new project, the applicant was required to be on-site to direct the bobcat to clear the site. She said when stating a project he may also have to be on the tools whilst that is done, such as pick up a shovel to remove debris in areas which cannot be reached by a bobcat. He also had to set up the work for the other workers and supervise them. He ordered sand and materials as he had a company credit card to buy small things at Bunnings. He also organised work flow.
- 29 Jennifer Revell said in her evidence that in late 2007 she looked at the monthly and quarterly figures and compared them to previous years and saw that the business had increased sales by \$80,000 but had made \$80,000 to \$100,000 less in profit. It was apparent to her that they were living on their home loan. She decided to leave it a bit longer but things got worse so in February 2008 she called the applicant and Lance Revell into the office and she arranged for Sharon, the bookkeeper, to draw up a profit and loss statement. The profit and loss statement from 1 July 2007 to the end of January 2008 showed that they made a net profit of \$26,259 which was to be split between herself and her husband. The profit and loss statement also showed that they had paid \$106,303 in wages in that period of time. She said they could not go on like this as they could not service their loans and she was worried about going bankrupt. She spoke to the applicant in the office, wrote the figures on the whiteboard and showed the applicant comparisons for previous years to show him the "dire straits" of the business. They discussed ways to improve the business, such as making running sheets to watch how long jobs were taking. She told him that wages at the end of the day were too high. She asked him if he would consider taking a pay cut to \$25 an hour to work as a landscaper. She put this to him because she wanted to go back to only having two landscapers in the business at \$25.00 an



- hour plus two labourers (which included her husband), as that had worked in the past. He told her that that was not enough and he also said, "What about Mark? He is on \$27.50." She told him that she would be to speaking to Mark. She also told the applicant she would work things out over the course of a week or so and get back to him.
- 30 Jennifer Revell spoke to Mark who agreed to take a pay cut to \$25.00 an hour. She then spoke to the applicant and told him that Mark had agreed to take a salary cut. She asked the applicant again to reconsider his position and to go back to being a landscaper at \$25.00 an hour. The applicant told her that it was not an option.
- 31 Shortly before Jennifer Revell spoke to the applicant about the profitability of the business, Jennifer Revell and the applicant interviewed prospective landscapers to replace Tom as Tom had given four weeks' notice and was leaving in late February 2008. After the applicant declined the position of landscaper at a reduced rate of pay, she offered two prospective landscapers work on a trial basis to commence on 18 February 2008. She engaged two of them on a trial to see who was the best. She did so because in her experience it had been revealed that often people who are engaged as landscapers say they can do things when they cannot. She intended to only retain one person to work in the business as a landscaper but that was only if the applicant did not want to reconsider his position.
- 32 On the Friday before 18 February 2008, Jennifer Revell was in the office and the applicant and Tom were working at the back of her house. Tom is a carpenter and he was building a deck. She testified that Tom and the applicant were quibbling all day. She had previously warned the applicant about bullying Tom. On that day Tom had come to her and complained about the applicant bullying him so she told the applicant not to do so. At about 3.00 pm Mrs Revell could hear yelling and she went out to the driveway and she heard the applicant yelling at Tom to move his car or he would punch his f ing head in. She told Tom to go around the back and to get out of the way of the applicant. She then told the applicant to go home and she would see him on the Monday morning in the office. She was in a hurry because she was leaving to do a quote.
- 33 On Monday 18 February 2008, when the applicant came into the office, she told the applicant that she had made a decision and that she was going to have to make him redundant. As soon as she said those words he got really angry and asked whether she was sacking him. He told her that she had "burnt him". He stormed out and said, "How am I supposed to get home?" Jennifer Revell offered to give him a lift or to get her husband to give him a lift. The applicant told her not to worry about it. He went out the front of the premises and telephoned Mary Macpherson. Jennifer Revell says she tried to talk to the applicant but he refused. She says that she thought at that stage that he may say he would take the \$25.00 an hour but she thought he probably would not stay because he was very ambitious and he would get another job. He came back into the office after about 10 minutes and told her that he wanted his pay and a letter of redundancy. She told him she had not written a letter out yet. She still thought that maybe he would have taken the job of landscaper at \$25.00 an hour and that is why she had not worked out his pay at that stage and why she did not have any letter of redundancy prepared for him. She hoped that he would stay because he was a very good landscaper and she did not want to go through the trouble of taking on the two who were on trial. She testified that in fact the two who started on trial on 18 February 2008 did not turn out and she had to find a third person before she was able to replace Tom. It was put in cross-examination that he practically begged her to let him take a pay cut like Mark. Jennifer Revell said that was not the case; he abused her, he told her that she had burnt him, that she was sacking him and that he was having a baby. He did not beg her. However, she wanted the applicant to stay on as she did not want him to go.
- 34 Jennifer Revell says that she engaged the two landscapers on trial because she said she did not want to say yes you have a full time job to either of them in case the applicant "turned around" and said he wanted to take up the position of landscaper. When asked whether she put it to him on 18 February 2008 that he could stay at \$25.00 an hour she said she did not get a chance because he stormed out of the office just after she had uttered the words that "she was afraid that she had to make him redundant". When asked what her intention was in relation to manning at that time she said that she only wanted to retain two landscapers and two labourers because she wanted to sell a car. Prior to the applicant being made redundant the business employed three landscapers and two labourers and supplied three cars. She wanted to sell a car as there was not enough work at that stage to support the number of employees in the business and by the figures it was not working. She said that by running the business with two landscapers and two labourers she was able to make the business work as she could carry out all the scheduling of the jobs and sales. That is how the business has run since the applicant's employment was terminated and the business has recovered.
- 35 Jennifer Revell also went on to say that in relation to the applicant's threats on the Friday to punch Tom's head in, she was aware that she could have dismissed the applicant because of his conduct but she did not wish to do so because she had already made the decision to make him redundant. In addition he had worked for her for almost a year and she considered him a friend.
- 36 When cross-examined Jennifer Revell agreed that whilst the applicant was employed she provided quotes and ordered materials. When asked whether the applicant was required to run jobs prior to August 2007, Jennifer Revell said that after he became project manager in August 2007 he was required to do so but he was not required to do so prior to that because he was not a site supervisor or project manager. After answering this question, an advertisement in the West Australian newspaper was put to Jennifer Revell which was published on 26 January 2008. The advertisement stated, "Landscaper, must be able to read plans and run large jobs. Experience in limestone block laying and paving essential. Carpentry skills also considered. Company car and excellent salary" (Exhibit 6). When this advertisement was handed to her in the witness box Jennifer Revell agreed that she had put this advertisement in the West Australian newspaper on 26 January 2008. When asked to comment about the advertisement stating that the business required a landscaper to run large jobs, Jennifer Revell said that they are all required to run large jobs at one stage or another. When it was then put to her that she had testified that the applicant was only required to run large jobs after August 2007 she replied that she did not say "only". She then went on to say that when she placed the job advertisement she only had one landscaper so they had to run their own jobs.

- 37 It was also put in cross-examination that Lance Revell was not present when she discussed the applicant's position. In response she said he was. Jennifer Revell was then asked why was Lance Revell not in court to corroborate her story and Jennifer Revell replied that he was at work and she said she thought her word would be good enough.
- 38 When asked how many hours a week did the applicant work she said that he rarely did more than 76 hours a fortnight or 38 hours a week. She said on some occasions they did more but on many occasions they did less.
- 39 Jennifer Revell also said when cross-examined that she had no hard feelings towards the applicant and that at the time she made him redundant she knew that his first child was due to be born in three weeks. However, Jennifer Revell was handed a series of emails from the applicant to Jennifer Revell dated 18 February 2008, 27 February 2008 and 6 March 2008 in which the applicant had sought copies of pay slips, a separation certificate and a written reference. In an email dated 18 February 2008, Jennifer Revell agreed to provide the applicant with a written reference and payslips. She told him he would receive his pay to date plus holiday pay and two weeks' redundancy pay. Jennifer Revell later retracted the promise to provide him with a reference. In an email dated 6 March 2008, she informed the applicant that she did not have to supply a separation certificate and that she had been advised by the Chamber of Commerce not to supply a personal reference. When questioned about this she testified that she was not a current member of the Chamber of Commerce and had not sought their advice but she did have a manual from the Chamber of Commerce which stated that personal references should not be provided because you could be held legally liable for what is written. She said the manual recommended providing a statement of service and she tried to ring the applicant regarding this but he would not answer her calls. In relation to a separation certificate she said she did not really have time to deal with the applicant's request because of the new employees she had working on trial and the numerous duties that she had to carry out and look after her children. She also said that she felt she was being badgered by the applicant when he made these requests. She rang Centrelink to obtain the separation certificate form and they told her to come down to the office. She said she did not have time to go down to the office and they finally told her that she did not have to provide one.

### Legal Principles

- 40 It is well established that employer's legal rights to dismiss an employee must be exercised in such a way that the right is not harshly or oppressively against an employee (see the discussion in *Miles, Rose and Crown Hiring Services trading as The Undercliffe Nursing Home v The Federated Miscellaneous Workers' Union of Australia, Hospital, Service and Miscellaneous W.A. Branch* (1985) 65 WAIG 385 at 386 and 387 in relation to the legal right of an employer to dismiss an employee). It is also well established that an employer has the prerogative to organise their business in the way they see fit and the Commission should not interfere in such a decision unless the decision can be said to be industrially unfair (see *Amalgamated Metal Workers and Shipwrights Union of Western Australia and the Operative Painters and Decorators Union of Australia, West Australian Branch Union of Workers v Australian Shipbuilding Industry (WA) Pty Ltd* (1987) 67 WAIG 733). However, as the Commission in Court Session in *The Federated Engine Drivers' and Firemen's Union of Workers of Western Australia v Robe River Iron Associates* (1986) 67 WAIG 763 at 766: "Managerial prerogative is not a sword which can be wielded in wanton disregard of the industrial consequences nor is it a shield to hide behind. An employer has a responsibility to manage fairly."
- 41 The onus is on the applicant to prove that the dismissal was unfair on the balance of probabilities. However, there is an evidential onus upon the employer to prove in a case of summary dismissal that the dismissal is justified (*Newmont Australia Ltd v The Australian Workers' Union, Western Australian Branch, Industrial Union of Workers* (1988) 68 WAIG 677 at 679). In this matter it cannot be disputed that the applicant was summarily dismissed.
- 42 It is argued on behalf of the applicant that at law he was not made redundant at the time of the termination of his employment as his job still existed as his duties were carried out by other employees. It is also contended that the respondents engaged an employee to replace the applicant and that employee commenced work on the day the applicant was dismissed.
- 43 In *Webforge Australia Pty Ltd v Richards* (2005) 85 WAIG 1445 Sharkey P with whom Beech CC and Wood C agreed observed at [50] to [54]:
- 50 ... The classic but not exhaustive definition is that given by Bray CJ in *R v Industrial Commission of South Australia; Ex parte Adelaide Milk Supply Co-operative Ltd* (1977) 16 SASR 6 at 8 (hereinafter referred to as the "*Adelaide Milk Co-op Case*"), where His Honour said:-
- "the concept of redundancy in the context we are discussing seems to be simply this, that a job becomes redundant when the employer no longer desires to have it performed by anyone. A dismissal for redundancy seems to be a dismissal, not on account of any personal act or default of the employee dismissed or any consideration peculiar to him, but because the employer no longer wishes the job the employee has been doing to be done by anyone."
- 51 Redundancies can arise as the result of the closure of a business (see *Coles Fossey v Burton* (1992) 41 IR 49), the sale of a business (see *Re Government Cleaning Service (Privatisation) Award No 2* (1994) 55 IR 199), as a result of a privatisation of a government undertaking (see *Re Government Cleaning Service (Privatisation) Award No 2* (op cit)), or the "outsourcing" of the relevant part of the business.
- 52 Quite clearly, the introduction of technological or organisation change can also bring about redundancies in jobs (see *Short v F W Hercus Pty Ltd* (1993) 40 FCR 511 at 520-521). A redundancy may arise as a result of a restructure in order to increase the competitiveness or profitability of the business (see *Howarth v Babin*, ICR, Wilcox J, 30 September 1996, No 550 of 1996 (unreported)). More relevantly, it has been accepted that an employee's position is redundant where the duties that go to make up the position are split up and spread amongst other employees (see *Aitken v CMETSWU* (1995) 63 IR 1 (IRC of Aust) and *Quality Bakers of Australia Ltd v Goulding and Another* (1995) 60 IR 327 at 332-333 (IRC of Aust)).

- 53 Ryan J, in *Jones v Department of Energy and Minerals* (1995) 60 IR 304 (IRC of Aust) at 308, quoted with approval in *Quality Bakers of Australia Ltd v Goulding and Another* (op cit), *Aitken v CMETSWU* (op cit), and *Association of Professional Engineers, Scientists and Managers Australia v Deniliquin Council No. 2* (1995) 134 ALR 267 at 285, referred to what a job was and also discussed the notion of redundancy:-
- "... it should be noted that Bray CJ's description of what can constitute redundancy is not expressed to be exclusive. His Honour's description was cast in terms of a "job" in the sense of a collection of functions, duties and responsibilities entrusted, as part of the scheme of the employer's organisation, to a particular employee. However, it is within the employer's prerogative to rearrange the organisational structure by breaking up the collection of functions, duties and responsibilities attached to a single position and distributing them among the holders of other positions, including newly-created positions. It is inappropriate now to attempt an exhaustive description of the methods by which a reorganisation of that kind may be achieved. One illustration of it occurs when the duties of a single, full-time, employee are redistributed to several part-time employees. What is critical for the purpose of identifying a redundancy is whether the holder of the former position has, after the reorganisation, any duties left to discharge. If there is no longer any function or duty to be performed by that person, his or her position becomes redundant in the sense in which the word was used in the *Adelaide Milk Co-operative* case."
- 54 Of course, *Gromark Packaging v FMWU* (IAC) (op cit) is authority for the proposition that a circumstance of "labour in excess of that reasonably required to perform the work" available to the employer also reveals the situation of redundancy.
- 44 In *Garbett v Midland Brick Company Pty Ltd* (2003) 83 WAIG 893, E M Heenan J also indicated that the classic statement by Bray CJ in *Adelaide Milk Co-operative Ltd* is not exclusive. At [76] his Honour observed that:
- It has been recognised, however, that it is not essential for all the work to have disappeared and that organisational restructuring may result in a position being abolished and the functions of that position being divided or given to others - *Bunnett v Henderson's Federal Spring Works Pty Ltd* (1989) 31 AILR 356.
- 45 Section 41 of the MCE Act provides:
- (1) Where an employer has decided to —
    - (a) take action that is likely to have a significant effect on an employee; or
    - (b) make an employee redundant,
 the employee is entitled to be informed by the employer, as soon as reasonably practicable after the decision has been made, of the action or the redundancy, as the case may be, and discuss with the employer the matters mentioned in subsection (2).
  - (2) The matters to be discussed are —
    - (a) the likely effects of the action or the redundancy in respect of the employee; and
    - (b) measures that may be taken by the employee or the employer to avoid or minimize a significant effect, as the case requires.
- 46 It is argued on behalf of the respondents that where an employer has decided to make an employee redundant the employee has a right to be informed of the redundancy and a right to discuss with the employer the matters set out in s 41(2). Essentially it is argued that the right resides with the employee to discuss the matters set out in s 41(2) but there is no obligation on the employer to discuss those matters with the employee. With respect, I do think that is a correct interpretation of s 41. In *Garbett* E M Heenan J (with whom Parker J agreed) at [94] held:
- 94 ... I consider that the term implied in all contracts of employment by s 41 of the *MCEA* that, where the employer has decided to take action that is likely to have a significant effect on an employee or make an employee redundant, the employee is entitled to be informed by the employer as soon as reasonably practicable after the decision has been made, of the action on the redundancy, as the case may be, and the obligation to discuss with the employee the various matters mentioned in s 41(2), actually requires the employer to bring that entitlement to the attention of the employee and to discuss the matters so arising, notwithstanding that the employee may not be aware of the existence of his or her entitlement to be so informed or of the obligation of the employer to discuss the matters provided. In the absence of such an obligation, the statutory provision is likely to have haphazard and random effect depending upon the existence or otherwise of knowledge by the individual employee, at the relevant time, of the effect of s 41. As the section applies to contracts of employment of all kinds, and the Act is designed to provide minimum conditions of employment which will, inevitably, involve many employees at the lower end of the employment scale whose knowledge and experience is likely to be limited, I consider that any different approach would fail to ensure that such employees receive the benefit of the statutory provision which its policy demonstrates is a necessary ingredient of their employment.
- 47 As set out in the above passage when informing the applicant that his position had been made redundant there is an obligation under s 41 of the MCE Act to inform the applicant of any other employment available (see also *Hooker v The Owners of Strata Plan 5679 Kashmir* (2003) 83 WAIG 3948 and *Budget Airconditioning v Penn* (2004) 84 WAIG 2171 at [57], [58], [88] and [90]).

#### Documentary evidence and credibility of the witnesses

- 48 The applicant's evidence that his diaries contained an accurate record of the work he carried out each day was not challenged when the applicant was cross-examined by the respondents' counsel.

- 49 The applicant's diaries (Exhibits 1 and 2) record the jobs the applicant attended and his duties. Although Jennifer Revell testified that the applicant did not write up quotes, Exhibit 1 records prior to August 2007 the applicant either wrote up quotes or provided quotes. On the following days it is recorded:

<u>DATES</u>	<u>EVENTS</u>
8/1/07	Office to write up quotes Quote meeting Trevor
15/1/07	Quote for Hilt and Dean
17/1/07	Office to do quotes
19/1/07	Office/quotation @ Karrinup [sic]
8/2/07	Quote for Geoff in Mt Lawly [sic] 5-00pm
20/2/07	5-00 - 7-00pm Quote
26/2/07	Quote in South Perth
28/2/07	Office plant trees do quotes
13/3/07	Quote Helen Mathews
3/5/07	Quote for timber fence
8/5/07	Scarborough for quote
14/5/07	Quote @ S/Perth Bella Casa Building

- 50 On 30 July 2007, the applicant went to an interview for a job with Dream Gardens. Exhibits 1 and 2 record the applicant either wrote up quotes or provided quotes after the date of the interview on the following days:

<u>DATES</u>	<u>EVENTS</u>
10/8/07	Rained off Office quotes
20/8/07	Office quotes Quote Mt Hawthorn
21/8/07	Quote Francein Vic Park Quote Duncraig
9/10/07	Quote 12-30 - 3-30pm
7/2/08	Rain day Quotes in office

- 51 In relation to work in the office, site meetings or ordering material Exhibits 1 and 2 record:

<u>DATES</u>	<u>EVENTS</u>
8/1/07	Site meeting with Jenny Leonard St Vic Park
12/1/07	Meeting Jerramy Tolken Lara Anstie
16/1/07	Lunch meeting in town Jen Revell
27/2/07	Office invoicing Jack Towton job
19/4/07	Visit Manning job
24/4/07	Meeting am with Jen and Buma clients Office with Tom
30/4/07	Office drop off tools for Lance Show job photos to Jen
3/5/07	Organise soil con for delivery 5m <sup>3</sup>
7/6/07	Office for shedual [sic] meeting
2/7/07	Meeting in office am paid for the day
18/7/07	Site visit Loverich [sic] with Jen
30/7/07	Site visit Jack Towton Jandickot [sic]
29/8/07	Office pm

<u>DATES</u>	<u>EVENTS</u>
3/9/07	Office
4/9/07	Office
21/9/07	Jane Brooke [sic] job look at 3-00pm
2/10/07	Office 3-00 - 4-30
5/10/07	Site visits office 12-00 - 2-30
8/10/07	Office 12-00 - 3-30
23/10/07	Meeting Carnarvon Street
21/11/07	Meeting on site Mt Claremont
6/2/08	Interview with new landscaper
7/2/08	Site visit in Ballcatta [sic]

52 As to the work of others in the business Exhibits 1 and 2 record:

<u>DATES</u>	<u>EVENTS</u>
4/1/07	Lee to work
5/1/07	Lance to Maddington
9/1/07	Lance 5 hrs
30/1/07	7-30am Bennys team to Maddington Drew – Lance – Martin Vic Park
27/3/07	South Perth Chris 6.5 hrs
28/3/07	Marangaroo job Chris 6.5 hrs
29/3/07	Maragaroo [sic] job Julian 8 hrs
30/3/07	Marangaroo Chris 8 hrs
24/4/07	Tom pick up timber for S/Perth deck seats
26/4/07	Tom S/Perth deck seats
27/4/07	Tom S/Perth deck seats
30/4/07	Tom am finish S/Perth deck seats
19/5/07	Tom to Maylands
6/7/07	Lance and Mark @ Stewart Street
23/8/07	Tom & Paul
24/8/07	Tom/Paul/Lance
27/8/07	Paul/Tom
28/8/07	Paul/Tom/Lance/Mark
7/9/07	Beano/Lance/Tom
10/9/07	Beano/Lance/Tom/Paul
11/9/07	Beano/Lance/Tom/Mark/Paul
12/9/07	Lance/Tom/Paul/Mark/Beano
18/9/07	Brett/Paul
24/9/07	Beano no good fired
25/9/07	Bartell job Tom Stew me Loveridge job Tom Stew me Woodbridge job Stew/me

<u>DATES</u>	<u>EVENTS</u>
26/9/07	Stew/me
27/9/07	Paul/Stewart
28/9/07	Paul Stewart
2/10/07	Paul/Stew
3/10/07	Paul/Stew
4/10/07	Stew/Mark/Paul Lance ½ day
5/10/07	Paul/Lance/Stew
10/10/07	Tom West Swan Mark/Lance Woodbridge
11/10/07	Moir Maylands me Stewart Mark Lance Tom West Swan
12/10/07	Moir Maylands me/Stewart Mark Lance Woodbridge/Bayswater Laying lawn Tom West Swan guttering
13/10/07	Tom West Swan Staining deck
15/10/07	West Swan Tom Stewart Mark me
16/10/07	West Swan Tom Lanec [sic] Mark Stewart me
17/10/07	Maylands Lance/Stewart West Swan Tom/Mark/me
18/10/07	West Swan Mark Stewy Tom Maylands Lance me
19/10/07	West Swan job Mark/Tom/me Maylands job Lance/Stewy
22/10/07	Loveridge W/Swan Stew ½ day Mark me front Tom deck
23/10/07	Loveridge West Swan Tom deck Stew fill planters Mark front planters build Lance
24/10/07	Loveradge [sic] W Swan Lance planting Stew clean up Tom decking (rest obscured)
26/10/07	Loveridge West Swan Tom/Lance back deck Paul Mark fron [sic] planters Retic
29/10/07	Loveridge job West Swan Stew clean up Paul paving/capping Lane/Mark maintenance [sic] Tom wood work
30/10/07	Loveridge job Mark Stew Tom Paul

<u>DATES</u>	<u>EVENTS</u>
1/11/07	Brain job Mt Lawley Mark/Paul West Swan job Loveridge Tom/Stew/Lance
2/11/07	Brain job Mark Paul Stew Lance West Swan Loveridge job Tom
5/11/07	West Swan Loveridge job Stew Tom Paul Brain job Lance Mark
6/11/07	West Swan Loveridge job Paul Tom Mt Lawley Brain job Mark Stew
7/11/07	West Swan Loveridge job Tom Paul Brain job Mt Lawley Stew Mark
8/11/07	West Swan job Loveridge Tom Mark Stew Paul
13/11/07	Tom Loveridge Mark Stewi Loveridge
14/11/07	Tom Loveridge [sic] Mark Stewie maintenance [sic]
15/11/07	Tom Loveridge [sic] Mark reticulation job
16/11/07	Tom Loveridge [sic] Mark Stewie Loveridge
19/11/07	Mark @ Brains
20/11/07	Mark @ Brains
22/11/07	Start Vic Park job New labor [sic] Evan + me
23/11/07	Vic Park job Me Ewan [sic]
26/11/07	Vic Park job Me/Ewan [sic]
27/11/07	Vic Park Tom-Stewart-Paul
28/11/07	Vic Park Claremont Tom-Evan-Stewart-Paul
29/11/07	Claremont Paul Stewart Tom-West Swan
30/11/07	Claremont Paul Evan Tom-West Swan
6/12/07	West Swan Paul Mal Tom Les
10/12/07	Chew South Perth Mal Mark Tom Les Paul
11/12/07	Chew South Perth Les Tom Mark Paul
12/12/07	Chew South Perth Tom Mark Paul Les

<u>DATES</u>	<u>EVENTS</u>
13/12/07	Chew South Perth Tom Mark Paul Lez [sic]
14/12/07	Chew South Perth Tom Mark Lez [sic] Paul Inglewood
17/12/07	Robberts [sic] Vic Park Tom Mark Lez [sic] Paul
18/12/07	Brain Mt Lawley Mark Lez [sic] Robberts [sic] Vic Park Tom Paul
19/12/07	Tom Mark Lez [sic] Paul
3/1/08	Start Blake job Hillarys Les Lance Tom Mark Paul (Exhibit 1)
4/1/08	Blake job Hillarys Les Lance Tom Mark Paul (Exhibit 1)
4/2/08	Blake job Hillarys Tryout landscaper Michale
14/2/08	Cyrenian House job Mark/Paul/Les

53 Whilst the applicant's diaries corroborate his evidence that he quoted on jobs throughout his employment with the respondents, the diaries could be said to corroborate Jennifer Revell's evidence in one respect and that is that from late August 2008 onwards the applicant as part of his duties as a project manager had a supervisory role. The diaries, however, directly contradict her evidence that he did not write up quotes prior to his appointment as project manager. In fact his diary records he provided quotes on fewer occasions after July 2007 than in the period between January 2007 and the end of May 2007. As to site visits, his diaries are more consistent with his evidence that his duties did not change rather than the evidence given by Jennifer Revell. I do, however, accept that these diaries are consistent with Jennifer Revell's evidence that the applicant took on a supervisory role as project manager as his diaries from end of August 2008 contain a record of not only the jobs he worked on but also the jobs worked on by others. For example, the applicant's diary records that on 14 December 2007 he was working on a job in Inglewood and Tom, Mark and Les were working on a job in South Perth. This record is consistent with Jennifer Revell's evidence that the applicant supervised the work of the other landscapers and the labourers.

#### Findings of Credibility

54 I did not find the evidence given by either the applicant or Jennifer Revell entirely satisfactory. In relation to the applicant, I do not accept his evidence that he did not take up the role of project manager and that his duties did not change after he received a substantial increase in his remuneration and I find that he was not truthful in respect of this issue. The reason why I have reached this conclusion is that:

- (a) He was evasive when questioned about the business cards which described him as project manager of the respondents' business.
- (b) His diaries support an inference that he undertook a supervisory role from the end of August 2007.
- (c) It is apparent from his evidence that Jennifer Revell treated him as a manager of many aspects of the business. She not only jointly carried out planning work with him but she consulted him about matters that it would be expected an owner of a business would consult a manager about, such as interviewing a new landscaper, discussing the financial state of the business and her plans to reduce Mark's remuneration.
- (d) He was the most highly paid person in the business and not only earned more than the other landscapers but also more than the owners of the business.

55 In relation to Jennifer Revell, her evidence was not satisfactory in a number of respects. I did not find her to be a truthful or reliable witness in respect of the following matters:

- (a) Her evidence that the applicant did not write up quotes is directly contradicted by the applicant's diaries the content of which was not challenged by the respondents (Exhibits 1 and 2).
- (b) When cross-examined she clearly stated that the applicant was not required to run jobs prior to taking up the position of project manager, however, when Exhibit 6 was put to her which showed on 26 January 2008 an advertisement in the West Australian newspaper stated that she was seeking to engage a landscaper who must be able to run large jobs, Jennifer Revell attempted to qualify her evidence. She then said that when



she placed the job advertisement they only had one landscaper, which was not the case as it is common ground that in January 2008 the respondents employed two landscapers, Tom and Mark, and that the advertisement was placed in the newspaper to find a replacement for Tom. In addition she had earlier given evidence that in early February 2008 she made the decision that she wanted to run the business with two landscapers and two labourers and without the applicant's position.

- (c) Despite saying in the letters to the applicant that the possibility of redundancy had been discussed with him prior to 18 February, 2008 in her oral evidence she did not say that occurred.
- (d) She gave contradictory evidence about her conversations with the applicant on the day he was terminated. In particular, she said that she did not have an opportunity to discuss with him whether he would take the landscaper position yet when he returned to the office after telephoning Mary Macpherson she discussed his request for pay and a redundancy letter.

56 Having heard the evidence of both witnesses and observed each of them carefully when they gave evidence, even though I do not accept the applicant was truthful when he gave his evidence about not being a project manager (except in relation to that issue), I prefer the evidence given by the applicant to the evidence given by Jennifer Revell and I find that he was otherwise truthful. The reason why I have reached this conclusion is that:

- (a) The diaries corroborate the applicant's evidence about his duties more than Jennifer Revell's evidence about his duties.
- (b) There are more inconsistencies in Jennifer Revell's evidence than the applicant's.

#### Findings of Fact

57 The material facts of this matter which are uncontradicted are as follows:

- (a) The applicant was a valued employee who carried out all duties provided to him by the respondents in an effective manner.
- (b) The applicant was the most highly paid person in the business. At the time of the termination of his employment he earned substantially more than the owners of the business.
- (c) By early February 2008 it was necessary for Jennifer Revell to introduce cost saving measures to make the business financially viable.
- (d) The largest quantum of expenses in the business was materials and labour.
- (e) Jennifer Revell discussed with the applicant in early February 2008 that:
  - (i) the business had suffered a significant downturn in profit;
  - (ii) she intended to put to Mark a proposition that his remuneration be reduced or that he lose the use of a motor vehicle;
  - (iii) She intended to "go back to only employing two landscapers and two labourers".
- (f) In February 2008, the applicant was aware that Jennifer Revell was of the opinion that wages were too high.
- (g) At the time of termination of the applicant's employment alternative work was available that could have been performed by the applicant, namely the position of landscaper at the rate of \$25 an hour.

58 Whilst I did not find either the applicant or Jennifer Revell to be reliable witnesses in relation to the issues set out in paragraph [55] of these reasons, the burden of proof lies on the respondents to prove the termination was justified. I do not accept that the respondents did not genuinely have a need to abolish the position of project manager. Inherent in this finding is a finding that the applicant was employed as the project manager of the respondents' business. It is clear to me that he was employed as a project manager which entailed additional duties to hands-on work as a landscaper. Jennifer Revell had to take steps to reduce costs by abolishing the applicant's position as the cost of his position was greater than any other position in the business and the business could be run without a project manager. As discussed in *Webforge Australia Pty Ltd* at [52], a redundancy can arise because of measures taken to increase the profitability of the business and where work of a position is shared among others. I am satisfied that taking such a step was necessary and consequently I am satisfied the decision to make the applicants' position of project manager redundant was genuine.

59 The next issue is whether Jennifer Revell informed the applicant that other work was available, namely landscaping work at \$25 an hour to replace Tom. Having heard the evidence and accepting the applicant's version of events in respect of the alternative work, I find Jennifer Revell did not offer the applicant work as a landscaper at \$25 an hour. Further, even if I was to prefer the evidence of Jennifer Revell to the applicant on this issue, I am not satisfied that Jennifer Revell made a proper offer of alternative work to the applicant. Even if her evidence is accepted and the applicant's evidence is rejected, her evidence at the highest was that on two occasions prior to 18 February 2008 she asked the applicant if he would consider his position and go back to being a landscaper at \$25 an hour. She did not at any point in time tell him that if he did not agree to do so his employment would be terminated. On the day his employment was terminated she did not renew the offer of work. She says she was unable to do so but I do not accept that to be the case. She said he stormed out of the office. However, he returned after speaking to Mary Macpherson. They had a discussion about his pay and a letter of redundancy. She had an opportunity of making the offer then. She did not do so. If she seriously wished to retain his services she could have allowed him an opportunity to "cool down" and contact him later.

60 Plainly the failure by Jennifer Revell to discuss with the applicant that although his position of project manager had been made redundant there was an alternative to terminating his employment constituted a breach of s 41 of the MCE Act. Consequently, I find that the termination of the applicant's employment was unfair.

- 61 I am satisfied that the applicant suffered a loss caused by the unfair dismissal. He suffered a loss of opportunity to take up the position of landscaper at \$25 an hour. If he had been offered the position I am satisfied that he would have accepted the offer which would have minimised the effects of the redundancy.
- 62 The applicant was paid two weeks' pay in lieu of notice. He was unemployed for three weeks and then was paid \$23,785.00 an hour for 76 hours a fortnight until 25 July 2006. Taking into account the two weeks' pay in lieu of notice I am satisfied that the applicant's loss caused by the unfair dismissal is as follows:
- (a) \$950 (being \$25 an hour for 38 hours for one week he was unemployed and without payment)
  - (b) \$923.40 (being \$25.00 minus \$23,785.00 equals \$1,215 an hour for 38 hours x 20 weeks)
- = \$1,873.40
- 63 In relation to the applicant's claim that he suffered an injury in *AWI Administration Services Pty Ltd v Birnie* (2001) 81 WAIG 2849 Chief Commissioner Coleman and Commissioner Smith observed at [200]:
- It is accepted that there is an element of distress associated with almost all employer initiated terminations of employment. For injury to be recognised by way of compensation and thereby fall outside the limits which can be taken to have normally been associated with a harsh, oppressive or unfair dismissal there needs to be evidence that loss of dignity, anxiety, humiliation, stress or nervous shock has been sustained. Injury embraces the actual harm done to an employee by the unfair dismissal. It comprehends 'all manner of wrongs' including being treated with callousness (*Capewell v Cadbury Schweppes Australia Limited* (1998) 78 WAIG 299). The injury may be manifested by the detrimental impact on the physical or emotional wellbeing of the person whose services were terminated. However dismissals will impact to varying degrees on individuals and while the need for professional care may be evidence of that impact, this will not necessarily always be the case in order to establish the causal link between the termination of employment and the injury. While it is necessary to exercise a degree of caution to ensure that compensation is confined to reasonable limits (*Timms v Phillips Engineering Pty Ltd* (1997) 70 WAIG 1318 and *Burazin v Blacktown City Guardian Pty Ltd* 142 ALR 144) that is not to say that every claim for injury necessarily involves expert evidence of emotional trauma.
- 1 The circumstances in which the dismissal from employment has been effected may be sufficient to demonstrate the injury which is experienced. Situations where an employee is locked out of the workplace or is escorted from the premises, or the termination has been conducted in full view of other staff are examples of callous treatment justifying recognition for compensation for injury (*Lynham v Lataga Pty Ltd* (2001) 81 WAIG 986).
  - 2 However, the Commission is not able to adjust the measure of compensation according to the opinion of the employer or employee or of the conduct of the respective parties (*Capewell v Cadbury Schweppes Australia Limited* (op cit)).
- 64 The principles set out above in relation to assessing whether a claim for injury is made out an assessment of compensation was applied by me in *Lenny v Bone Densitometry* (2005) 85 WAIG 946 and upheld by the Full Bench at (2005) 85 WAIG 2981.
- 65 I accept that the timing of the decision to make the applicant redundant in that it occurred three weeks prior to the applicant's first child being born was stressful. Jennifer Revell's conduct after she terminated the applicant's employment could be construed as callous or at best as extremely helpful she did not provide the applicant with a separation certificate or a reference given that she regarded his work highly. Despite this finding I am not satisfied there is sufficient evidence before me to make a finding that the applicant suffered an injury as a result of the termination of his employment as it is not clear to me that the stress, high blood pressure and difficulty sleeping the applicant suffered was sustained because of the termination or the consequences of taking a position with a reduced salary. If he had been offered and taken a reduced salary and continued to work for the respondents he still would have been on a reduced salary which would, to use his words, have been "hard for him and his family" and may have caused him to suffer the symptoms he described in any event.
- 66 For the reasons set out above I will make a declaration that the applicant was unfairly dismissed and make an order that the respondents pay the applicant \$1,873.40 (gross) as compensation.

2008 WAIRC 01642

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

PAUL MARCUS LIVERIS

APPLICANT

-v-

JENNIFER REVELL AND LANCE REVELL T/A REVELL LAWNS AND LANDSCAPES

RESPONDENTS

CORAM

SENIOR COMMISSIONER J H SMITH

DATE

FRIDAY, 21 NOVEMBER 2008

FILE NO/S

U 27 OF 2008

CITATION NO.

2008 WAIRC 01642

---

<b>Result</b>	Declaration and Order issued
<b>Representation</b>	
<b>Applicant</b>	Ms M Macpherson (as agent)
<b>Respondents</b>	Mr D H Schapper (of counsel)

---

*Declaration and Order*

HAVING heard Ms Macpherson as agent on behalf of the applicant and Mr Schapper of counsel on behalf of the respondents, the Commission pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby —

1. DECLARES that the applicant was unfairly dismissed by the respondents; and
2. ORDERS that the respondents pay the applicant within 14 days of the date of this order the sum of \$1,873.40 (gross) as compensation.

[L.S.]

(Sgd.) J H SMITH,  
Senior Commissioner.

**2008 WAIRC 01643**

---

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
<b>PARTIES</b>	PAUL MARCUS LIVERIS	<b>APPLICANT</b>
	-v-	
	JENNIFER REVELL AND LANCE REVELL T/A REVELL LAWNS AND LANDSCAPES	<b>RESPONDENTS</b>
<b>CORAM</b>	SENIOR COMMISSIONER J H SMITH	
<b>DATE</b>	19 NOVEMBER 2008 (CORRIGENDUM 24 NOVEMBER 2008)	
<b>FILE NO/S</b>	U 27 OF 2008	
<b>CITATION NO.</b>	2008 WAIRC 01643	

---

**CORRIGENDUM**

1. In the third line and the eleventh line of [53] of the Reasons for Decision of 19 November 2008 delete the words "August 2008" and insert the words "August 2007".
2. In the second line of [62] of the Reasons for Decision of 19 November 2008 delete the words "July 2006" and insert the words "July 2008".
3. In the fourth line of [65] of the Reasons for Decision of 19 November 2008 delete the word "helpful" and insert the word "unhelpful".

[L.S.]

(Sgd.) J H SMITH,  
Senior Commissioner.  
Dated: 24 November 2008

**2008 WAIRC 01603**

---

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
<b>PARTIES</b>	KYM YVETTE MUNN	<b>APPLICANT</b>
	-v-	
	SUSAN RIPLEY - OSCHEA HAIR & BEAUTY	<b>RESPONDENT</b>
<b>CORAM</b>	COMMISSIONER S WOOD	
<b>DATE</b>	MONDAY, 17 NOVEMBER 2008	
<b>FILE NO</b>	U 125 OF 2008	
<b>CITATION NO.</b>	2008 WAIRC 01603	

---

<b>Result</b>	Application discontinued
<b>Representation</b>	
<b>Applicant</b>	Ms K Munn
<b>Respondent</b>	Ms S Ripley

---

*Order*

WHEREAS this is an application pursuant to section 29(1)(b)(i) of the Industrial Relations Act 1979; and

WHEREAS a conciliation conference was convened on 28 October 2008 at the conclusion of which the matter was resolved; and

WHEREAS the applicant advised the Commission on 6 November 2008 that she wanted to discontinue the application; and

WHEREAS the parties have waived their rights to speak to the Minutes of Proposed Order pursuant to s.35(4) of the Industrial Relations Act 1979;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders -

THAT the application be and is hereby discontinued.

[L.S.]

(Sgd.) S WOOD,  
Commissioner.

---

**2008 WAIRC 01676**

<b>PARTIES</b>	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION MANUEL OCTAVIO RAMOS	<b>APPLICANT</b>
	-v-	
	THE BOSE STORE	<b>RESPONDENT</b>
<b>CORAM</b>	COMMISSIONER S J KENNER	
<b>DATE</b>	TUESDAY, 2 DECEMBER 2008	
<b>FILE NO/S</b>	U 114 OF 2008	
<b>CITATION NO.</b>	2008 WAIRC 01676	

---

<b>Result</b>	Application discontinued by leave
<b>Representation</b>	
<b>Applicant</b>	Mr P King
<b>Respondent</b>	Ms M Ivanovski of counsel

---

*Order*

WHEREAS the applicant sought and was granted leave to discontinue the application, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders

THAT the application be and is hereby discontinued by leave.

[L.S.]

(Sgd.) S J KENNER,  
Commissioner.

---

2008 WAIRC 01671

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

TIM PETER SLISKOVIC

**APPLICANT**

-v-

REZIN INVESTMENT PTY LTD

**RESPONDENT****CORAM** SENIOR COMMISSIONER J H SMITH**DATE** MONDAY, 1 DECEMBER 2008**FILE NO/S** U 81 OF 2008**CITATION NO.** 2008 WAIRC 01671**Result** Dismissed**Representation****Applicant** In person**Respondent** Mr R A Burns*Order*

The applicant filed an application under s 29(1)(b)(i) of the *Industrial Relations Act 1979* (the Act) on 26 June 2008;

AND WHEREAS on 2 September 2008, a conciliation conference was convened by the Commission. At the conclusion of the conference the applicant and the respondent reached an agreement to compromise the applicant's claim;

AND WHEREAS it was a term of the agreement that the applicant would file a Notice of withdrawal or discontinuance;

AND WHEREAS on 17 October 2008, the Commission wrote to the applicant and informed him that if he did not file a Notice of withdrawal or discontinuance or contact the Commission within 14 days of the date of the letter Senior Commissioner Smith would make an order dismissing his claim;

AND WHEREAS by close of business 28 November 2008, the applicant had not contacted the Commission or filed a Notice of withdrawal or discontinuance;

NOW THEREFORE the Commission pursuant to the powers conferred by it under the Act hereby orders:—

THAT the application be and is hereby dismissed.

[L.S.]

(Sgd.) J H SMITH,  
Senior Commissioner.**SECTION 29(1)(b)—Notation of—**

Parties		Number	Commissioner	Result
Alexander Buchan	Ian Bresland, A Team Printing Pty Ltd	U 148/2008	Senior Commissioner J H Smith	Discontinued
Ann Hutchison	Mohamed Shoeib Abernathy Drive In Chemist	U 84/2008	Senior Commissioner J H Smith	Discontinued
Ann Hutchison	Mohamed Shoeib Abernathy Drive In Chemist	B 84/2008	Senior Commissioner J H Smith	Discontinued
Anne Melissa Gunson	Strive Warren Blackwood Inc	U 4/2007	Senior Commissioner J H Smith	Discontinued
Czeslaw (Chester) Lukowski	Westrac Pty Ltd	B 124/2008	Commissioner S J Kenner	Discontinued
David William Coles	Minara Resources Ltd	U 91/2008	Senior Commissioner J H Smith	Discontinued
Diane Hanrahan	Narelle Watt Principal ABN: 61 347 212 398 T/C: 52088 - 3L Real Estate	B 198/2007	Senior Commissioner J H Smith	Withdrawn
Gordon Lesslar	Kiri McKenzie (State Manager) Craigcare St. James	U 123/2008	Senior Commissioner J H Smith	Withdrawn

Parties		Number	Commissioner	Result
Jason Rodney Bert Waind	Stanford Cabinets	U 203/2007	Senior Commissioner J H Smith	Withdrawn
Jason Rodney Bert Waind	Stanford Cabinets	B 203/2007	Senior Commissioner J H Smith	Withdrawn
Lorraine Alexander	Australia and New Zealand Banking Group Limited	U 95/2008	Senior Commissioner J H Smith	Discontinued
Lynda Jane Tully	Department of Health	U 100/2008	Senior Commissioner J H Smith	Discontinued
Lynda Jane Tully	Department of Health	B 100/2008	Senior Commissioner J H Smith	Discontinued
Mr Thomas Dawson	Colbolt Transport	B 74/2008	Senior Commissioner J H Smith	Discontinued
Mr Thomas Dawson	Colbolt Transport	U 74/2008	Senior Commissioner J H Smith	Discontinued

## CONFERENCE—Matters arising out of—

2008 WAIRC 01586

**PARTIES**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION, WESTERN AUSTRALIAN  
BRANCH

**APPLICANT**

-v-

CATHOLIC EDUCATION OFFICE OF WESTERN AUSTRALIA

**RESPONDENT**

**CORAM**

COMMISSIONER S J KENNER

**DATE**

TUESDAY, 11 NOVEMBER 2008

**FILE NO/S**

C 26 OF 2008

**CITATION NO.**

2008 WAIRC 01586

<b>Result</b>	Application discontinued by leave
<b>Representation</b>	
<b>Applicant</b>	Ms J Stribling
<b>Respondent</b>	Ms K Wroughton of counsel

*Order*

WHEREAS the applicant sought and was granted leave to discontinue the application, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders –

THAT the application be and is hereby discontinued by leave.

[L.S.]

(Sgd.) S J KENNER,  
Commissioner.

2006 WAIRC 05707

### DISPUTE REGARDING WORK BANS

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

THE DIRECTOR GENERAL FOR THE DEPARTMENT OF EDUCATION AND TRAINING

**APPLICANT**

-v-

THE STATE SCHOOL TEACHERS UNION OF W.A.(INCORPORATED)

**RESPONDENT**

**CORAM**

COMMISSIONER J L HARRISON

**DATE**

THURSDAY, 2 NOVEMBER 2006

**FILE NO/S**

C 79 OF 2006

**CITATION NO.**

2006 WAIRC 05707

---

<b>Result</b>	Order issued
<b>Representation</b>	
<b>Applicant</b>	Ms D MacTiernan
<b>Respondent</b>	Mr M Amati

---

*Order*

WHEREAS the applicant lodged an application on 6 September 2006 pursuant to s44 of the *Industrial Relations Act, 1979* (“the Act”), as amended on 11 September 2006, seeking the assistance of the Commission in relation to bans in place by the respondent (“the Union”) and its members associated with the Department of Education and Training (“the Department”) obligations under the State/Commonwealth Quadrennial Funding Arrangements in four areas:

- General Reporting Template (“the templates”)
- Making Consistent Judgments Program (“MCJ”)
- Curriculum Improvement Program Phase 2 (“CIP2”)
- Western Australia Literacy and Numeracy Assessment (“WALNA”); and

WHEREAS on 12 September 2006 the Commission convened a conference for the purpose of conciliating between the parties and the parties agreed to have further discussions concerning the issues in dispute; and

WHEREAS at a conference held on 20 September 2006 the Commission was advised that the parties were having on-going discussions with respect to MCJ, CIP2 and WALNA and that the parties remained in dispute about bans implemented by the respondent and its members in relation to the implementation and use of the templates; and

WHEREAS the respondent and its members have the following bans in place in relation to this issue (“the bans”):

“DIRECTIVE

All members are directed to not implement the new Nelson/Ravlich student reports.

**SSTUWA MEMBER/BRANCH ACTION TO IMPLEMENT THE REPORT BAN**

In working to our union directive the school report must meet the following restrictions:

No grades, quartiles or achievement targets.

Primary comments: required for English, Maths and general.

In working to our union directive the school report will follow one of the following options:

1. **CURRENT REPORTS:** The school continues to use the previous years report.
2. **ALTERNATIVE REPORTS:** The school uses an alternative student report that meets the above union requirements. A primary and secondary sample will be placed on the SSTUWA Website.
3. **NEW REPORTS:** For schools that moved to the new report in 2005 this directive requires any continuation **only** with the above union restrictions. These schools may choose to use the word document version to create a hard copy and/or amended version.”

(Extract from SSTUWA Faxstream dated 9 August 2006); and

WHEREAS the applicant maintained that these bans were impacting on the issuance of student reports for Semester 2, 2006; and

WHEREAS the parties were advised that the Commission would hear further from the parties as to whether an order should issue to lift the bans relating to the use of the templates and the matter was set down for hearing on 29 September 2006; and

WHEREAS when this matter was part heard the Commission assisted the parties with further conciliation with respect to the issues in dispute and a representative of the Minister for Education and Training was also involved in these discussions; and

WHEREAS after further discussions the applicant agreed to modify its current templates and use revised templates in Semester 1, 2007 taking into account some of the respondent’s concerns about the content of the templates and the applicant also undertook to provide additional resources during Term 4, 2006 to assist teachers and administrators with the implementation of the Semester 2, 2006 templates; and

WHEREAS the Minister for Education and Training committed to review the format of the templates in place for Semester 1, 2007 at the end of Semester 1, 2007; and

WHEREAS notwithstanding these changes and undertakings by the applicant and the Minister for Education and Training the respondent decided to continue with the bans on implementing and using the templates and the Commission set down this issue for further hearing on 31 October 2006 to hear from the parties as to whether an order should issue to lift the bans on the use of the current templates; and

WHEREAS the applicant argued the following in support of its application that the bans should be lifted:

1. that the matter before the Commission is an industrial matter as it is a matter affecting or relating or pertaining to the work, privileges, rights, or duties of employers or employees in any industry or of any employer or employee therein;

2. that the requirement for reporting to parents/caregivers is an essential feature and function of teachers and administrators' roles and forms part of their contracts of employment and the bans are in defiance of a lawful direction given by the applicant to teachers to use the templates and to use the software supporting these templates;
3. that there is a potential for Western Australia to lose or have Commonwealth funding suspended if the templates are not used by teachers in Western Australian Government schools and this would impact severely on the delivery of public education in Western Australia;
4. that the applicant has already committed a significant amount of resources into the School Information System ("SIS") reporting program;
5. that pursuant to the objects of the Act, in particular s6(c), an order should issue in the terms sought; and

WHEREAS Mr William Murdoch gave the following evidence on behalf of the applicant:

1. In 2005 the Minister for Education and Training determined that the reporting of student progress be consistent across Western Australian Government schools;
2. In 2006 the applicant developed mandatory policies and procedures for reporting and as part of its policy teachers are required to use standardised reporting templates which include grades;
3. Currently approximately 77% of student reports were generated using the SIS programme and of these around 60% had grades allocated;
4. The applicant negotiated with representatives of the respondent in 2006 and revised the templates and computer software to complete the revised templates is now in place in almost all Western Australian Government schools;
5. The Federal Minister for Education, Science and Training requires that the applicant include grades in student reports and Federal Government funding for Western Australian Government schools is contingent on this being achieved across the board;
6. The applicant has allocated significant funding and support for teachers and administrators to implement the templates and the applicant is monitoring any additional support required by teachers and administrators on an on-going basis;
7. The completion of the templates by teachers does not represent a significant increase to a teacher's workload and in many instances will result in a decrease in workload; and

WHEREAS the respondent argued the following in support of its claim that an order lifting the bans should not issue:

1. that in part the bans are in place because of an inappropriate level of resourcing and lack of facilities being available to schools to use and fill out the templates;
2. that it is educationally problematic to use an A to E grade to quantify a student's achievement level particularly for primary schools students;
3. that substantial progress has been made towards commonly agreed reporting templates and the respondent wants the opportunity to have further discussions to agree on further changes to the templates and the respondent maintains that further discussions are also necessary to deal with the issue of teacher workloads under Clause 25 of the *School Education Act Employees' (Teachers and Administrators) General Agreement, 2006* ("the Agreement") caused by the use of the templates;
4. that even if the bans are lifted teachers will have difficulty completing the templates in Semester 2, 2006 due to a range of issues including a lack of training, an increased requirement for comments in Years 4 to 7, a lack of appropriate Information Technology ("IT") facilities in many schools and a lack of appropriate broadband and electronic access to the system for many teachers;
5. that long hours of work for compiling reports at school will result in an unreasonable escalation of the workloads of teachers and administrators during Term 4, 2006 and this will create Occupational Health and Safety issues for teachers and administrators; and

WHEREAS Mr Clive Kelly gave the following evidence on behalf of the respondent:

1. The implementation of the templates will result in an unreasonable increase to the workloads of teachers and administrators;
2. There is insufficient time in Term 4, 2006 for teachers to adequately complete the templates and there will be a substantial increase in teachers' workloads due to:
  - lack of relevant IT support, connectivity and unreliable software;
  - the personal safety of some teachers will be compromised when teachers remain at school to complete the templates after hours;
  - the requirement for comments on some reports is onerous;
  - the grades lack integrity, are inconsistent and arbitrary; and

WHEREAS the respondent tendered a number of comments by some of its members highlighting a range of resourcing and pedagogical problems if the current templates were required to be used by teachers; and

WHEREAS the Commission is of the view that the matter before it is an industrial matter as it relates to issues pertaining to the employment relationship between the applicant and the respondent's members and the rights of an organisation; and



WHEREAS the Commission is of the view that it has jurisdiction to issue the orders sought pursuant to s44 of the Act which enables the Commission to issue orders with respect to an industrial matter; and

WHEREAS having heard from the applicant and the respondent and when taking into account equity and fairness and the substantial merits of this case and the objects of the Act including in particular s6(af) and s6(c) the Commission has formed the view that the bans that the respondent and its members have in place with respect to teachers and administrators preparing for and using the current templates should be lifted; and

WHEREAS in reaching this conclusion the Commission has taken the following into account:

1. That the progress to date between the parties on the revised templates to be used in Semester 1, 2007 represents the extent to which agreement can be reached on this issue at this point in time for implementation in Semester 1, 2007 and even if further discussions are held between the parties via the consultative mechanisms set out in the Agreement with respect to these templates computer software will not be ready in time to change the revised templates for Semester 1, 2007;
2. That concerns such as using grades to report on early childhood students and other primary students as well as the ability to replace grades with descriptors can be further discussed between the parties and with the Commission's assistance prior to and at the time the Minister for Education and Training conducts a review of the templates at the end of Semester 1, 2007;
3. That the applicant will provide the following resources during Term 4, 2006 in addition to resources currently being provided to assist teachers and administrators to implement and complete the templates:
  - (a) A hot-line at Central Office to provide additional IT and curriculum support;
  - (b) Two additional officers are available in each District Office throughout Western Australia to provide telephone and on-site support and training to schools and additional funding will be provided for these personnel to travel to schools as and when necessary;
  - (c) Ten additional personnel from Central Office are available to provide back up assistance to schools including school visits, telephone support and provide lap-top computers to schools where necessary;
  - (d) Remote access broadband and dial-up for teachers will be in place by 3 November 2006;
4. That sanctions will not be placed on a teacher or administrator who is unable to implement and complete the templates due to circumstances beyond their control;
5. That a majority of students in a majority of schools are currently being given reports which include grades and that a number of hardware and software concerns regarding the use of the current templates have been and continue to be addressed by the applicant;
6. That teachers in a number of other states throughout Australia are required to use grades when reporting on the progress of both primary and secondary students now and/or in 2007;

WHEREAS on 1 November 2006 the Commission issued Reasons for Decision by way of recitals and a Minute of Proposed Order in relation to this matter; and

WHEREAS on 2 November 2006 the Commission conducted a Speaking to the Minutes of Proposed Order; and

WHEREAS the applicant argued that amendments should be made to Orders 1 and 2 to describe the proper terminology used for the reporting templates and the SIS programme used for the templates; and

WHEREAS the respondent did not oppose the amendments being sought; and

WHEREAS the respondent argued that there were issues with Order 1 given the lack of resources available to teachers to implement and use the templates and that the orders finally dispose of the matters in dispute and raised concerns in regard to teachers who are unable to implement the templates due to circumstances beyond their control; and

WHEREAS having considered the submissions of both parties the Commission advised the parties that, except for the minor amendments to terminology raised by the applicant, the order would issue in its original form;

NOW THEREFORE having heard Ms D MacTiernan on behalf of the applicant and Mr M Amati on behalf of the respondent, the Commission having regard for the interests of the parties directly involved, the public interest and to prevent the further deterioration of industrial relations, and pursuant to the powers vested in it by the Act, and in particular s44(6)(ba)(i) and (ii) and s44(6)(bb)(i), hereby orders:

1. THAT the respondent, its officers, agents, employees and members immediately cease industrial action, including bans, in relation to the implementation and use of the General Reporting Templates.
2. THAT teachers and administrators with specific IT responsibility in Western Australian Public schools who are members of the respondent and currently have a ban on the implementation and use of the templates are not to take any industrial action including bans and restrictions on the implementation of SIS Curriculum Manager software upgrades and downloads with respect to the General Reporting Templates.
3. THAT the respondent, its officers, agents and employees are to take reasonable steps to inform its members about the terms of this order and direct its members to comply with this order.
4. THAT the respondent, its officers, agents and employees and the respondent's members are not to take any further industrial action in relation to the implementation and use of the templates whilst this order remains in force.

5. THAT in order to ensure that the issue of resourcing is being adequately addressed by the applicant the parties are to meet on or about 15 November 2006 and 29 November 2006 to review the progress of completing the templates and the level of resourcing being provided to assist teachers and administrators to implement and use the templates and report backs on this issue will be held in the Commission in mid November 2006 and at the end of November 2006.
6. THAT the parties are to attend a report back conference in the Commission at the end of February 2007 to review the status of templates being used in other states.
7. THAT this order is to remain in force until revoked or varied by the Commission.
8. THAT both parties have liberty to apply to vary this order.

(Sgd.) J L HARRISON,  
Commissioner.

[L.S.]

**2008 WAIRC 01604**

**DISPUTE REGARDING WORK BANS**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

THE DIRECTOR GENERAL FOR THE DEPARTMENT OF EDUCATION AND TRAINING

**APPLICANT**

-v-

THE STATE SCHOOL TEACHERS' UNION OF W.A. (INCORPORATED)

**RESPONDENT**

**CORAM** COMMISSIONER J L HARRISON

**DATE** MONDAY, 17 NOVEMBER 2008

**FILE NO/S** C 79 OF 2006

**CITATION NO.** 2008 WAIRC 01604

**Result** Order revoked

**Representation**

**Applicant** Mr R Andretich (of Counsel)

**Respondent** Mr M Amati

*Order*

WHEREAS the applicant lodged an application on 6 September 2006 pursuant to s 44 of the *Industrial Relations Act, 1979* ("the Act"), as amended on 11 September 2006, seeking the assistance of the Commission in relation to bans in place by the respondent ("the Union") and its members with respect to the Department of Education and Training's ("the Department") obligations under the State/Commonwealth Quadrennial Funding Arrangements in four areas:

- General Reporting Template ("the templates")
- Making Consistent Judgments Program ("MCJ")
- Curriculum Improvement Program Phase 2 ("CIP2")
- Western Australia Literacy and Numeracy Assessment ("WALNA"); and

WHEREAS on 12 September 2006 the Commission convened a conference for the purpose of conciliating between the parties and the parties agreed to have further discussions concerning the issues in dispute; and

WHEREAS at a conference held on 20 September 2006 the Commission was advised that the parties were having on-going discussions with respect to MCJ, CIP2 and WALNA and that the parties remained in dispute about bans implemented by the Union and its members in relation to the implementation and use of the templates; and

WHEREAS the Union and its members had the following bans in place in relation to this issue ("the bans"):

**"DIRECTIVE**

All members are directed to not implement the new Nelson/Ravlich student reports.

**SSTUWA MEMBER BRANCH ACTION TO IMPLEMENT THE REPORT BAN**

In working to our union directive the school report must meet the following restrictions:

No grades, quartiles or achievement targets.

Primary comments: required for English, Maths and general.

In working to our union directive the school report will follow one of the following options:

1. **CURRENT REPORTS:** The school continues to use the previous years report.
2. **ALTERNATIVE REPORTS:** The school uses an alternative student report that meets the above union requirements. A primary and secondary sample will be placed on the SSTUWA Website.
3. **NEW REPORTS:** For schools that moved to the new report in 2005 this directive requires any continuation **only** with the above union restrictions. These schools may choose to use the word document version to create a hard copy and/or amended version.”

(Extract from SSTUWA Faxstream dated 9 August 2006); and

WHEREAS the Department maintained that these bans were impacting on the issuance of student reports for Semester 2, 2006; and  
 WHEREAS the parties were advised that the Commission would hear further from the parties as to whether an order should issue to lift the bans relating to the use of the templates and the matter was set down for hearing on 29 September 2006; and

WHEREAS when this matter was part heard the Commission assisted the parties with further conciliation with respect to the issues in dispute and a representative of the Minister for Education and Training was also involved in these discussions; and

WHEREAS after further discussions the Department agreed to modify its current templates and use revised templates in Semester 1, 2007 taking into account some of the Union’s concerns about the content of the templates and the Department also undertook to provide additional resources during Term 4, 2006 to assist teachers and administrators with the implementation of the Semester 2, 2006 templates; and

WHEREAS the Minister for Education and Training committed to review the format of the templates in place for Semester 1, 2007 at the end of Semester 1, 2007; and

WHEREAS notwithstanding these changes and undertakings by the Department and the Minister for Education and Training the Union decided to continue with the bans on implementing and using the templates and the Commission set down this issue for further hearing on 31 October 2006 to hear from the parties as to whether an order should issue to lift the bans on the use of the current templates; and

WHEREAS the Department argued the following in support of its application that the bans should be lifted:

1. that the matter before the Commission is an industrial matter as it is a matter affecting or relating or pertaining to the work, privileges, rights, or duties of employers or employees in any industry or of any employer or employee therein;
2. that the requirement for reporting to parents/caregivers is an essential feature and function of teachers and administrators’ roles and forms part of their contracts of employment and the bans are in defiance of a lawful direction given by the Department to teachers to use the templates and to use the software supporting these templates;
3. that there is a potential for Western Australia to lose or have Commonwealth funding suspended if the templates are not used by teachers in Western Australian Government schools and this would impact severely on the delivery of public education in Western Australia;
4. that the Department has already committed a significant amount of resources into the School Information System (“SIS”) reporting program;
5. that pursuant to the objects of the Act, in particular s6(c), an order should issue in the terms sought; and

WHEREAS Mr William Murdoch gave the following evidence on behalf of the Department:

1. in 2005 the Minister for Education and Training determined that the reporting of student progress be consistent across Western Australian Government schools;
2. in 2006 the Department developed mandatory policies and procedures for reporting and as part of its policy teachers are required to use standardised reporting templates which include grades;
3. currently approximately 77% of student reports were generated using the SIS programme and of these around 60% had grades allocated;
4. the Department negotiated with representatives of the Union in 2006 and revised the templates and computer software to complete the revised templates is now in place in almost all Western Australian Government schools;
5. the Federal Minister for Education, Science and Training requires that the Department include grades in student reports and Federal Government funding for Western Australian Government schools is contingent on this being achieved across the board;
6. the Department has allocated significant funding and support for teachers and administrators to implement the templates and the Department is monitoring any additional support required by teachers and administrators on an on-going basis;
7. the completion of the templates by teachers does not represent a significant increase to a teacher’s workload and in many instances will result in a decrease in workload; and

WHEREAS the Union argued the following in support of its claim that an order lifting the bans should not issue:

1. that in part the bans are in place because of an inappropriate level of resourcing and lack of facilities being available to schools to use and fill out the templates;
2. that it is educationally problematic to use an A to E grade to quantify a student’s achievement level particularly for primary schools students;

3. that substantial progress has been made towards commonly agreed reporting templates and the Union wants the opportunity to have further discussions to agree on further changes to the templates and the Union maintains that further discussions are also necessary to deal with the issue of teacher workloads under Clause 25 of the *School Education Act Employees' (Teachers and Administrators) General Agreement, 2006* ("the Agreement") caused by the use of the templates;
4. that even if the bans are lifted teachers will have difficulty completing the templates in Semester 2, 2006 due to a range of issues including a lack of training, an increased requirement for comments in Years 4 to 7, a lack of appropriate Information Technology ("IT") facilities in many schools and a lack of appropriate broadband and electronic access to the system for many teachers;
5. that long hours of work for compiling reports at school will result in an unreasonable escalation of the workloads of teachers and administrators during Term 4, 2006 and this will create Occupational Health and Safety issues for teachers and administrators; and

WHEREAS Mr Clive Kelly gave the following evidence on behalf of the Union:

1. the implementation of the templates will result in an unreasonable increase to the workloads of teachers and administrators;
2. there is insufficient time in Term 4, 2006 for teachers to adequately complete the templates and there will be a substantial increase in teachers' workloads due to:
  - lack of relevant IT support, connectivity and unreliable software;
  - the personal safety of some teachers will be compromised when teachers remain at school to complete the templates after hours;
  - the requirement for comments on some reports is onerous;
  - the grades lack integrity, are inconsistent and arbitrary; and

WHEREAS the Union tendered a number of comments by some of its members highlighting a range of resourcing and pedagogical problems if the current templates were required to be used by teachers; and

WHEREAS the Commission was of the view that the matter before it was an industrial matter as it related to issues pertaining to the employment relationship between the Department and the Union's members and the rights of an organisation; and

WHEREAS the Commission was of the view that it had jurisdiction to issue the orders sought pursuant to s 44 of the Act which enables the Commission to issue orders with respect to an industrial matter; and

WHEREAS after hearing from the Department and the Union and taking into account equity and fairness and the substantial merits of the case and the objects of the Act including in particular s6(af) and s6(c) the Commission formed the view that the bans that the Union and its members had in place with respect to teachers and administrators preparing for and using the current templates should be lifted; and

WHEREAS in reaching this conclusion the Commission took the following into account:

1. that the progress to date between the parties on the revised templates to be used in Semester 1, 2007 represents the extent to which agreement can be reached on this issue at this point in time for implementation in Semester 1, 2007 and even if further discussions are held between the parties via the consultative mechanisms set out in the Agreement with respect to these templates computer software will not be ready in time to change the revised templates for Semester 1, 2007;
2. that concerns such as using grades to report on early childhood students and other primary students as well as the ability to replace grades with descriptors can be further discussed between the parties and with the Commission's assistance prior to and at the time the Minister for Education and Training conducts a review of the templates at the end of Semester 1, 2007;
3. that the Department would provide the following resources during Term 4, 2006 in addition to resources currently being provided to assist teachers and administrators to implement and complete the templates:
  - (a) a hot-line at Central Office to provide additional IT and curriculum support;
  - (b) two additional officers available in each District Office throughout Western Australia to provide telephone and on-site support and training to schools and additional funding would be provided for these personnel to travel to schools as and when necessary;
  - (c) ten additional personnel from Central Office available to provide back up assistance to schools including school visits, telephone support and provide lap-top computers to schools where necessary;
  - (d) remote access broadband and dial-up for teachers would be in place by 3 November 2006;
4. that sanctions would not be placed on a teacher or administrator who is unable to implement and complete the templates due to circumstances beyond their control;
5. that a majority of students in a majority of schools were currently being given reports which included grades and that a number of hardware and software concerns regarding the use of the current templates had been and continued to be addressed by the Department;
6. that teachers in a number of other states throughout Australia are required to use grades when reporting on the progress of both primary and secondary students now and/or in 2007; and

WHEREAS on 1 November 2006 the Commission issued Reasons for Decision by way of recitals and a Minute of Proposed Order in relation to this matter; and

WHEREAS on 2 November 2006 the Commission conducted a Speaking to the Minutes of Proposed Order; and

WHEREAS the Department argued that amendments should be made to Orders 1 and 2 to describe the proper terminology used for the reporting templates and the SIS programme used for the templates; and

WHEREAS the Union did not oppose the amendments being sought; and

WHEREAS the Union argued that there were issues with Order 1 given the lack of resources available to teachers to implement and use the templates and that the orders finally dispose of the matters in dispute and raised concerns in regard to teachers who are unable to implement the templates due to circumstances beyond their control; and

WHEREAS having considered the submissions of both parties the Commission advised the parties that, except for the minor amendments to terminology raised by the Department, the order would issue in its original form; and

WHEREAS on 2 November 2006 the Commission issued the following orders pursuant to s 44 of the Act ("the Order"):

1. THAT the respondent, its officers, agents, employees and members immediately cease industrial action, including bans, in relation to the implementation and use of the General Reporting Templates.
2. THAT teachers and administrators with specific IT responsibility in Western Australian Public schools who are members of the respondent and currently have a ban on the implementation and use of the templates are not to take any industrial action including bans and restrictions on the implementation of SIS Curriculum Manager software upgrades and downloads with respect to the General Reporting Templates.
3. THAT the respondent, its officers, agents and employees are to take reasonable steps to inform its members about the terms of this order and direct its members to comply with this order.
4. THAT the respondent, its officers, agents and employees and the respondent's members are not to take any further industrial action in relation to the implementation and use of the templates whilst this order remains in force.
5. THAT in order to ensure that the issue of resourcing is being adequately addressed by the applicant the parties are to meet on or about 15 November 2006 and 29 November 2006 to review the progress of completing the templates and the level of resourcing being provided to assist teachers and administrators to implement and use the templates and report backs on this issue will be held in the Commission in mid November 2006 and at the end of November 2006.
6. THAT the parties are to attend a report back conference in the Commission at the end of February 2007 to review the status of templates being used in other states.
7. THAT this order is to remain in force until revoked or varied by the Commission.
8. THAT both parties have liberty to apply to vary this order."; and

WHEREAS after 2 November 2006 a number of conferences were held with respect to the issues in dispute; and

WHEREAS on 26 September 2008 the dispute about the reporting template issue was referred for hearing and determination on 4, 5, 6 and 7 November 2008 which dates were later changed to 13, 14, 17 and 18 November 2008 under application CR 79 of 2006; and

WHEREAS on 10 November 2008 the parties advised the Commission that the issues referred for hearing under application CR 79 of 2006 had been resolved and sought leave to discontinue this part of this application; and

WHEREAS on 13 November 2008 the Commission convened a conference for the purpose of dealing with the status of the file and the Order that issued on 2 November 2006; and

WHEREAS at this conference the parties advised the Commission that they consented to the Order being revoked and the file being closed; and

WHEREAS the Commission advised the parties at this conference that as the dispute about the reporting template was the only outstanding issue in dispute with respect to this application and this issue had now been resolved and as the Commission was satisfied that there was no industrial action in place or any prospect of further industrial action taking place with respect to this issue then the Order would be revoked and the file closed;

NOW THEREFORE having heard Mr R Andretich of Counsel on behalf of the Department and Mr M Amati on behalf of the Union, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act, 1979*, and by consent, hereby orders:

THAT the Order which issued in this matter on 2 November 2006 be and is hereby revoked.

[L.S.]

(Sgd.) J L HARRISON,  
Commissioner.

2008 WAIRC 01691

**DISPUTE RE IMPLEMENTATION OF NEW STRUCTURE**  
WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

THE DIRECTOR GENERAL OF HEALTH

**APPELLANT**

-v-

LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION, WESTERN AUSTRALIAN  
BRANCH, HEALTH SERVICES UNION OF WESTERN AUSTRALIA (UNION OF WORKERS)**RESPONDENTS****CORAM**PUBLIC SERVICE ARBITRATOR  
COMMISSIONER P E SCOTT**DATE**

MONDAY, 8 DECEMBER 2008

**FILE NO**

PSAC 22 OF 2008

**CITATION NO.**

2008 WAIRC 01691

**Result**

Order issued

**Representation****Applicant**

Ms F Bajrovic

**Respondents**Ms C Pullen for Liquor, Hospitality and Miscellaneous Union, Western Australian Branch  
Mr D Ellis for the Health Services Union of Western Australia (Union of Workers)*Order*

WHEREAS on 16 November 1995, Commissioner C.B. Parks issued an Order No C107 of 1995 in the following terms:

1. That Enrolled Nurses (Anaesthetic Department), employed by the respondent, shall be paid at the rates of salary applicable to Anaesthetic Technicians employed pursuant to the Hospital Salaried Officers' Award 1968 or its successor.
2. That this Order shall have effect on and from 24 May 1995.

WHEREAS on 18 August 2008 an application was filed in the Commission requesting that a conference be convened pursuant to s.44 of the Industrial Relations Act 1979; and

WHEREAS such a conference was held on 20 August 2008; and

WHEREAS the parties have reached agreement as to the introduction of an Anaesthetic Technician structure at Fremantle Hospital and Health Service which will result in the abolition of Enrolled Nurse positions in the Anaesthetic Department at Fremantle Hospital and Health Service; and

WHEREAS as a consequence the introduction of the Anaesthetic Technician structure within the Anaesthetic Department at Fremantle Hospital and Health Service, Order No C107 of 1995 will no longer be relevant; and

WHEREAS the continuance of Order No C107 of 1995 may result in future disputes including in regards to overlapping coverage; and

WHEREAS the parties requested that Order No C107 of 1995 cease to have application from the date that the Enrolled Nurses employed in the Anaesthetic Department at Fremantle Hospital and Health Service are transferred into the appropriate position in the Anaesthetic Technician structure and thereby employed pursuant to the Health Services Union – WA State Health Industrial Agreement 2006 or its successor;

NOW THEREFORE the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders:

That Order No C107 of 1995, issued on the 16<sup>th</sup> day of November 1995, shall cease to have effect on and from the 1<sup>st</sup> day of December 2008

(Sgd.) P E SCOTT,  
Commissioner,  
Public Service Arbitrator.

[L.S.]

**CONFERENCES—Matters referred—**

2008 WAIRC 01605

**DISPUTE REGARDING WORK BANS**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

THE DIRECTOR GENERAL FOR THE DEPARTMENT OF EDUCATION AND TRAINING

**APPLICANT**

-v-

THE STATE SCHOOL TEACHERS' UNION OF W.A. (INCORPORATED)

**RESPONDENT****CORAM** COMMISSIONER J L HARRISON**DATE** MONDAY, 17 NOVEMBER 2008**FILE NO/S** CR 79 OF 2006**CITATION NO.** 2008 WAIRC 01605**Result** Discontinued**Representation****Applicant** Mr R Andretich (of Counsel)**Respondent** Mr M Amati*Order*

WHEREAS this is a matter referred for hearing and determination pursuant to s 44 of the *Industrial Relations Act 1979*; and

WHEREAS the Commission listed the matter for hearing and determination on 4, 5, 6 and 7 November 2008 which dates were later changed to 13, 14, 17 and 18 November 2008; and

WHEREAS on 10 November 2008 the parties advised the Commission that the issue referred for hearing had been resolved and sought leave to discontinue the matter and the hearing was vacated; and

WHEREAS the Commission has formed the view that in the circumstances it is appropriate to issue an order discontinuing the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT the application be, and is hereby, discontinued.

(Sgd.) J L HARRISON,  
Commissioner.

[L.S.]

**CONFERENCES—Notation of—**

Parties		Commissioner	Conference Number	Dates	Matter	Result
The Director General for the Department of Education and Training	The State School Teachers' Union of W.A.(Incorporated)	Harrison C	C 79/2006	12/09/2006 20/09/2006 29/09/2006 4/10/2006 4/10/2006 26/10/2006 27/10/2006 31/10/2006 2/11/2006 20/11/2006 11/12/2006 28/02/2007 13/06/2007 14/08/2007 24/10/2007 11/06/2008 16/06/2008 23/09/2008 13/11/2008	Dispute regarding work bans	Concluded

Parties		Commissioner	Conference Number	Dates	Matter	Result
The State School Teachers' Union of W.A.(Incorporated)	Director General, Department of Education and Training	Harrison C	C 11/2008	2/07/2008 31/07/2008 7/08/2008 10/09/2008	Dispute re disciplinary process	Concluded
The State School Teachers' Union of W.A.(Incorporated)	The Governing Council, South West College of TAFE	Harrison C	C 37/2007	N/A	Dispute re conditions of employment of union members	Concluded
The State School Teachers' Union of WA (Incorporated)	Director General, Department of Education and Training	Harrison C	C 14/2008	2/07/2008 31/07/2008 7/08/2008 10/09/2008	Dispute re decision by the employing authority to reprimand and impose a fine on union member	Concluded
The State School Teachers' Union of WA (Incorporated)	The Director General, Department of Education and Training	Harrison C	C 12/2008	2/07/2008 31/07/2008 7/08/2008 10/09/2008	Dispute re decision by the employing authority to reprimand and impose a fine on union member	Concluded
The Western Australian Police Union of Workers	Commissioner of Police	Kenner C	PSAC 25/2008	4/09/2008	The Union seeks assistance to stop the proposed action to cease paid sick leave to a union member during a period for which a medical certificate applies.	Discontinued
Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch	Spartan Freightlines	Smith SC	C 17/2007	12/09/2007 13/12/2007 6/03/2008	Dispute in relation to underpayment of wages.	Concluded

## PROCEDURAL DIRECTIONS AND ORDERS—

2008 WAIRC 01672

### ALLEGED BREACH OF RESPONDENT'S DUTY TO AFFORD PROCEDURAL FAIRNESS

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

SEAN TYNDALL

**APPLICANT**

-v-

DIRECTOR-GENERAL, DEPARTMENT OF EDUCATION AND TRAINING

**RESPONDENT**

**CORAM**

COMMISSIONER J L HARRISON

**DATE**

MONDAY, 1 DECEMBER 2008

**FILE NO/S**

APPL 6 OF 2008

**CITATION NO.**

2008 WAIRC 01672

**Result**

Discontinued

### *Order*

WHEREAS this is an application referred to the Commission pursuant to s 78 of the *Public Sector Management Act 1994*; and

WHEREAS on 13 March 2008 and 10 April 2008 the Commission convened conferences for the purpose of conciliating between the parties; and



WHEREAS at the conclusion of the second conference the parties were given time for further discussions; and

WHEREAS the Commission contacted the applicant on a number of occasions after 10 April 2008 about the status of the matter; and

WHEREAS on 26 August 2008 the applicant's representative advised the Commission that the matter had settled; and

FURTHER that a Notice of Discontinuance would be lodged in the Commission once the settlement had been confirmed in writing; and

WHEREAS the Commission contacted the applicant on a number of occasions about lodging a Notice of Discontinuance; and

WHEREAS on 19 November 2008 the applicant filed a Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

(Sgd.) J L HARRISON,  
Commissioner.

[L.S.]

### INDUSTRIAL AGREEMENTS—Notation of—

Agreement Name/Number	Date of Registration	Parties		Commissioner	Result
Department of Corrective Services Juvenile Custodial Officers' General Agreement 2008 PSAAG 18/2008	25/11/2008	The Department of Corrective Services and Another	(Not applicable)	Commissioner S J Kenner	Agreement Registered
Department of Racing, Gaming & Liquor Agency Specific Agreement 2008 PSAAG 16/2008	14/11/2008	The Civil Service Association of Western Australia Incorporated	Director General, Department of Racing, Gaming and Liquor	Commissioner P E Scott	Agreement registered
Employment Law Centre of WA (Inc.) Enterprise Bargaining Agreement 2008 AG 18/2008	18/11/2008	Australian Municipal, Administrative, Clerical and Services Union of Employees, W.A. Clerical and Administrative Branch	Employment Law Centre of WA (Inc.)	Senior Commissioner J H Smith	Agreement Registered
Penrhos College Non Teaching Staff (Enterprise Bargaining) Agreement 2008 AG 20/2008	11/11/2008	The Independent Education Union of Western Australia, Union of Employees and others	(Not applicable)	Commissioner S J Kenner	Agreement Registered
Waikiki Private Hospital Registered Nurses Agreement 2008 AG 19/2008	19/11/2008	The Australian Nursing Federation, Industrial Union of Workers Perth	Dr Anthony Robinson trading as Waikiki Private Hospital,	Commissioner S Wood	Agreement registered

## INDUSTRIAL AGREEMENTS—BARGAINING—Matters dealt with—

2008 WAIRC 01592

### APPLICATION FOR ENTERPRISE ORDER PURSUANT TO S.42I OF THE ACT

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

DIRECTOR GENERAL, DEPARTMENT OF EDUCATION AND TRAINING AND OTHERS

**APPLICANT**

-v-

THE STATE SCHOOL TEACHERS' UNION OF W.A.(INCORPORATED)

**RESPONDENT**

**CORAM**

COMMISSIONER J L HARRISON

**DATE**

THURSDAY, 13 NOVEMBER 2008

**FILE NO/S**

APPL 18 OF 2008

**CITATION NO.**

2008 WAIRC 01592

**Result**

Order issued

**Representation**

**Applicant**

Mr D Matthews (of Counsel)

**Respondent**

Mr M Harding (of Counsel)

*Order*

WHEREAS on 24 July 2008 the Director General, Department of Education and Training and a number of Managing Directors of TAFEs (“the applicants”) lodged an application for an enterprise order under s 42I(1) of the *Industrial Relations Act, 1979* and on 5 September 2008 the State School Teachers’ Union of W.A. (Incorporated) (“the respondent”) lodged a Notice of Answer and Counter-proposal with respect to the proposed enterprise order; and

WHEREAS a directions conference was held on 31 July 2008 with respect to this application and the matter was set down for hearing on 13 to 17, 20 to 24 and 27 to 31 October 2008 inclusive; and

FURTHER by letter dated 5 August 2008 the parties were given directions in respect to the hearing of the matter which included an opportunity for either party to apply to vary the directions; and

WHEREAS on 29 August 2008 the respondent made an application for liberty to apply with respect to the directions that issued on 5 August 2008; and

WHEREAS on 8 September 2008 the Commission convened a conference for the purpose of dealing with the respondent’s request to vary the directions; and

WHEREAS at the conference on 8 September 2008 the respondent argued that the hearing be adjourned until February 2009 so that the respondent could adequately prepare for the hearing given the range and complexity of the matters to be heard and determined and requested that the directions to apply to the parties be altered accordingly; and

FURTHER the respondent requested that its application for an interim order as set out in its Notice of Answer and Counter-proposal lodged in the Commission on 5 September 2008 be dealt with in September 2008 prior to the substantive matter being heard; and

WHEREAS the applicants argued that in their view nothing had changed since the Commission issued its directions on 5 August 2008 however if there was to be a change to the hearing dates the hearing should take place in November 2008; and

WHEREAS after hearing from the parties the Commission advised the parties that given the respondent’s limited access to its members since the directions issued and the difficulties faced by both parties if this matter was listed in December 2008 and January 2009 the hearing dates in October 2008 would, albeit reluctantly, be vacated and the matter listed in February 2009; and

WHEREAS the applicants were given until the close of business 10 September 2008 to consider the draft timetable proposed by the respondent; and

WHEREAS on 10 September 2008 the applicants proposed a change to the date of filing submissions prior to the hearing; and

WHEREAS after considering the submissions of the parties and taking into account equity and fairness and the substantial merits of the case, and the objects of the Act, on 11 September 2008 the Commission issued orders with respect to this matter; and

WHEREAS the orders contained a provision that the matter would be set down for hearing on 2 to 6, 9 to 13 and 16 to 20 February 2009, and 9 to 11 March 2009 inclusive for closing submissions; and

FURTHER the orders contained provisions in respect to the hearing of the matter which included an opportunity for either party to apply to vary the orders; and

WHEREAS by letter dated 7 November 2008 received in the Commission on 10 November 2008 the respondent advised the Commission that the parties had recently re-commenced negotiations and to facilitate these discussions the parties were seeking to vary the orders that issued on 11 September 2008; and

WHEREAS on 11 November 2008 the Commission convened a conference for the purpose of dealing with the request to vary the orders; and

WHEREAS at the conference the parties confirmed that negotiations between the parties had re-commenced and that the revised programming and hearing dates were agreed to by both parties; and

WHEREAS the parties were advised that the Commission was satisfied that the hearing of this application should be delayed to facilitate negotiations between the parties and that an order would issue containing the revised hearing and programming dates proposed by the parties in the respondent's letter to the Commission dated 7 November 2008;

NOW THEREFORE having heard Mr D Matthews (of Counsel) on behalf of the applicants and Mr M Harding (of Counsel) on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979* hereby orders:

1. THAT the Commission's order that issued on 11 September 2008 be revoked.
2. THAT the hearing dates of 2 to 6, 9 to 13, 16 to 20 February 2009 and 9 to 11 March 2009 inclusive be vacated.
3. THAT the matter be set down for hearing on 9 to 13, 16 to 20 and 23 to 27 February 2009, and 9 to 11 March 2009 for closing submissions.
4. THAT the parties provide discovery by no later than the close of business on 5 December 2008.
5. THAT the parties are to exchange the names of witnesses to be called to give evidence by no later than the close of business on 5 December 2008.
6. THAT the parties are to file and serve witness statements by no later than the close of business on 19 December 2008.
7. THAT the parties are to file and serve any witness statements in reply by no later than the close of business on 30 January 2009.
8. THAT the parties are to file, and exchange, any documents upon which they wish to rely at hearing by no later than the close of business on 30 January 2009.
9. THAT the parties are to file and serve outlines of submissions by no later than the close of business on 4 February 2009.
10. THAT the parties have liberty to apply in relation to the above orders.

(Sgd.) J L HARRISON,  
Commissioner.

[L.S.]

---

## PUBLIC SERVICE APPEAL BOARD—

**2008 WAIRC 00380**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

LIAM GERARD COSTELLO

**APPELLANT**

-v-

THE DIRECTOR GENERAL THE DEPARTMENT OF PREMIER AND CABINET / MINISTER  
FOR PUBLIC SECTOR MANAGEMENT

**RESPONDENT**

**CORAM**

PUBLIC SERVICE APPEAL BOARD  
COMMISSIONER S J KENNER - CHAIRMAN  
MR K TRENT - BOARD MEMBER  
MS K BERGER - BOARD MEMBER

**DATE**

TUESDAY, 24 JUNE 2008

**FILE NO**

PSAB 1 OF 2007

**CITATION NO.**

2008 WAIRC 00380

<b>Result</b>	Direction issued
<b>Representation</b>	
<b>Appellant</b>	Mr B Jackson of counsel
<b>Respondent</b>	Ms L Warbey of counsel

*Direction*

HAVING heard Mr B Jackson of counsel on behalf of the appellant and Ms L Warbey of counsel on behalf of the respondent the Public Service Appeal Board, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby directs –

- (1) THAT the appellant file and serve further particulars of grounds of appeal by 8 July 2008.
- (2) THAT any amended notice of answer be filed and served within 7 days of service of the appellant's particulars.
- (3) THAT evidence in chief in this matter be adduced by way of signed witness statements which will stand as the evidence in chief of the maker. Evidence in chief other than that contained in the witness statements will only be adduced by leave of the Public Service Appeal Board. Copies of documents referred to in witness statements shall be annexed to the statement.
- (4) THAT the parties file and serve upon one another any signed witness statements upon which they intend to rely no later than 7 days prior to the date of hearing.
- (5) THAT the parties give notice to one another of witnesses they require to attend at the proceedings for the purposes of cross-examination no later than 3 days prior to the date of hearing.
- (6) THAT the appellant and respondent file and serve an outline of submissions and any list of authorities upon which they intend to rely no later than 3 days prior to the date of hearing.
- (7) THAT the matter be listed for hearing for 1 day.
- (8) THAT the parties have liberty to apply on short notice.

(Sgd.) S J KENNER,  
Commissioner,

On behalf of the Public Service Appeal Board.

[L.S.]

**2008 WAIRC 01619**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
LIAM GERARD COSTELLO

**PARTIES**

**APPELLANT**

-v-

THE DIRECTOR GENERAL / THE DEPARTMENT OF PREMIER AND CABINET / MINISTER  
FOR PUBLIC SECTOR MANAGEMENT

**RESPONDENT**

**CORAM** PUBLIC SERVICE APPEAL BOARD  
COMMISSIONER S J KENNER - CHAIRMAN  
MR K TRENT - BOARD MEMBER  
MS K BERGER - BOARD MEMBER

**DATE** MONDAY, 17 NOVEMBER 2008

**FILE NO** PSAB 1 OF 2007

**CITATION NO.** 2008 WAIRC 01619

<b>Result</b>	Application discontinued by leave
<b>Representation</b>	
<b>Appellant</b>	Mr B Jackson of counsel
<b>Respondent</b>	Ms L Warbey of counsel

*Order*

WHEREAS the appellant sought and was granted leave to discontinue the application, the Public Service Appeal Board, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders –

THAT the application be and is hereby discontinued by leave.

(Sgd.) S J KENNER,  
Commissioner,

[L.S.]

On behalf of the Public Service Appeal Board.

---

## RECLASSIFICATION APPEALS—Notation of—

File Number	Appellant	Respondent	Commissioner	Decision	Finalisation Date
PSA 57/2008	Ehab Haddad	Small Business Development Corporation	Smith SC	Upheld	14/11/2008

---

## OCCUPATIONAL SAFETY AND HEALTH ACT—Matters Dealt With—

2008 WAIRC 01547

IN THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

SITTING AS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

**PARTIES**

IHI CORPORATION  
BLUEWATERS POWER STATION

**APPLICANT**

-v-

THE WORKSAFE WESTERN AUSTRALIA COMMISSIONER

**RESPONDENT**

**CORAM** COMMISSIONER S J KENNER  
**HEARD** MONDAY, 27 OCTOBER 2008  
**DELIVERED** FRIDAY, 31 OCTOBER 2008  
**FILE NO.** OSHT 84 OF 2008  
**CITATION NO.** 2008 WAIRC 01547

**Catchwords** Further Review of WorkSafe Western Australia Commissioner's Notice - Referral to Tribunal made outside of prescribed time limit - Principles applied - Application dismissed - Order issued - *Occupational Safety and Health Act 1984 (WA) s 51A, s 51A(1), s 51A(2), s 51A(7)(a); Industrial Relations Commission Regulations 2005 (WA) reg 96, reg 37; Industrial Relations Act 1979 (WA); Mines Safety and Inspection Act 1994 (WA) s 31BA(1), s 31BA(2); Mines Safety and Inspection Amendment Act 2008 (WA) s 9(1).*

**Result** Application dismissed

**Representation**

**Applicant** Ms R Harding of counsel

**Respondent** Mr S Nunn of counsel

---

*Reasons for Decision*

- The matter before the Tribunal is a referral pursuant to s 51A of the Occupational Safety and Health Act 1984 ("the OSH Act") seeking a review of the WorkSafe Commissioner's decision of 6 October 2008 affirming Improvement Notice Number 22800095. Whilst the referral to the Tribunal on 17 October 2008 was not, as required by reg 96 of the Industrial Relations Commission Regulations 2005 ("the Regulations"), in the form of Form 7 to the Regulations, for reasons which will become apparent below, pursuant to reg 37 of the Regulations, the Tribunal waived compliance with this requirement.

2. The application was listed for mention before the Tribunal on 27 October 2008. Ms Harding of counsel appeared on behalf of the applicant. Mr Nunn of counsel appeared on behalf of the respondent. At the conclusion of the hearing the Tribunal dismissed the application for the reasons then announced in short form as outlined below.
3. At the hearing the Tribunal raised with the applicant the issue of the referral to the Tribunal being made outside of the seven day time limit prescribed by s 51A of the OSH Act which provides as follows:

**“51A. Further review of notices**

- (1) A person issued with notice of a decision under section 51(6) may, if not satisfied with the Commissioner’s decision, refer the matter in accordance with subsection (2) to the Tribunal for further review.
- (2) A reference under subsection (1) may be made in the prescribed form within 7 days of the issue of the notice under section 51(6).
- (3) A review of a decision made under section 51 shall be in the nature of a rehearing.
- (4) The Tribunal shall act as quickly as is practicable in determining a matter referred under this section.
- (5) On a reference under subsection (1) the Tribunal shall inquire into the circumstances relating to the notice and may —
  - (a) affirm the decision of the Commissioner;
  - (b) affirm the decision of the Commissioner with such modifications as seem appropriate; or
  - (c) revoke the decision of the Commissioner and make such other decision with respect to the notice as seems fit, and the notice shall have effect or, as the case may be, cease to have effect accordingly.
- [(6) repealed]
- (7) Pending the decision on a reference under this section, irrespective of the decision of the Commissioner under section 51, the operation of the notice in respect of which the reference is made shall —
  - (a) in the case of an improvement notice, be suspended; and
  - (b) in the case of a prohibition notice, continue, subject to any decision to the contrary made by the Tribunal.”

4. The issue of the nature of time limits imposed by s 51A in applications of the present kind were considered by the Full Bench of the Commission *WorkSafe Western Australia Commissioner v Anthony & Sons Pty Ltd t/a Oceanic Cruises* (2006) 86 WAIG 2950. In considering, on appeal from the first instance decision of the Tribunal, whether there exists under the OSH Act, when read with the Industrial Relations Act 1979, a power to extend the seven day time limit for bringing proceedings, Ritter AP, with Scott and Wood CC agreeing, observed at 2955:

*“Although s 51A (2) of the OSH Act is couched in permissive terms, in my opinion it provides for a limited entitlement. It is an entitlement to make a reference limited, with respect to time, to taking this action within the specified 7 day period. Put slightly differently the subsection does not provide for any entitlement upon a person to refer a matter to the Tribunal under s 51A(1) of the OSH Act outside the 7 day period specified in s 51A(2). Accordingly as a matter “under” s 51A(1) may only be referred to the Tribunal “for determination” if the reference is made within the 7 day time period specified in s 51A(2) of the OSH Act, the Tribunal does not have jurisdiction under s 51G to hear and determine a matter of this type referred to it outside this time period. As a matter of statutory construction therefore the making of a reference within the 7 day time period is an “essential preliminary to the exercise of the [Tribunal’s] jurisdiction”. (See *Aurion Gold v Bilos* [2004] WASCA 270 per *McLure J* at [28]; and see also *Berowora Holdings Pty Ltd v Gordon* (2006) 80 ALJR 1214 at [20]).”*

5. Whilst counsel for the applicant somewhat faintly suggested that a submission was open to be made to reconsider the conclusion of the Full Bench in *Oceanic Cruises*, in my opinion, unless and until the decision is reconsidered by the Full Bench in another matter, or is overturned on appeal by the Industrial Appeal Court, then I am obliged to adopt and follow the ratio of that case.
6. Accordingly, there being no dispute as to the application being outside of the seven day time limit prescribed by s 51A(2) of the OSH Act, the Tribunal had no alternative but to dismiss it. Given this conclusion, it would have imposed an unnecessary burden on the applicant to require compliance with reg 96 of the Regulations in the present circumstances.
7. As I expressed during the course of the hearing, in comparable proceedings referred to the Tribunal pursuant to s 31BA(1) of the Mines Safety and Inspection Act 1994, the Tribunal has, under s31BA(2), resulting from a recent amendment effected by s 9(1) of the Mines Safety and Inspection Amendment Act 2008, a discretionary power to extend the seven day time limit for a referral of such a matter to the Tribunal. In my opinion, this is also a matter which could be the subject of consideration by the Parliament for the purposes of s 51A of the OSH Act.
8. There have been several applications referred to the Tribunal of recent times, under s 51A of the OSH Act, where the applications have been out of time. It is important for parties intending to commence proceedings before the Tribunal, to familiarise themselves with the practises and procedures of the Tribunal, and in particular, any time limitations that may apply. To not do so may have significant consequences as the present case illustrates.

9. For example in the case of a valid referral to the Tribunal within time under s 51A(1) of the OSH Act, by s 51A(7)(a), in the case of an Improvement Notice, the Notice is suspended pending the decision of the Tribunal. Whilst it is not necessary to finally determine the matter for present purposes, it is arguable that no such suspension can have effect, in respect of a purported referral to the Tribunal which is out of time for the purposes of s 51A (2) of the OSH Act. This of itself may have consequences, not the least of which is the possibility of a prosecution for non compliance with an Improvement Notice during the period of time from the purported institution of the proceedings before the Tribunal.

---

**2008 WAIRC 01548**

IN THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

SITTING AS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

**PARTIES**

IHI CORPORATION

BLUEWATERS POWER STATION

**APPLICANT**

-v-

THE WORKSAFE WESTERN AUSTRALIA COMMISSIONER

**RESPONDENT**

**CORAM** COMMISSIONER S J KENNER  
**DATE** MONDAY, 27 OCTOBER 2008  
**FILE NO/S** OSHT 84 OF 2008  
**CITATION NO.** 2008 WAIRC 01548

---

**Result** Application dismissed  
**Representation**  
**Applicant** Ms R Harding of counsel  
**Respondent** Mr S Nunn of counsel

---

*Order*

HAVING heard Ms R Harding of counsel on behalf of the applicant and Mr S Nunn of counsel on behalf of the respondent the Tribunal, pursuant to the powers conferred on it, hereby orders –

THAT the application be and is hereby dismissed.

[L.S.]

(Sgd.) S J KENNER,  
Commissioner.

---